

THE PRIME MINISTER OF WESTERN SAMOA
THE HONOURABLE TUPUA TAMASESE LEALOFI IV

and

THE GOVERNOR OF AMERICAN SAMOA
THE HONOURABLE JOHN M. HAYDON

cordially invite

*to attend the first South Pacific Judicial Conference to be
opened in Western Samoa on 10 January, 1972 and concluded
in American Samoa on 13 January 1972*

**It is requested that the reply to this
invitation should be sent to the Secre-
tary, William Stewart, Pago Pago,
American Samoa, 96920.**

PROGRAM

1971

AMERICAN SAMOA JUDICIAL CONFERENCE

A Seminar

A JUDICIAL CONFERENCE BETWEEN JUDGES
AND INVITED GUESTS OF SUPREME COURT
WESTERN SAMOA AND JUDGES AND INVITED
GUESTS OF THE HIGH COURT OF AMERICAN
SAMOA

Intercontinental Hotel
Sadie Thompson Room
Pago Pago, American Samoa
February 25, 26 and 27, 1971

1st South Pacific Judicial Conference

Apia, Samoa; and Pago Pago, American Samoa

January 10-13, 1972

The very first South Pacific Judicial conference, in the two Samoas in January of 1972, was a historic undertaking. It brought together three indigenous cultures of the Pacific islands: Micronesian, Melanesian, and Polynesian, and was attended by delegates from fifteen different legal jurisdictions, including several developing island nations of the Pacific. Also attending this first meeting were representatives from the Australia, New Zealand, the United States, the United Kingdom, and a representative from the South Pacific Commission. *(See appendix for a list of those attending)*

This was the first opportunity for the judiciary from the emerging nations around the Pacific to share experiences and knowledge. The judicial education afforded by this conference was recognized as valuable both by ex-patriate judges with extensive legal training and experience but, in some cases, limited familiarity with the cultures of the island nations in which they served, and to native judicial officials whose legal training and experience was in some cases limited. The timing was right as new nations were coming into being, with new constitutions that reflected the influence of the Western nations that had controlled various parts of the Pacific under mandate from the League of Nations after World War I, and the United Nations after World War II.

The participants in this first conference also recognized the value in sharing information and experiences with each other, as they struggled to incorporate traditional and customary laws within the framework of the new constitutions. They agreed that preservation of the cultural heritage of the peoples of the Pacific was vital to successfully establishing the rule of law.

A custom established at this first conference was for the host country to offer insights into its own judicial system's accomplishments, problems, and challenges as a starting point of discussion. Chief Justice Barrie Spring, Supreme Court of Samoa, gave a presentation on the judicial system of Samoa, including its relationship to the Executive.

Samoa's history of being governed by much larger Western countries was in many respects similar to that of many other emerging nations in the Pacific. Its judicial system reflected that fact, and under a treaty signed in 1889, law as administered in the courts of England was set as the basis, but the Court had authority to impose punishment established by laws of the United States, England, or Germany, whichever the Chief Justice determined to be the most appropriate. Significantly, the Court was permitted to modify practice and procedure as required by local circumstances, and to treat the indigenous people according to the laws and customs of Samoa. Until that time, the rule of law had been regulated solely by the usages and customs of the Samoan people.

In 1898, when King Malietoa died, a dispute over succession was resolved when Samoan leaders agreed with the commission of the United States, Great Britain, and Germany, to

abolish the kingship. From 1900-1920, German Law applicable to the Protectorate of Samoa applied. In 1920, the government of New Zealand took control under a mandate from the League of Nations, and enacted a comprehensive code of law known as the Samoan Constitution Order 1920, laying down the basis of law for the territory.

In 1946, Samoa petitioned the United Nations for self-government. Trusteeship was set up under administering authority of New Zealand. In 1954, the Constitutional Convention adopted a series of basic principles, and in 1961, a majority of the Samoan people voted for independence. At this time, such New Zealand legislation as applied to the country was steadily replaced by local legislation, although the system and jurisdiction of the courts still closely resembles those of New Zealand.

