

# DEVELOPING LEGAL COMMUNICATION SKILLS IN A SOUTH PACIFIC CONTEXT

CAROLYN PENFOLD\*

## I INTRODUCTION

It is the first day of Law School and 100 students from a dozen different South Pacific countries file into the classroom. In two of those countries alone, Vanuatu and Solomon Islands, there are over 150 extant languages,<sup>1</sup> and few if any students will be native speakers of English. Both Vanuatu and Solomon Islands are mainly oral-based societies with low rates of literacy,<sup>2</sup> and few publications — other than the Bible — are available in local languages. Having grown up speaking ples tok (the language of the place they are in), plus one or both of their parent's languages<sup>3</sup> and the language/s of surrounding villages, University of the South Pacific (USP) students from Vanuatu and Solomon Islands will then speak to one another in Pijin or Bislama, contact languages

\* Faculty of Law, University of New South Wales.

<sup>1</sup> Solomon Islands has 71 living languages, and Vanuatu has 110: M Paul Lewis, Gary F Simons and Charles D Fennig (eds), *Ethnologue: Languages of the World* (SIL International, 17<sup>th</sup> ed, 2014). For online version, see Ethnologue, *Ethnologue: Languages of the World* (2013) <<https://www.ethnologue.com>>.

<sup>2</sup> In Solomon Islands 'functional literacy rates in major provinces are as low as 7 to 17 percent.' World Bank, *Skills for Solomon Islands; Second Chances* (2012) 2. <<http://www.worldbank.org/content/dam/Worldbank/document/EAP/Pacific%20Islands/Solomon%20Island%20Skills%20-%20Brief%20.pdf>>.

In Vanuatu, 'two in every three students are achieving at least a year behind regional literacy standards in their age groups' and Vanuatu is 'off-track for achieving MDG/EFA/PRS targets re adult literacy rates for group aged 15 years and over.' Department of Foreign Affairs and Trade (DFAT) *Vanuatu Education Sector Strategy 2007 – 2016* (December 2006) <[http://aid.dfat.gov.au/Publications/Pages/4453\\_5040\\_5252\\_5485\\_8314.aspx](http://aid.dfat.gov.au/Publications/Pages/4453_5040_5252_5485_8314.aspx)>

<sup>3</sup> Marriage outside one's own clan is common, and is used both to enhance or maintain relations between tribes and to guard against in-breeding in small communities. Hence, it is common that two parents will have different first languages: Every Culture, *Vanuatu* (2014) <<http://www.everyculture.com/To-Z/Vanuatu.html>>; Every Culture, *Solomon Islands* (2014) <<http://www.everyculture.com/Sa-Th/Solomon-Islands.html>>; and see Bernard Narokobi, *Lo Bilong Yumi Yet: Law and Custom in Melanesia* (Melanesian Institute for Pastoral and Socio-Economic Service and University of the South Pacific, 1989) 70; Brij V Lal and Kate Fortune, *The Pacific Islands: An Encyclopaedia* (University of Hawaii Press, 2000) 413, 414.

which originated with Blackbirding.<sup>4</sup> While they will have some familiarity with English from school,<sup>5</sup> once at Law School they will need to interact cross culturally with expatriate teachers, read English-language materials, listen to English-language lectures, take part in English-language tutorials, and complete assessments in English language. While English language and cross cultural communication skills are required in these spheres, local languages and local modes of communication will be just as important in both personal and professional settings.

In 2011, communication skills were identified by the USP Law School as one of the required 'program learning outcomes' for law graduates. However, much of the teaching of Ni-Vanuatu and Solomon Islander law students is undertaken by expatriate academics, likely to be more familiar with the communication needs of students and lawyers elsewhere than those of students and lawyers in the South Pacific. While the USP Law School requires its graduates to 'be able to communicate in ways that are effective, appropriate and persuasive for legal and non-legal audiences',<sup>6</sup> expatriate teachers may have difficulty applying that to the local context.

Communication skills in law are the subject of considerable literature,<sup>7</sup> often referred to as generic or transferrable skills,<sup>8</sup> and

<sup>4</sup> 'Blackbirding' is the practice of taking Pacific Islanders to work on cane fields in Queensland and Fiji. During the Blackbirding period (1870s to early 1900s) many thousands of Pacific islanders were forced to work on plantations overseas. A pidgin was formed as a common language, combining mainly English vocabulary (and some French in the case of Bislama) with grammatical structures of local languages. Plantation pidgin is the origin of Bislama in Vanuatu, Solomons Pijin, and Tok Pisin of Papua New Guinea: Terry Crowley, *Language Varieties: Bislama* (Vanuatu) (nd) <<http://www.hawaii.edu/satocenter/langnet/definitions/bislama.html>>, and in relation to Solomon Islands, see Regional Assistance Mission to Solomon Islands, *Tok Pijin Guide* (2011) <<http://archive-org.com/page/3989573/2014-05-14/http://www.ramsi.org/solomon-islands/tok-pijin-guide.html>>. Melanesian pidgins have now developed to become creoles: France Mugler and John Lynch (eds), *Pacific Languages in Education* (Institute of Pacific Studies 1996). Note that pidgin describes a type of language rather than a specific pidgin language such as Solomon Islands Pijin.

<sup>5</sup> See Part III below.

<sup>6</sup> University of the South Pacific School of Law, 'Draft Program Learning Outcomes' (October 2011), unpublished, available from author.

