

A PROGRAM FOR LEGAL EDUCATION IN THE TRUST TERRITORY

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It is the purpose of this paper to examine some of the problems of legal education in the Trust Territory, to determine the types of legal education which should be employed to meet the present and future needs for legal personnel, and to propose steps which can be taken in the very near future to meet these pressing needs.

At the present, due to increased hiring of American attorneys by the Trust Territory Government, as well as the presence of Peace Corps lawyers in each of the districts, there is a greater supply of well-trained lawyers in the Trust Territory than ever before. The fact remains, however, that the vast majority of these persons are here on a relatively short-term basis and, especially in the case of Peace Corps lawyers, should not be counted on to meet the long-range legal needs of the Trust Territory for staff personnel.

The Trusteeship Agreement under which the islands are governed emphasizes the promotion of, among other things, self-government. Lawyers are especially aware of the importance of an adequate legal system in the attainment of this goal, with the requisite legal personnel to meet the needs of the system, and the people. A legal system must be a reflection of the needs and standards of the inhabitants of a society, and can not, past a certain point, be superimposed from without. This is recognized clearly by the Trust Territory Government in the acceptance of local custom as controlling law in the absence of specific statute affecting the Trust Territory.

At present the legal personnel of the Trust Territory are, however, of two distinct types: formally trained American lawyers who have limited knowledge of the customary law of the Trust Territory, and Micronesians who have a solid understanding of their own culture and customs but inadequate legal training to apply such customary law to the American legal system. Admittedly the twain shall meet on occasion, meshing American principles and Micronesian custom, but often the results are disappointing. American personnel tend naturally to interpret Micronesian customary law in terms of their background in Anglo-American legal principles, with only a cursory understanding of the customary principles involved. Alternatively, Micronesians, due to their unfamiliarity with the American legal system, are unable to express the customary law in meaningful legal principles clear to their American counterparts.

For the legal system of the Trust Territory to truly meet the needs of the people of Micronesia, there must be personnel who have a solid background in both American law and Micronesian customary law. The first alternative is that of Americans gaining expertise in customary law. For obvious reasons this is extremely difficult: most Americans do not speak the local language; most do not live squarely within the local culture; most do not anticipate spending their lives in the Trust Territory; most are working for the Government in semi-administrative areas which custom seldom pervades; and finally

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the tendency is for Americans to be transferred from district to district, thereby preventing expertise in any one particular culture or making such expertise valueless elsewhere.

Alternatively, qualified Micronesians have much less difficulty in learning the principles and concepts which form the basis of the American legal system. Most legal personnel speak at least adequate English for instructional purposes; they will likely be staying within their respective district cultures, making it necessary to learn but one foreign system; and they will be spending their lives in these, their islands. In addition, Micronesians, to attain self-government, themselves need the technical and professional skills to make self-government actually work. Thus, it is imperative that Micronesians receive adequate professional training in American legal principles, procedures and concepts. What form then should such legal education take; what is the next step?

First it should be stated that there will never be a substitute for well-trained and professionally qualified lawyers in the Trust Territory. For Micronesians to take an active and meaningful role in their government, it is imperative that they have a legal background equal in all respects to that of their American counterparts. To many Micronesians, the lack of an equivalent education results in a professional insecurity which is manifested in reluctance to take issue with Americans who do have a law degree, regardless of who is correct in the particular instance. In short, then, there must be major emphasis on sending qualified Micronesians to law school in the United States (assuming that the United States and American law will have a continuing place in Micronesia). Admittedly this is an expensive program, and perhaps many classroom hours will be spent in areas of the law not directly applicable to the Trust Territory at present; however, the returns in and importance personal dignity and self-confidence can not be exaggerated. It has been said that for a lawyer to be good, he must be at least a bit conceited.

As an alternative to American law school education, it has been suggested that Micronesians be sent to British-type law schools in the Pacific area, such as the University of Papua-New Guinea, where they could obtain a legal education without first attaining an undergraduate degree, thereby lessening the time and expense of training. Although the suggestion is attractive as a stop-gap measure, as a long-range policy its limitations are clear. First, the objective of equivalent education still would not be realized, and uncertainty as to the future would leave such graduates in the same insecure position as present Trust Territory Medical Officers trained in Fiji. Second, the differences between English and American law, while not great, are certainly existent. Finally, migrated American lawyers would still be at an advantage due to the breadth of their education, while Papua-educated Micronesians would be less versatile legal technicians. Thus, priority must be given to high-quality formal legal education in the United States.

