10TH SOUTH PACIFIC JUDICIAL CONFERENCE

the Fijian Resort, Yanuca Is.

FIJI

23 - 28 MAY 1993

PROGRAMME

"Continuing Judicial Education"

10th South Pacific Judicial Conference

Suva, Fiji

May 23-28, 1993

The Tenth South Pacific Judicial Conference was a milestone of sorts, an opportunity for assessment in addition to the regular business of conferring about judicial matters of common interest. By this time, 21 years after the first conference took place in the Samoas in 1972, the conference had grown significantly. From 13 delegates at that first conference, all of whom were chief justices in their own jurisdictions, the number of judicial delegates had grown to more than fifty, plus a substantial number of support staff and a handful of observers.

The key issues facing the delegates in their day-to-day work on the bench remained very much the same. The conference theme was the need for continuing judicial education, but topics addressed also included judicial independence and freedom from political reprisal, alternative dispute resolution, and the role of the judiciary in the protection of human rights.

The Honorable Clifford Wallace, Chief Judge of the US Ninth Circuit Court of Appeals chaired a discussion on judicial administration and case flow. Judicial business equaled public business, the panel agreed, so prompt settlement of litigation provided the institutional value of motivating citizens to settle disputes in court rather than by

violence. Judges needed to manage their caseload and schedule based on public need, rather than allowing the schedule to be dictated by attorneys for their own convenience.

Judicial independence was more than the security of a judge's tenure on the bench, said Justice Ian Sheppard, of the Federal Court of Australia. It involved both individual and institutional relationships to the legislative and executive branches. If an individual judge enjoyed independence, but the court he presided over did not, then he could not be said to be an independent tribunal. Equally significant, he said, was the perception of independence, which is as important as the reality.

Judicial independence is fragile, even in stable communities, and can be undermined in a number of ways, including failure to provide sufficient resources for the court to function, reduction of salaries to the point that qualified people are not attracted to the bench, political appointment of unqualified or partial justices, and removal or dilution of jurisdiction.

Justice Sheppard weighed into the ongoing discussion of the best way to bring good judges to the bench, saying that to him, the election of judges was "unthinkable if we are to maintain any semblance of judicial independence. Nothing could be more certain than that which would deprive the judiciary of any semblance of independence. Judges would be exposed to the political lobby using that expression in its widest sense."

The Honorable Judge William Canby, of the US Ninth Circuit Court of Appeals, put forth the idea of alternative dispute resolution (ADR) as one means of helping the court to function more efficiently. Such systems, he said, were designed to substitute for conventional litigation, and avoid the expense and delays of court adjudication, and can often lead to a better result. He referred to the Navajo system of Peacemaker Courts, wherein both parties in a dispute sit down with a peacemaker and try to come up with a solution that satisfies everyone. Types of ADR include negotiation, mediation with a neutral arbitrator, binding and non-binding arbitration, and mini-trials in which parties present a shortened form of their cases to a judge or jury who may render a non-binding decision, which gives a realistic assessment of the worth of the case and stimulates settlement.

ADR, he acknowledged, was not always preferable to full adjudication. When many similar cases would not be governed by a legal ruling, for example, formal court adjudication and a written opinion were preferable. But from the standpoint of the litigant, the problems of assuring the competence of neutral mediators and arbitrators weren't as severe as the expense, delay, and legal constraints of a trial.

(Emeritus)

The Honorable Chief Justice Edward King, President of the newly incorporated Pacific Institute of Judicial Administration (PIJA), together with chairman of the working committee, the Honorable Chief Justice Sir Timoci Tuivaga of the Supreme Court of Fiji, talked about the work that had been done on this concept since it was proposed at 1991 conference in Tahiti. Significant detail to the function of PIJA as they envisioned it was

added to the discussion in a 1/93 letter from Justice Tuivaga to chief Judge Clifford Wallace.

Under the proposal, topics for judicial seminars could include: sentencing and alternatives to incarceration, evidence, integration of principles derived from custom and tradition into the system of justice, alternative forms of dispute resolution, crimes of violence, white collar and juvenile crimes, issues of commercial law and economic development in the Pacific courts, environmental law, land issues, and others.

Judicial Administration programs, for chief justices, justices, magistrates, clerks, registrars, administrators, probation officers, court reporters, and secretaries could include: case flow management and delay reduction, processing appeals, separation of powers and functions with respect to relationships between judiciaries and other parts of the government, and the operation and maintenance of court reporting transcribers.

Technical assistance under PIJA could include the design and implementation of plans for computerization of the court, assessment of a court system with confidential recommendations, preparation of bench books, and design of statistical reports.

PIJA could also serve a clearinghouse role, helping with circulation of judgments as a tool for research, publishing a newsletter for Pacific judiciaries as the first step towards a legal journal for the Pacific, legal education for selected jurisdictions, helping to locate outstanding students and helping them get into law schools.

The concept was discussed at length with the group, picking up momentum as it went along.

Finally, before adjourning, The Honorable Chief Justice Gordon Ward, of Tonga, took the long view of the conferences. He posed a number of questions to his fellow judges about what the conference had become in the 21 years since its inception, and the direction the group wanted for the future. He wondered out loud if the conference, as it had become, was meeting the expectations of its founders. The growth in the number of delegates indicates that it has been useful, but the size also created problems. Much of the value of the conference, he said, is generated outside the conference hall in small discussions among colleagues. Now, he said, the big social functions have become "jamborees" rather than a continuation of the work of the conference. Should the number of delegates from each jurisdiction be limited, he asked.

He wondered also if opening the conference to non-judges jeopardized the confidentiality of discussions. For whom are the observers observing? Should the media be allowed to report anything more than the opening speeches and social events? Are we happy, he asked, with presenting papers, and with the content of those papers? Should the topics concern day-to-day work and actual problems more than broader theories of law and administration? Should the agenda be less formal – and if so, would delegates both to analyze their problems sufficiently beforehand to fuel discussion? Should it be a single,

large forum, or should it be split into separate conferences based on the size of the country or origin of the legal system?

Delegates had much to think about as they headed back to their jurisdictions, and two years to think about it before the 11th South Pacific Judicial Conference would convene in Guam in 1995.