<sup>7</sup> See for example those collected in Sharon Wesley, *Good Practice Guide* (Bachelor of Laws): Communication (Threshold Learning Outcome 5) (Australian Learning and Teaching Council, 2011).

<sup>8</sup> See for example repeated references in Sharon Christensen and Sally Kift, 'Graduate Attributes and Legal Skills: Integration or Disintegration?' (2000) 11 *Legal Education Review* 207 to a misapprehension that legal skills are more important than 'generic skills (such as communication)' at 212, and reference to few core law units teaching 'generic skills such as communication' at 213. See also Karen Holmes, *What Employers Want: The Work Skills Handbook* (Trotman, 2011) 2: 'Transferable skills have been defined ... as "skills developed in one situation which can be transferred to another situation" ... examples ... include communication skills'.

understood to be fundamental for lawyers across jurisdictions.<sup>9</sup> This paper focusses on the context-specific nature of communication skills, arguing that both the content of the skills, and the way they are learned and taught, are very much shaped by the local environment. It aims to shed some light on the South Pacific context, and to suggest strategies for helping students and lawyers to develop the necessary communication skills. Further, although this paper relates in particular to Vanuatu and Solomon Islands, the issues will be relevant also to those working with culturally and linguistically diverse students in other settings, and to those teaching international students elsewhere, particularly those from the South Pacific.<sup>10</sup>

## II THE RESEARCH PROJECT

This paper draws on both the author's experience teaching in the USP School of Law and an ongoing research project into the legal education needs of South Pacific lawyers. As mentioned above, the USP School of Law has recently developed LLB Program Learning Outcomes. When doing so the School recognised the lack of research into South Pacific lawyers' needs, and the consequent dearth of information on the topic.<sup>11</sup> Unfortunately, however, the small size of the School of Law, heavy teaching loads, high staff turnover, and the push to publish in substantive areas of law have all militated against USP academics researching in the area of legal education.

<sup>9</sup> Major reports, including those from Australia, US, UK, Europe, Canada and Latin America, all include communication as a required skill, attribute, or competency of lawyers. See Sally Kift, Mark Israel and Rachael Field, 'Learning and Teaching Academic Standard Project: Bachelor of Laws Learning and Teaching Academic Standards Statement' (Australian Learning and Teaching Council, 2010) and the reports referred to therein.

<sup>10</sup> While there is considerable literature available regarding international students generally, very little of it relates to South Pacific students as international students. For some which does, see John A Thompson and Roy G Bauer, 'Factors Affecting the Academic Success of Pacific Island International Students' (1994) 21(2) *Educational Research and Perspectives* 38, and the work referred to therein. See also Fiona Pakoa, 'Melanesian Students: Negotiating their Identities to Succeed in Higher Education' (Queensland Education and Training International, nd) <[http://www.isana.org.au/files/20062916945\\_melanesianidentities.pdf](http://www.isana.org.au/files/20062916945_melanesianidentities.pdf)>.

<sup>11</sup> See the following from the time of the initial development of Graduate Attributes for the School of Law: 'Action 9: Undertake survey of graduates and employers of graduates to identify satisfaction of stakeholders and continuing education needs. Rationale: In order to maintain the quality of our courses ... we need to ensure that our graduates who are entering the legal profession are meeting the requirements of professional bodies in the region. This research will also identify continuing education needs in the region. Timeframe: 2006–2007.' USP School of Law Teaching Plan, 2006–2011. The same information needs were identified by the University of the South Pacific, School of Law Working Group on Program Learning Outcomes in 2011.

There is literature that argues the case for South Pacific lawyers to be trained *in* the South Pacific specifically *for* the South Pacific environment, citing the difficulties that foreign-trained lawyers often had in applying their overseas learning to the local legal environment.<sup>12</sup> Other work discusses the need to educate specifically for the South Pacific's plural legal systems, and the challenges of providing such education, including geographical factors, diversity of the student population, funding constraints, and lack of resources.<sup>13</sup> Thus there is recognition of the need to train lawyers for the local context, and of the challenges of doing so, but no research has asked lawyers themselves, or those with whom they worked, what they needed in terms of knowledge, skills and abilities to prepare them for work in this environment.

This research project focusses on the latter, and the author has interviewed 80 lawyers and others working closely with lawyers in Vanuatu and Solomon Islands regarding the knowledge, skills and abilities needed by lawyers in the local environment.<sup>14</sup> Participants were recruited via email lists of local lawyers, Law Societies and Bar Associations, former USP students, and personal contacts, with participants asked to identify further potential participants.<sup>15</sup> Respondents were almost evenly split between Vanuatu (48 per cent) and Solomon Islands (52 per cent). Private-sector lawyers were 14 per cent of respondents, with government, NGO, and education sectors making up 86 per cent.<sup>16</sup> The majority of respondents were South Pacific Islanders (72 per cent to 28 per cent expatriate), and 86 per cent of respondents were lawyers.<sup>17</sup> In

<sup>12</sup> See for example R Grimes, 'Legal Education in the South Pacific — Producing Tomorrow's Lawyers: Introduction' (Discussion Paper, USP Pacific Law Department, 1995) 3; C G Powles, 'Legal Education and Information Needs' (1984) 12(1) *Pacific Perspective* 17, 21; A H Angelo and J Goldring, 'The Study of Law at the University of the South Pacific' (1994) 24 *Victoria University of Wellington Law Review* 103, 104.

<sup>13</sup> J Corrin Care, 'Finding the Right Balance in Plural Systems: Training Lawyers in the South Pacific' (2006) 4 *Journal of Commonwealth Law and Legal Education* 171; R B Cartledge, 'In Depth ... Thrown in at the Deep End' (2011) 3 *NewSPLAsh* 6.

