The 1975 South Pacific Judicial Conference

at the
Sheraton-Waikiki Hotel
in Honolulu
July 16–19, 1975

2nd South Pacific Judicial Conference

Honolulu, Hawaii

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The Second South Pacific Judicial Conference was in many ways key to the ultimate success of this project because it would take the success of the first conference, in Samoa, and give it momentum. However, as noted in the Introduction, this second conference almost didn't happen.

This second conference also took place in the context of some of the participating countries having recently achieved full independence, while others were in the process of constitutional change.

Chairman Chief Justice Sydney Frost, of Papua New Guinea, in his opening remarks, detailed some of his country's efforts to draft a constitution, which was accomplished in December of 1973, and become self-governing, which would take place in September of 1975. He reminded the delegates that regardless of the status of their own political aspirations, there was much they all had in common. Most had inherited the common law from which their legal systems would be built from the British, the French, or the Americans.

The American judicial system was the model for the court system of the Trust Territory of the Pacific (TTPI), detailed to the delegates by the Honorable Harold W. Burnett,

Chief Justice of the TTPI. He told the delegates that it was a unique challenge to work out the self-government process of these American protectorates in Micronesia. The Trust Territory, which was spread out over the Pacific in an area about as big as the continental United States, was divided politically into six different administrative districts, all of which observed different customs with distinct social differences and different languages.

Cultural awareness was required under the Trusteeship Agreement, by which the US administers the islands of Micronesia. By statute, the US was required to preserve, observe, and protect the customs and cultures of the people. And, by statute, custom would apply in all cases in which it had not been superseded by written law.

Chief Justice Burnett acknowledged a problem in bringing cultural awareness to the bench, a problem that was familiar to most of the delegates. He explained that he came to his position in the Trust Territories from the United States, with considerable legal and judicial experience, but although he lived in Guam for an extended period prior to his appointment to the TTPI High Court, he still didn't feel that he had a thorough understanding of Micronesia or its people. Even after nearly eight years on the bench in Micronesia, and even with all of the extensive studies done to help non-natives to understand the customs and culture, he said he was still searching for understanding and becoming less and less convinced that he would ever achieve it.

A jury system would bring that knowledge of tradition to trials, but in small communities, with conflicting relationships and no tradition of an impartial jury, it could be nearly impossible to empanel an appropriately objective jury. Chief Justice Burnett discussed his view of the assessor system, as used in Samoa, as a way to provide a non-native judge, like himself, with input on traditions and customs, but said he had come to use the assessors less and less because there is little general agreement on what the relevant custom in a particular case might be. The principal value of using assessors, to him, was in evaluating witnesses whose testimony is in a language with which he was not familiar.

The Right Honorable Sir Harry Gibbs of the High Court of Australia, reminded the group that the assessor system was, in any case, a colonial invention, adopted by the British because they used expatriate judges throughout their empire. The system provided for assessors who would be responsible for making a decision, and advisory assessors who would only asked to offer thoughts and reactions, for which they could not be held responsible. Justice Gibbs said he believed it better to have the advisory assessors, whose views would contribute to a decision that would ultimately be made by a strong and experienced judge. A less able and experienced judge, he cautioned, might find it more difficult to deal with the recommendations of an irresponsible body, or one that might not fully understand the rule of law.

The Honorable Leslie N. Jochimesen, Acting Chief Justice for the High Court of American Samoa, explained that he worked with Samoan judges, not assessors, who were appointed by the governor. They were generally *Matais*, with no judicial experience and

widely varying levels of education. Two Samoan judges sat with him in every case, criminal and civil, and all of them would participate in the decision, but he could override them. He said it was awkward at first because as Chief Justice, he was regarded as the equivalent of a very high chief, so in deliberations, the *matai*-judges were reluctant to speak up once he had expressed an opinion. It took him a while to convince them to offer their opinions, and discuss the issues involved in a case. He said, however, he looked forward to the day when upcoming young Samoan lawyers would sit as judges themselves.

The Honorable Sydney Frost, Chief Justice of Papua New Guinea (PNG), opined that without the tradition of a jury, the ultimate legal system would likely be that of a collegiate bench, with issues being tried by a judge sitting with two magistrates.

Papua New Guinea was trying a variation on the assessor, according to PNG Minister for Justice, N. Ebia Olewale. He told the group that his nation is one of tremendous diversity, with more than 700 different languages and dialects spoken, and scattered, often hostile tribes separated by steep mountain ranges. But, he said, the new Constitution set out a system of justice that, along with matters incidental to it, such as rules of evidence, was uniform throughout the country. New regulations, which were to take effect by the end of 1976, would use assessors in selected court towns on a trial basis, in effort to involve ordinary members of the community in the processes of judicial decision-making, and to see that local custom is taken into account.

A discussion of crime prevention in developing areas touched on many issues that would return to the agendas in future judicial conferences over the next thirty years. Professor William Clifford, Director of the Australian Institute of Criminology, spoke also from his experience as head of the United Nations Crime Prevention Program. He explained that comparison shows that "developed" countries have higher rates of crime than "developing" countries, and the village community in any country has less crime than the city. He attributed this to the fact that the industrialized nations have lost a great many of the traditional social controls that developing countries usually possess, such as the strong family structure, the older web of obligations, the status within a tribal group, and the expectations of neighbors or friends. To be respected and effective, he said, a legal system must accurately and fairly reflect the way a culture weighs the importance of community versus the importance of the individual.

All shared common problems, said Chief Justice Frost, but the two things that united all of the delegates were their agreement that the absolute need for the judiciary's independence from the executive must be unquestioned; and that the fundamental duty shared by all of them must be to do justice according to the law.

The Honorable William S. Richardson, Chief Justice of Hawaii, reflected on the promise of the conference when he told the delegates, "We are a family of nations, a gigantic circle of humanity, a living ring of intense activity...In the ancient past, our ancestors had frequent contact with each other, but these relations have almost disappeared, and we have become isolated by war and nationalism. Today, we've chosen to end this isolation,

at least in the judicial field, knowing that the peoples of the world could attain peace and harmony by meeting and exchanging ideas regarding our legal systems..."

With the conferences now firmly back on track, the delegates voted to accept the offer of Papua New Guinea to host the next conference in 1977.