It was established that the Chief Justice should be "learned in law and equity of mature years, of good repute for his sense of honor, impartiality, and justice. His decisions...shall be final." Judges of the Supreme Court were appointed by the head of state, acting on the advice of the prime minister. As is true with most of the emerging island nations of the Pacific, Samoa had limited financial resources and decisions on funding the operations of the judiciary were entirely in the hands of the executive.

Chief Justice Spring said however that he believed the Executive in Samoa was conscious of the fact that the imposition of the rule of law over custom was hard for some of the populace to accept, and that one result of the independent judiciary was public confidence

in, and respect for, both the judiciary and the executive, leading to greater stability and promoting security and freedom of the individual.

Judicial independence was guaranteed in the Constitution, and has been respected, according to Chief Justice Spring. "Looking back on eight years of independence, it is my considered opinion that Western Samoa has obtained judicial independence and that the statement in the preamble to the Constitution, 'Wherein the impartial administration of justice should be fully maintained,' is fully satisfied."

There were significant ways in which the system adapted to Samoan culture and customs.

For example, Samoa adapted the jury system with use of "assessors" to incorporate tradition law into decisions of the court. In serious criminal cases, where an accused had pleaded not guilty to an offense punishable by death or by more than five years in prison, the Supreme Court along with a panel of four lay assessors, including at least two Samoans, heard the evidence. Conviction required concurrence of at least three of the assessors AND the trial judge (who was not to deliberate with the assessors, so he would not have undue influence over their decision).

There were a number of factors that kept the right of statutory law under the Constitution, and traditional law as interpreted by the Assessors, in balance. The Land and Titles Court as adapted in Samoa from German administration prior to World War I also used assessors. It had jurisdiction over *matai* titles (personal dignities or titles of nobility) and

customary land, but not over European or freehold land, which was held under title and was freely transferable. This court, with jurisdiction over about 80% of the land in Samoa, according to Judge Spring, was “probably to the Samoan mind the most important court in the land.”

The Honorable Justice C. C. Marsack, of Suva, Fiji, in his address to the group on cultural and ethnic disparities and their effect on the judicial process in Fiji, cited Samoa’s system of assessors, which incorporated elements of tradition into the administration of justice, was cited.

explain = what exactly did he say

Judge Marsack noted that often, a highly trained judge would be brought in from the outside, and hadn’t been in the territory long enough to make a fair assessment of what constitutes a “reasonable man” under the law, as interpreted in the context of tradition. Local assessors, as used in Samoa, could explain fully to the trial judge the reasons for their verdict, and provide assistance in the matter of the character and outlook of the indigenous people, and the age-old customs by which their lives were largely regulated.

“In many cases,” he said, “substantial justice cannot be done...unless proper allowance is made for local conditions and customs in the islands, and most importantly, for the essential differences in human character and general outlook between the average islander and the ordinary ‘reasonable man’ of British jurisprudence.”

What are the customs talked about?

Example

This issue of the incorporation of traditional law into the body of statutory law would come up many times in future conferences, as would the issue of judicial independence. Many other topics discussed in Apia and in Pago Pago over the three days of this first conference would also be considered again and again throughout the years as the conferences continued in different venues around the Pacific.

Participants shared other problems, such as the problem of interpreting, reporting and transcribing judicial proceedings in several languages, the need for agreements among them to enforce court judgments and to extradite and exchange prisoners, and the need for a regional court of appeals. They also discussed the problems of narcotics in the islands, marine pollution, and the Law of the Sea.

Other subjects discussed this first conference included: treatment of juvenile offenders, probation, and pre-sentence investigation; psychiatric evaluation and care of offenders; and immigration and extradition issues.

Chief Justice Barrie Spring, of Samoa, one of the two individuals responsible for this first conference, was elected Chairman by the delegates in attendance. The host government of Samoa even issued a commemorative ten-cent postage stamp on the opening day of the conference. The group overwhelmingly supported the value of this first conference, and those to come by approving a proposal to establish a permanent South Pacific Judicial Conference to take place every two years.