<sup>14</sup> Two jurisdictions only were selected for this project, due to time and resources available.

<sup>15</sup> The initial phase of this project, with a more detailed contextual background and discussion of methodology, was reported in a previous volume of this journal: Carolyn Penfold, 'Contextualising Program Outcomes for Pacific Island Law Graduates' (2012) 22 *Legal Education Review* 51. While the overall research project includes all aspects of legal education, this paper focuses only on communication skills.

<sup>16</sup> Those recorded as 'private' were actually employed in private law firms at the time of interview, but many respondents move in and out of categories, or straddle more than one. For example, a private lawyer or aid worker may also tutor law students for USP; a USP teacher may hold a practising certificate and appear in court.

<sup>17</sup> Non-lawyer respondents worked closely with lawyers. They included for example a senior police officer, a court registrar, the head of a statutory office, policy makers, and parliamentary advisers.

some respects differences were not discernible between the various groups of interviewees, but where there were relevant differences they are noted in the text below.

University ethics processes were followed,<sup>18</sup> with participants given written information about the project and giving written consent before interviews. During and after data collection, qualitative analysis, including grounded theory,<sup>19</sup> was used to make sense of the data rather than using the data to ‘test’ a predetermined hypothesis.<sup>20</sup> The experience of other researchers, particularly those who had conducted interviews with the legal fraternity and others in the South Pacific, offered important contextual insights into the research process.<sup>21</sup> Loosely structured face to face interviews were recorded by the researcher in longhand, with the words often read back to participants to ensure their responses had been correctly captured. All quotes in this article not otherwise attributed are drawn from participants’ responses. While the research project was broad, this paper focuses only on communication skills.

### III LOCAL CONTEXT

Before looking at participants’ views it is necessary to understand something more of the local context. The University of the South Pacific has 12 member countries: Cook Islands, Fiji, Kiribati, Marshall Islands, Nauru, Niue, Samoa, Solomon Islands, Tokelau, Tonga, Tuvalu and Vanuatu.<sup>22</sup> All are island states which

<sup>18</sup> Initial approval was sought from the USP Faculty of Arts and Law in accord with USP protocols. More recently ethics approval has been granted by ANU’s Humanities and Social Sciences Delegated Ethics Review Committee — Protocol: 2012/263.

<sup>19</sup> Melanie Birks and Jane Mills, *Grounded Theory; A Practical Guide* (Sage, 2011); Keith F Punch, *Introduction to Research Methods in Education* (Sage, 2009).

<sup>20</sup> Data collection begins in a very open manner, generating a broad range of information about the research topic. As the data is collected, it is ‘coded’ to allow patterns or categories to emerge. As some categories become more important and patterns become more prevalent, the researcher may increasingly investigate those categories and patterns, while putting aside the seemingly less important information. Constant and continuing collection and analysis of data leads eventually to the generation of a ‘grounded theory.’ The full development of theory occurs only toward the end of the process: Birks and Mills, above n 19; Punch, above n 19.

<sup>21</sup> See, eg, Miranda Forsythe, *A Bird That Flies with Two Wings; The Kastom and State Justice Systems in Vanuatu* (PhD Thesis, Australian National University, 2007) 62, especially ‘Methodology’; Warren Prior, Suzanne Mellor and Graeme Withers, ‘Promoting Social Tolerance and Cohesion through Education’ (Report, Deakin University and Australian Council for Educational Research, July 2001), especially ‘Research Methodology’. The research was also informed by discussions between the researcher and Anusha Goonitillekke, a postgraduate student at USP Law School.

<sup>22</sup> University of the South Pacific, *About the University* (12 February 2013) <[https://www.usp.ac.fj/index.php?id=usp\\_introduction](https://www.usp.ac.fj/index.php?id=usp_introduction)>.

include hundreds of islands and stretch over more than 33 million square kilometres of the Pacific Ocean. USP's students are drawn from all of these countries, as well as occasionally from Papua New Guinea, the Federated States of Micronesia, and others. Each country has its own internal diversity of cultures, and students have a variety of background languages, disparate levels of facility with English, and marked differences in educational levels and life experiences. The Law School is located in Port Vila, Vanuatu, over 1000 kilometres from the main administrative hub of USP and from the remainder of the Faculty of Arts and Law in Suva, Fiji. Some law classes are taught also on Fiji's Laucala campus, and campuses scattered across the Pacific provide resources for distance learning.<sup>23</sup>

While students are drawn from across the Pacific region, the majority of the Law School's teaching staff is drawn from outside the South Pacific, with many teachers from Australia, New Zealand, Canada, the United Kingdom, Europe and the USA coming in for a period of time to teach in the Bachelor of Laws program.<sup>24</sup> While staff members are generally engaged on the basis of academic experience elsewhere, they often have only superficial knowledge of the South Pacific on arrival.<sup>25</sup> Little orientation to local culture or the local legal environment is provided. Short stays and constant turnover militate against the development of deeper knowledge and expertise in local matters, whether substantive, pedagogical, or cultural.<sup>26</sup>

As South Pacific legal systems are based largely on English common law, and as USP's medium of instruction is English, law teachers and other expatriates may not anticipate the communication difficulties which USP law students experience at university, and which law graduates experience in their work. They are unlikely to be aware of common Melanesian communication traits, or of cross cultural issues which may arise in communication between locals and expatriates or even amongst local people themselves. Many expatriates bemoan the

<sup>23</sup> Note also that the whole law degree may be undertaken online, with students never physically attending a class or coming face to face with a teacher. This situation makes the development of communications skills even more complex, but this is an issue beyond the scope of the current paper.