II. RESIDENT PROGRAM

General. The Resident Program would consist of a four to six month general legal program for approximately fifteen to twenty students who would, at least at the outset, be legal personnel from the various districts of the Trust Territory, and from various departments of the Government. All courses and instruction would be conducted in English, both because of the inter-district nature of the Institute and to increase the students' working ability in the language. While such a policy would necessarily restrict somewhat the persons who might be eligible to attend, especially, for example, the older Micronesian judges, such a practical policy is absolutely necessary for the long-range development of qualified legal personnel. Students would have their transportation and salaries paid by the department for which they work, but presumably no other compensation, such as per diem or differential, would be necessary; they could be charged a reasonable sum for food and lodging to be paid out of their salaries, or alternatively, this sum could be paid by the department for which they work.

Program of Study. The program of study could be adjusted to each group of students, dependent upon their background and experience, language ability, and area of professional interest. The program would have a duration of from four to six months, consisting of four phases of instruction of a month to six weeks each. The program would tentatively include the following courses of study:

1. First Phase: Introduction.
 - a) Introduction to Legal Reasoning. Emphasis on legal writing and speaking in English.
 - b) Legal Profession. Role of lawyers in society, professional ethics, etc.
 - c) Legal Bibliography and Research. Use of legal references, legal citations, interpretation of statutes, etc.
 - d) Basic Trust Territory Law. United Nations Charter, the Trusteeship Agreement, Bill of Rights, customary law, powers of the Congress of Micronesia and the district legislatures, common law, and sources of Anglo-American traditions and principles.

2. Second Phase: Procedure and Trial Practice.
 - a) Civil Procedure.
 - b) Criminal Law and Procedure I.
 - c) Legal Drafting. Wills, contracts, pleadings, motions, etc.
 - d) Evidence.

INSTITUTE FOR LEGAL EDUCATION

I. GENERAL REQUIREMENTS

Physical Needs. The Institute would be established in one of the district centers outside of Saipan, possibly in conjunction with the new Palau Vocational School, or using the existing District Court House in Ponape once the new building, nearing completion, is occupied. The Palau site would have the advantages of using new facilities, and would presumably have adequate supplies and clerical staff to support the Institute; in addition there is a resident Associate Justice of the High Court in Palau, with the attendant library and support. The Ponape site, on the other hand, would be ideal for immediate use since the new Court House is nearly finished, and the old building, ramshackle as it is, would require little modification for such a use. Only furniture and office equipment would be needed, and here again the close presence of a High Court Associate Justice and a fairly adequate legal library would be invaluable. At any location in the Trust Territory, housing and meals for resident students might be troublesome, but could be worked out through local high school and training school facilities.

Staff Needs. The Institute could be staffed and operated by three or four Peace Corps lawyers assigned to the Institute. Under the day-to-day supervision of the resident Associate Justice, and the long-range supervision of the Chief Justice and/or a Legal Education Committee as before mentioned, the PCV lawyers would serve as law instructors for resident programs, as well as serving as coordinators for non-resident programs. The teaching staff would be aided by occasional lectures and/or courses which might be presented by the resident Associate Justice, the District Attorney, the Public Defender, or other resident or visiting attorneys from the staff of the three legal departments or the Congress of Micronesia. In addition, clerical staff would be needed to support both the resident and non-resident programs; one good secretary-typist should be sufficient.

Cost. Although it is impossible here to give any realistic approximation of the cost of establishing and operating an Institute such as this, it is clear that, through the use of Peace Corps lawyers as instructors and the use of existing facilities such as those to be found in Ponape, the cost of operating the Institute could be kept to a minimum. It is also assumed that each of the three departments involved would be willing, dependant upon financial ability, to share the cost of Institute operations to some degree. Alternatively, it is possible that appropriations from the Congress of Micronesia might be available to support the Institute, as the Congress has made clear its support of such professional and technical training.

