

A NOTE FROM THE EDITOR

In the last issue, I used these pages to enunciate our hope that the *Melanesian Law Journal* will be of service to the legal profession in Papua New Guinea. I should like, in this issue, to describe the kind of profession we hope to serve. It is needless to write at length on this topic, as there has been much useful discussion on it already. A Saturday seminar, organised by recent law graduates, generated several provocative papers on the future of the legal profession in Papua New Guinea, and these papers have been printed in the law students' *TokTok*. But the question is crucial, as the structure of the legal profession has ramifications for all areas of society. Whether lawyers form an elite or align themselves with the masses, whether legal services are available to the poor, are issues that will affect Papua New Guinean society generally. Therefore, these observations are offered in the interest of continuing debate on an important topic.

Since in a colonial country all discussion must eventually turn to race and nationality, I shall begin by stating that we look forward to the time when most barristers, solicitors and judges here will be Papua New Guineans. Self-reliance takes many forms, but one surely is the ability of a nation to man and administer its own institutions. Papua New Guinean lawyers will have many advantages over expatriate counsel -- the ability to gain the confidence and trust of Papua New Guinean clients; the knowledge that customary law cannot be squeezed into common law pigeon holes; and, not least, the duty to honour the traditions of their country and the right to be lawyers in their own land.

However, having said as much, I prefer not to dwell on that point. The race or nationality of a lawyer is less important than his breadth of knowledge, his commitment to the ideals of his profession, and his willingness to put service to his clients before personal ambition. Service is the essence of professionalism, and the *Melanesian Law Journal* is edited for lawyers who view admission to the bar as a commitment to a lifetime of service. This statement would be trite, were it not that Papua New Guinea's special aims and needs require a special definition of service.

Lawyers in Papua New Guinea serve a population that is, for the most part, ignorant of the demands of and justifications for the imposed legal system. Further, there are many Papua New Guineans who need legal assistance, but cannot afford its cost. Lawyers in Papua New Guinea should be advising their countrymen who sell coffee to regional factories, who buy

consumer goods from trade stores that evade price control regulations, who sign labour contracts or who wonder whether they can leave their land to their sons instead of to the heirs specified by customary law.

As Papua New Guinea develops, as local and central government agencies provide more economic incentives and new economic regulations, as the political system imposes new duties on citizens, the need of the Papua New Guinea government and Papua New Guinean people for lawyers will grow. But the ability of Papua New Guineans to pay for legal services will not grow correspondingly. It will be many years before lawyers can support themselves in a practice dependent entirely on fees from Papua New Guinean clients. If we are to ask lawyers to serve in rural areas - especially if we are to ask them to give service to every Papua New Guinean who needs it, regardless of his ability to pay - then we must continue to support lawyers out of public funds.

In Western countries, the ideal of service is satisfied when the lawyer commits himself, wholeheartedly and honestly, to serve the individual client who has presented himself at the lawyer's door and agreed to pay the prescribed fees. But, in Papua New Guinea, service cannot be defined thus, because it deprives most people of the opportunity for legal service, either because they cannot afford it or because they are unaware of their rights and privileges.

The ideal of service, to which every professional commits himself, demands in the context of Papua New Guinea a nationalised legal profession. I favour a nationalised legal service for four reasons. First, the mass of Papua New Guineans will be prevented from obtaining legal assistance if they have to pay legal fees themselves. Second, there will be a shortage of lawyers in Papua New Guinea for some time, particularly if there is an attempt to make legal services widely available. In the delicate task of building a nation, with a stable political system and an economy that benefits the people, the government must be able to exercise some control over where its few lawyers will work, so that they can be placed in the regions and jobs where they are most needed. A government that has spent \$50,000 to educate a lawyer does not need to find him representing a foreign business on the other side of the negotiating table, if it would prefer that he negotiate for the government or represent Papua New Guineans.

My third reason for favouring a nationalised legal service is that the lawyer on government salary is more likely than the lawyer in private practice to represent dissident or minority clients and to take cases in opposition to the govern-

ment. It has often been said that the independence of the law from the partiality of those in power can be guaranteed only by lawyers who are not in the pay of the government. But, what is often said is not necessarily true, and this is such a case. Lawyers in private practice do not often handle suits by individuals against the government or against powerful commercial interests, because such clients can seldom afford large fees. Thus, in the United States, a host of important court cases altered the face of the legal system and of American society in the last twenty years. *Brown v. Board of Education* began the drive for racial equality; *Miranda* and *Escobedo* limited the power of police to use artfully extracted confessions; and numerous suits broadened the concept of free speech, attacked despoilers of the environment and provided benefits and safeguards for the poor. Almost every one of these cases - many of which pitched a member of a racial or political minority against the entrenched interests of the local or central government - was brought by a lawyer receiving a government salary. Until the burgeoning of a legal services programme in the United States, which gave salaries to lawyers willing to accept impoverished clients, none of these issues had been fought out in the courts.

Closer to home, Papua New Guineans have attempted in recent years to use the Land Titles Commission and the courts to obtain the return of alienated land. Many of these cases were prosecuted against the administration of Papua New Guinea, and in most of them, the petitioners were represented not by independent lawyers in private practice but by members of the public solicitor's office, who were paid by the administration that their clients' interests required them to attack.

Finally, I favour a nationalized legal service because Papua New Guinea has, in the *Eight-Point Improvement Plan*, pledged itself to equality. Where lawyers are free to earn large fees, they will become members of a rich and privileged elite, earning incomes far in excess of those available to most of the population and leading lives that remove them from the cares and aspirations of ordinary people. This will imperil the ideal of service, for a lawyer serves his client **best** when they share a common life experience, so that the lawyer can respond to the needs and understand the wishes of the client. If Papua New Guinea is to develop into a society where benefits are equally distributed, then curbs must be placed on the amount that the better educated groups can earn by exploiting their skills, and this can best be done by salary scales established and controlled by the government.