<sup>24</sup> USP does not offer tenure to academic staff. Three year contracts are the maximum available, but expatriate staff appointed to USP Law School commonly stay less than three years.

<sup>25</sup> The lack of orientation for staff new to the South Pacific was noted in a recent review which recommended 'that new members of staff should receive a specific induction into the SOL, its programmes and teaching methods': University of the South Pacific, 'Review Panel Report for the School of Law, Faculty of Arts, Law and Education' (August 2012) 37.

<sup>26</sup> Carolyn Penfold, 'Border Crossing in Legal Education' (Paper presented at the Compatibility or Conflict? Law and Culture Conference, University of the South Pacific, Port Vila, Vanuatu, September 2013).

communication ‘problems’ of South Pacific students and lawyers, but may be unable to see those ‘problems’ in context.

Communication needs can only be understood against the backdrop of the local environment more broadly. As mentioned above, Solomon Islanders and Ni-Vanuatu generally speak a number of languages, including indigenous and contact languages, but their societies are predominantly oral-based,<sup>27</sup> and literacy levels are low.<sup>28</sup> Melanesian culture has been passed down through stories and traditions, ‘in the form of spoken narratives, of chorally performed and often danced songs and dramas, and of emotive and wept laments’ rather than writing.<sup>29</sup> Tradition and custom are passed on through action, oratory, and even ‘extra-sensory’ communications.<sup>30</sup> Formal literacy is uncommon even in Pijin or Bislama, or in indigenous languages, many of which are still unwritten.<sup>31</sup> Yet without developing literacy in these languages, Ni-Vanuatu and Solomon Islanders are schooled in English and expected to become literate in English language.<sup>32</sup> Most students will not generally use English language outside school, so it tends

<sup>27</sup> Narokobi, above n 3, 26, 27.

<sup>28</sup> In Solomon Islands ‘functional literacy rates in major provinces are as low as 7 to 17 percent.’ World Bank, *Skills for Solomon Islands: Second Chances* (2012) <<http://www.worldbank.org/content/dam/Worldbank/document/EAP/Pacific%20Islands/Solomon%20Island%20Skills%20-%20Brief%202012.pdf>> 2. In Vanuatu, ‘retention rates are as low as 15 percent across the six years of primary school. Over 75 percent of all school children receive no secondary education.’ World Vision, *Country Profile: Vanuatu* (July 2008) <[http://www.worldvision.com.au/Libraries/School\\_Resources/Vanuatu\\_Country\\_Profile.pdf](http://www.worldvision.com.au/Libraries/School_Resources/Vanuatu_Country_Profile.pdf)>.

<sup>29</sup> Ruth Finnegan, ‘Introduction or Why the Comparativist Should Take Account of the South Pacific Oral Tradition’ (1990) 5 *Oral Tradition* 159, 161.

<sup>30</sup> Narokobi, above n 3, 27. Narokobi notes the use of oral language and unspoken language in communication amongst Melanesians.

<sup>31</sup> Mugler and Lynch, above n 4, 3.

<sup>32</sup> Ni-Vanuatu students may be schooled in English or French, but law is taught in English only at USP. Students wishing to study law in French need to go overseas to do so, but some USP law students come from French secondary schools and so their English language skills may be even less developed than those of their English language schooled peers. There are moves afoot to change the current English / French ‘dual education colonial system [which] has not worked to build strong literacy skills, pride in vernacular languages, or bilingualism. The dual system is expensive, unsustainable, divisive, and inequitable.’ Department of Foreign Affairs and Trade, *Vanuatu Education Sector Strategy 2007–2016: Built on Partnership to Achieve Self-Reliance through Education* (December 2006) <<http://aid.dfat.gov.au/countries/pacific/vanuatu/Documents/vanuatu-education-sector-strategy-final-version.pdf>> 16. Re Solomon Islands: ‘In Year 4 in 2010, 68 percent of students were below satisfactory level in literacy. A key reason for poor results is the need for students to learn English and Pijin as new languages beyond their mother tongue to participate in education. With too few children graduating from basic education with basic literacy skills, illiteracy forms a nationwide challenge.’ World Bank, above n 28. See also Mugler and Lynch, above, n 4 for discussion of the use of lingua franca and vernacular languages in education.

to be learned as an academic rather than practical subject.<sup>33</sup> Most local students

never have the opportunity to enjoy English in a natural setting. Compared to the relaxed atmosphere of their natural language environment, the classroom is artificial or contrived. Corrections are always emphasised and this usually has a negative effect on how students view English, which is likely to destroy their motivation as well as developing a loath[ing] towards English lessons.<sup>34</sup>

Further, teachers in both Vanuatu and Solomon Islands schools may themselves lack the English skills required to teach others English, or to teach other subjects using English language to do so.<sup>35</sup> Prior to independence, schools were often staffed by native English speakers from the colonising countries. Since independence, schools are more likely to be staffed by local teachers who themselves have had little experience with or exposure to English language, and hence may not have sufficient language skills 'to provide adequate classroom English experiences for students'.<sup>36</sup> There is a marked lack of local educational resources so education often relies on irrelevant and non-contextualised curriculum and learning resources.<sup>37</sup> Furthermore, mixed messages are given by school teachers who are required to teach in English but who 'may continue to teach in the [local] language, using English only when their classrooms are visited by Central Office staff' because the students are more confident using their own language.<sup>38</sup> One participant noted that 'village schools use Pijin or home languages, only a little English'.