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2. Second Phase: Procedure and Trial Practice.

- a) Civil Procedure.
- b) Criminal Law and Procedure I.
- c) Legal Drafting. Wills, contracts, pleadings, motions, etc.
- d) Evidence.

3. Third Phase: Substantive Law.

- a) Business Law I. Contracts, corporations, partnerships, tax law.
- b) Criminal Law and Procedure II.
- c) Land Law. Basic property law and study of land law in the Trust Territory.
- d) Torts. Negligence and intentional torts.

4. Fourth Phase: Specialization.

- a) Business Law II. Mortgages, insurance, suretyship, international trade.
- b) Constitutional Law. That part not covered in Criminal Law and Procedure or Basic Trust Territory Law.
- c) Elective Course: Legislation, Trial Practice, International Law. Depending upon the interests and needs of the students.
- d) Legal research paper required of all students.

The exact length of the resident courses will necessarily be determined by the extent of legal background possessed by the students; for experienced personnel some of the introductory material will be review, more quickly covered. In addition, there is the factor of how long certain persons can be away from their regular working assignments.

The teaching method used would combine three different types, depending upon the course material and background of the students. First, the case method could be used in many courses, especially substantive courses and areas new to the students. This method substantially increases the student's ability for legal reasoning and use of imagination. Second is the lecture method, which gives the student a solid base of information from which to work and to refer back to later. Third is learning through experience-- actually doing the things required of a lawyer: drafting pleadings and motions, writing briefs and drafting contracts and wills, and practicing trial techniques. It is felt that by combining these various methods of teaching and learning that the student can get training which is valuable not only in his day-to-day work, but also in extending his scope as new problems and situations arise.

III. NON-RESIDENT PROGRAMS

In many ways this part of the Institute program would simply be a matter of organizing the various training programs and courses started in recent years in the districts, primarily by Peace Corps lawyers. The difference would be that, because the courses from

the Institute would be standardized as much as possible, there would exist good basis for incorporating such a non-resident program into the promotion and upgrading proposal hereinbefore discussed. The non-resident courses would continue to be taught in much the same way as at present, i.e., using existing facilities, upon the request of the students, translation into the local language where necessary, and using Peace Corps lawyers or available Government personnel as instructors. The difference would be a standardized syllabus prepared by the Institute and approved by the Chief Justice, which would reduce duplication of effort by various instructors and give a basis for upgrading positions. Meanwhile, the syllabus could be altered to meet local conditions and needs: shorter or longer courses as required, emphasis on particular subjects, or broad and basic courses for the general public.

It has been shown in the past years that in-district courses offer many advantages. First, the cost, if any, is minimal, since the courses can be handled completely by local staff, using existing facilities and few supplies. Second, the courses reach persons who would otherwise receive no training at all: persons not speaking adequate English for inter-district courses, outer island personnel, Community Court judges, and trial assistants with other jobs they can not leave for an extended period.

The importance of this program is that it would provide official recognition of a person's efforts to become more educated, thus increasing individual pride and acting as an incentive to further self-improvement.

CONCLUSIONS

1. Providing legal education for Micronesians is an important duty of the Trust Territory Government in fulfilling its obligations under the Trusteeship Agreement to work for self-government in the Trust Territory.
2. Micronesians should be sent to law school in the United States where they will receive a legal education equivalent to that of American lawyers. This program should be started as soon as possible.
3. In the meantime there is a definite need for a legal training program to be set up with Government assistance in the Trust Territory to meet present needs for legal personnel.
4. Such a program, herein called the Institute for Legal Education, should have two parts: first, a resident program of from four to six months in which intensive and extensive legal training would be given to qualified personnel, the cost to be borne by the Government;

second, a non-resident program in each of the districts, coordinated by the Institute, which would reach non-speakers of English, other Government personnel, and private citizens such as trial assistants.

5. Any such program should be supplemented by a system of gradations of legal practitioners in the Trust Territory, whereby such training would count toward the upgrading of an individual's classification, thereby providing an incentive for further training. In addition, there should be job promotions and upgrading based upon such training.

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