In addition, English language is not one language. Standard English and South Pacific English (and in fact Aboriginal English and American English and Australian English) differ. Expatriate teachers often do not appreciate the differences between lawyers'

<sup>33</sup> Heather Lotherington, 'Trends and Tensions in Post-colonial Language Education in the South Pacific' (1998) 1 *International Journal of Bilingual Education and Bilingualism* 65.

<sup>34</sup> Helen Tamtam, 'The Status of English as a Language of Education and Communication in Vanuatu. Language Issues Affecting Students: A Case Study' (Paper presented at the Fifth Pan-Commonwealth Forum on Open Learning, London, July 2008).

<sup>35</sup> *Ibid.*

<sup>36</sup> Fata Simanu-Klutz, *Language of Instruction: Choices and Consequences* (Pacific Resources for Education and Learning, 1999) 2. See also H Lotherington, above n 33; Ana Taufe'ulungaki, 'Language and Culture in the Pacific Region: Issues, Practices, and Alternatives' (2005) 27(1) *Directions: Journal of Educational Studies* 12.

<sup>37</sup> Simanu-Klutz, above n 36; and see Lotherington, above n 33.

<sup>38</sup> Simanu Klutz, above n 36; and see Lotherington, above n 33; Taufe'ulungaki, above n 36.



and students' South Pacific English<sup>39</sup> and their own English, and tend to treat South Pacific English as simply 'wrong'. The same has been noted in the education of Indigenous Australians by teachers who misinterpret Aboriginal English as merely lazy, uneducated, bad, or incorrect.<sup>40</sup> Expatriate teachers are also unlikely to appreciate the difficulty of English pronunciation for those whose native tongue is a Melanesian language, which may make them 'difficult for speakers of some other varieties of English to understand',<sup>41</sup> especially as they 'don't speak English every day'.<sup>42</sup> Again, the same has been noted of Indigenous Australians whose background languages do not include various sounds found in English.<sup>43</sup>

Further, communication is not made up merely of words, and various other factors will impact upon the development of lawyer's communication skills. Indeed, even within the classroom a mismatch between the behaviour of students and the expectations of teachers may result from differing communication styles. For example the expatriate teachers' experience of verbal instruction as the norm may be very different from Melanesian students' learning strategies of observation, imitation, and trial and error.<sup>44</sup> Melanesian students may use silence to show respect and deference, while their teachers may interpret this as rudeness, disinterest, or lack of engagement.<sup>45</sup> Social norms may discourage students from asking questions or challenging authority,<sup>46</sup> but expatriate teachers may see this as mere passivity, a refusal to think independently, and an inability to analyse or critique. Students' unwillingness to compete or be singled out, and preference for acting communally, may be seen by teachers as a

<sup>39</sup> John Lynch and France Mugler, *English in the South Pacific* (1999) <<http://archive.today/Z9sl6>>. This paper provides an excellent overview of many of the specific characteristics of South Pacific English, including many examples which both frustrate and infuriate 'other' English speakers. These include, eg, the frequent omission of tense: 'office is close from 12-1'; the use of non-countable nouns as countable nouns: 'we need more furnitures'; the use of singular nouns following 'one of': 'one of my friend will ...'; and a distinctive use of prepositions in certain contexts: 'we should discuss about this problem' or 'to my opinion ...'.

<sup>40</sup> Diana Eades, *Aboriginal Ways of Using English* (Aboriginal Studies Press, 2013) 77, 80.

<sup>41</sup> Lynch and Mugler, above n 39.

<sup>42</sup> As mentioned above, all quotes not otherwise attributed are drawn from interview responses.

<sup>43</sup> Eades, above n 40, 82ff.

<sup>44</sup> Konai Thaman, 'Towards Cultural Democracy in Teaching and Learning with Specific Reference to Pacific Island Nations' (2009) 3(2) *International Journal of Scholarship of Teaching and Learning* 6 <<http://digitalcommons.georgiasouthern.edu/ij-sotl/vol3/iss2/6>>.

<sup>45</sup> Corrin Care, above n 13, 178.

<sup>46</sup> Konai Thaman, 'Hints for Teachers at the University of the South Pacific: (Multi) Cultural Sensitivity' (1996) 5(2) *Directions: Journal for Educational Studies* 1, 6 <<http://directions.usp.ac.fj/collect/direct/index/assoc/D1065015.dir/doc.pdf>>.

lack of motivation or interest, and an inability to think for themselves. Non-confrontational behaviour is often preferred by Pacific Islanders, but 'often interpreted by those who do not understand as "shyness" and/or lack of initiative'.<sup>47</sup> All of these cultural norms are as important in developing lawyer's communication skills as is language itself.

It is against this backdrop that participants' comments regarding the communication needs of lawyers in the South Pacific should be understood.

#### IV IDENTIFIED COMMUNICATION NEEDS

The following section discusses the communication needs of South Pacific lawyers, as identified by research participants.

##### *A Written Communication Skills*

The types of written communication that participants most frequently identified as required of lawyers in Vanuatu and Solomon Islands were similar to those required of lawyers elsewhere. Participants reported writing correspondence to clients and other lawyers, including general letters and written advice or opinions; drafting charges, pleadings and written submissions for court; writing consultation papers, political and economic reports and law reform proposals; drafting contracts; and drafting legislation.

However, there is little specialisation in legal work in Solomon Islands and Vanuatu, unlike the increasing specialisation of legal tasks seen in many more developed jurisdictions. Here the majority of lawyers appear to do a broad variety of legal tasks. For example, while only one participant's job was described as 'legislative drafting', numerous participants mentioned legislative drafting as part of their work. Most participants, including government and private employees, drafted documents for court. One participant described heading up a government legal department, including supervising staff and managing budgets, litigating in court one day and running community awareness programs in remote villages the next. A legal clerk to parliament was employed to advise MPs and parliamentary committees on standing orders, but also defended litigated matters, and drafted and advised on building and employment contracts. While a couple of newer lawyers mentioned specialising, a supervisor in an equivalent department stated 'everyone is involved in everything. Juniors specialise, but they still get involved in all things'. High staff turnover rates also mean that lawyers move frequently between work types.

<sup>47</sup> Ibid.

In the interviews there was a great deal of criticism of the written communication skills of local lawyers, especially from expatriates. They made comments such as ‘their English language is so poor that drafting, letter writing, is painful to read. They copy stuff in the hope that some of it will be right’, and ‘[locals have] extremely poor written and communication skills, we sometimes wonder how they’ve passed their LLB’.<sup>48</sup> However, the criticisms were not only by expatriates, with the following comments by local lawyers: ‘he had to leave, he had English communication problems, we had to re-write everything he did’, ‘some long-term employees of NGOs can’t write. I don’t know how they can function,’ and ‘they couldn’t draft a contract’. One USP graduate at a local private law firm was ‘sent back to do an English course’.

Local participants identified real and continuing needs in themselves and in their juniors, recognising their shortcomings and expressing a desire for further development of written communication skills. They wanted to improve their existing skills, particularly to learn to write more simply and more clearly, and also correctly and accurately. Local participants wished to be able to write at a more sophisticated level for courts, especially higher courts, but also expressed a desire to write in ways which would be more easily understood by lay persons. One expatriate participant noted that students ‘want more writing skills, they want to learn how to write, they’re nervous about that, they know things but find them difficult to write — they lack knowledge of writing genres, structures’.

### B *Oral and other Communications Skills*

All participants reported commonly using oral communication skills in their work. Many used these skills for interviewing, explaining, advising, negotiating, and courtroom advocacy. Others also used oral communication skills in facilitating and presenting at workshops and meetings, providing community education, consultations and advice, and public relations functions. ‘Listening’ was also identified as a commonly used and important skill.

Participants frequently identified a need for further development of non-written communications skills in three key areas: English and local languages, simplicity of communication, and confidence.

<sup>48</sup> See also Konai Thaman, initially a secondary school teacher and later a university academic, stating that: ‘It is sad for me to watch students struggling to make sense of lectures and or exam questions ... in a language in which they are not fluent.’ Thaman, above n 46.

## 1 *English and Local Languages*

In terms of language, the demands of a legal system based on English create difficulties for many lawyers. Even after completing a law degree in English, using the language in the work environment is problematic, as English is unfamiliar and ‘locals don’t speak English every day’.

Even for the more competent English speakers, legal language continues to present major challenges. Participants reported having insufficient English vocabulary, not knowing enough legal jargon,<sup>49</sup> and having difficulty with the ‘correct choice of words to give proper and effective meaning. Being persuasive in English can sometimes be a bit of a struggle.’ Another said ‘[local] lawyers know things but don’t know how to express it clearly. How to communicate it effectively’.

Recognising their difficulties, local lawyers often go to great lengths to improve their spoken English. One lawyer stated:

I go to court. I look out for cases similar to one I’m going to do, then I listen and I write notes ... I go to listen to expats ... The only thing I want to learn from them is how they use their words to the judge. Sometimes I know what to tell the court about but the problem for Solomon Islands lawyers is English skills, how to relate to the court what we know.

Local lawyers sometimes compare their English language skills with those of native English speakers, local students who have studied in Australia or New Zealand, or even with other Pacific Islanders from countries which more commonly use English.<sup>50</sup> One lawyer said:

There should be a special course to assist law students to speak English in court. Fijians and Samoans speak better English than Ni-Vanuatu and Solomon Islanders, we’re hindered by Pijin language. The gap is smaller for Fiji students because [English] is their second language.

While many participants focused on the need to improve oral and written skills in English language, Solomon Islanders and Ni-Vanuatu did not see the problem as one-sided only. English

<sup>49</sup> Note that this is not unique to the South Pacific. In a class of European non-native speakers studying legal English, 14 of 19 students found legal vocabulary and legal terms the most challenging factor in studying English: Aurelija Daukšaitė, ‘Is One Semester of Legal English Enough?’ (2013) 22 *Studies about Language* 124, 127.

<sup>50</sup> For example, Samoans and Tongans generally speak Samoan or Tongan as their first language, and English as a second language. Those from Fiji generally speak Fijian or Fiji-Hindi as a first language, and English as a second language, and as the common language between the Fijian and Indo Fijian communities. Hence in these countries English is generally a second, and more commonly used language than in Solomon Islands or Vanuatu where English may be a third, fourth or fifth language, and Pijin or Bislama is much more commonly used.

language skills need improvement for interaction with courts and the profession, but this emphasis often overlooked the need for courts and the profession to develop skills to communicate with the local population. As one participant noted, 'it's important for any lawyer to be able to speak the local languages and / or some of the dialects ... to ensure better communication between lawyer and client, hence better understanding'. Another said that 'clients won't speak English, won't be able to write.' A third stated that 'in going to rural areas [local people] can't speak English, and even Pijin could be difficult'.

Many participants identified the need for expatriate lawyers and judges to learn the local languages, stating that the required skills for legal work in this jurisdiction include 'a need to speak Pijin, obviously,' a 'need to be multilingual, they should speak local languages such as Bislama,' or a need for 'local language, languages for different societies.' Lawyers need 'the language of the country they work in,' 'expats need to know Bislama,' and 'lawyers need Pijin'.

Many locals made the point that their own language use is dictated by expatriates. According to one, 'if the magistrate is from Solomon Islands the prosecution is in Pijin; if they're expats it's done in English but translated into Pijin.' And according to another, 'the lawyer needs to translate the English into Pijin. And translate language and terms into Pijin, and the understanding of the magistrate and the witnesses may be different. It also means a one or two-day trial could go for four days ...'

Participants referred frequently to difficulties in the courtroom resulting from a lack of local language skills. One explained that 'judges need to understand, speak Bislama, because otherwise it becomes problematic in court ... lawyers need to be able to adduce evidence in Bislama, but some judges in the Supreme Court don't speak Bislama'. Another explained that 'foreign lawyers in Solomon Islands need to understand Pijin. Testimony is given in Pijin. It's a difficult skill to translate'.

## 2 *Simplicity of Communications*

Participants, both local and expatriate, referred to the importance, and the difficulty, of using simple language. They referred to the need to 'communicate simply' and 'explain the law in layman's terms,' and to the need for 'putting law into plain English' and 'simplifying complex legal concepts'. These skills are needed 'to communicate the law so the person you're working with can understand'. While one expatriate described this as 'dumbing it down, simplifying it', the same participant noted the need for this skill 'to deal with clients who don't have a good grasp of law and legal processes, which is most clients in Vanuatu'. Hence the need, identified also by others, to 'over-explain, the need to make sure the other person has 'got it''. In Solomon Islands the use of simple language was also seen as a

necessary skill 'to explain to people in remote areas. To translate knowledge downwards is very hard'.

Another participant described the difficulty of communicating about law with people who have no legal knowledge at all:

You need the ability to take clear instructions and to communicate clearly ... because here there is no basic understanding of law, this is possibly the client's first interaction with any state system or service at all. What is going on, what is happening, what it means. Sometimes clients don't understand, even after a trial, and lawyers don't have the ability ... to explain.

Both lawyers and teachers need to be able to make 'law accessible ... recognise the limitations of the audience, and communicate the law in a way that makes sense in the South Pacific context. It's partly to do with the language used and partly to do with the examples you choose'.

### 3 *Confidence*

Non-written communication skills were seen to depend as much on confidence as on language. There were two aspects to this. Firstly, social structures in Melanesia may militate against a lawyer being confident and assertive. One participant noted the difficulty of standing up to people who would otherwise be your seniors, stating that as a lawyer you 'need to distance yourself from your background, culture, learning and education. You need an ability to stand up to authority — your job is different from your place in the hierarchy. Don't cower, stand your ground'. Another asked, in relation to the local social structure, 'how could they possibly say "we submit your Honour is wrong?"' Even confident lawyers may have difficulty making such assertions, given the cultural norms regarding hierarchy and deference.

The other area where confidence sometimes failed local law students and lawyers was in dealing with expatriates. One participant noted that 'expat lawyers can be as bad as locals at intimidating others'. Another gave the following example:

One young lawyer had to appear before the Chief Justice. He was really well prepared, but when he found an expat was on the other side, he pushed the microphone over to his co-counsel. He couldn't face the expat on the other side. The presence of an Australian adviser was so intimidating that the local lawyer couldn't get up.

According to expatriates, the lack of confidence is often more referable to culture than to ability, with participants making comments such as 'they're too shy', 'most Pacific Islanders are very passive', and 'they don't like arguing'. Even a local Supreme Court judge was described by an expatriate lawyer as having 'a good legal brain, but no confidence'. One participant suggested that local lawyers need 'elbows, the ability to stand up to people, to stand their ground'.

## V IMPROVING COMMUNICATION SKILLS

Teachers at the USP Law School are often surprised by students' poor communication skills, especially given that students have completed their secondary schooling in English. One participant noted that 'the biggest thing holding them back is [English] language, which they should be taught at school,' while another said 'it's partly a [university] issue, but it's earlier education also'. This echoes the findings of a number of individual studies of Pacific Island students in the USA, which found that Micronesian, American Samoan, and Western Samoan students all struggled with English language proficiency, lacked confidence in using English, and had difficulties understanding and completing academic tasks.<sup>51</sup> Each study suggested that students had been inadequately prepared in local high schools for tertiary studies in the USA. While these studies relate to Pacific Islander students in external environments, the concerns of teachers at the USP Law School are often the same.

Expatriate staff may feel ill-equipped to deal with these issues, seeing themselves as law teachers, not English teachers.<sup>52</sup> As a result, there are frequent calls for tighter admission standards for Law School, to ensure that only students with adequate English language skills are accepted into the degree.<sup>53</sup>

### *A Law School Admission Standards*

Because many students arrive at USP with insufficient skills in English language, tightening language requirements for entry to Law School is often suggested. As one participant said, 'we need to re-evaluate the admissions process. The first year level of writing and comprehension is really bad ... There were only two or three in the class with writing skills good enough to have no concerns.' Proposals include requiring higher scores in secondary school English and requiring students to complete pre-law English language courses. Both suggestions, however, raise serious issues.

First, tightening entry requirements for students with poorer English skills is likely to disproportionately disadvantage particular South Pacific countries. Countries with fewer local languages and / or better secondary school English standards would have more lawyers, while countries with lower levels of English language would have fewer. Already countries such as Fiji and Tonga have far more lawyers per head of population than Vanuatu and Solomon Islands. Solomon Islands has the fewest

<sup>51</sup> Studies conducted by Leinwand, Saleebey, and Tanuvasuwere unavailable to the author, but are discussed in Thompson and Bauer, above n 10.

<sup>52</sup> The same is noted in Sharon Wesley, above n 7.

<sup>53</sup> This suggestion was made by USP staff at numerous formal and informal Law School meetings during 2010 and 2011, and the author has heard it voiced by USP staff and others numerous times since.

lawyers per head of population of any South Pacific country: 1 to 13 616 people, with Vanuatu 1 to 5614, compared to Fiji 1 to 3840 and Tonga 1 to 2583. (Australia has 1 to 351, and New Zealand has 1 to 409).<sup>54</sup> Introducing admission standards that deny access to more students from particular countries, especially countries most in need of more lawyers, would not be helpful. An external review of the USP Law School recommended the retention of current admission standards.<sup>55</sup>

Secondly, while an English language course prior to admission to Law School may be useful, it would also create difficulties. Requiring students to undertake further language training prior to entry would likely create political problems, as this could be seen as a suggestion by USP that member countries' secondary education is substandard. Concern about such political sensitivities has been part of USP Law School since its inception, and is to be avoided.<sup>56</sup> Further, if required prior to university entry such a course is unlikely to be funded by scholarships, or offered by USP, raising questions of how it would be paid for and by whom it would be provided.

Given the problems raised by tightening entry standards or requiring pre-law English language courses, it is probably more useful to focus on what can be done to develop the communication skills of Solomon Islanders and Ni-Vanuatu students during the law degree.

### *B During Law School*

Before looking at some ways to improve communication skills for law students and lawyers in the South Pacific, some points need noting.

First, law teachers often believe that their job is only to teach law,<sup>57</sup> and that 'literacy training should take place in secondary

<sup>54</sup> South Pacific Lawyers Association, 'Needs Evaluation Survey for South Pacific Lawyers Associations' (Final report, 18 October 2011) 5.

<sup>55</sup> University of the South Pacific, 'Review Panel Report', above n 25, 49. The review panel also recommended that the proposed new English Language Skills Assessment (ELSA) scheme be adopted, with pre-entry diagnostic testing, and the referral of weaker candidates to remedial and even English as a second language (ESL) courses, before they undertake legal studies: at 12. The School of Law has adopted this proposal, and has also requested the compilation of information on the correlation between English-language entry standards and academic performance in law: University of South Pacific School of Law, 'Action Plan to Address the Recommendations of School of Law Review Panel' (September 2013) 21.

<sup>56</sup> With membership of USP including 12 independent countries, there is a constant need to tread carefully between them. Threats by member countries to leave USP, to create national universities, or to set up individual local programs keep USP wary of offending any member state.

<sup>57</sup> Dean Bell and Penelope Pether, 'Re/writing Skills Training in Law Schools: Legal Literacy Revisited' (1998) *Legal Education Review* 113.



school'.<sup>58</sup> They may not recognise the connections between skills development and substantive law, 'as if generic attributes had nothing to do with discipline knowledge'.<sup>59</sup> Research suggests, however, that 'writing is a way of learning, and not just a communication skill'.<sup>60</sup> The language of a discipline and the content of a discipline are closely integrated, and thus legal writing, communication and discourse cannot be separated from legal content, reasoning, and analysis.<sup>61</sup> Developing students' legal communication skills is then as much the role of law teachers as the development of their legal knowledge or legal thinking skills. Further, in an environment with so few resources all teachers need to do many things.<sup>62</sup> Like South Pacific lawyers, there is little opportunity for law teachers in this environment to specialise only in narrow content areas; they must all take part in the development of program learning outcomes more broadly.

It should be understood, however, that many law teachers may not have the knowledge or understanding required to make their implicit knowledge of legal discourse explicit in their teaching.<sup>63</sup> Further, teachers who have learned law in English as their native language may not understand what makes legal English so difficult for non-native speakers.<sup>64</sup> An unwillingness to 'teach English' may be combined with an inability to do so.

Secondly, it is important that students improve their ability to communicate legally, to communicate in English, and to communicate in writing. It must be remembered, however, that students already *can* communicate, and often in many languages, and across numerous cultures. Recognising and building on these existing skills should be encouraged, rather than commencing from

<sup>58</sup> Wesley, above n 7, 13.

<sup>59</sup> Simon C Barrie, 'A Research-Based Approach to Generic Graduate Attributes Policy' (2012) 31 *Higher Education Research & Development* 79.

<sup>60</sup> Eric B Easton, *Sourcebook on Legal Writing Programs* (American Bar Association, 2<sup>nd</sup> ed, 2006).

<sup>61</sup> Bell and Pether, above n 57; Samantha Hardy, 'Improving Law Students' Written Skills' (Paper presented at the Australasian Law Teachers' Association Conference, Melbourne, 2006), cited in Wesley, above n 7.

<sup>62</sup> USP Law School has few academic staff spread across 2 campuses teaching in the LLB program. 'The School of Law faces particular difficulties in attracting and retaining staff at all levels ... staff attrition had particularly weakened the School.' University of the South Pacific, 'Review Panel Report', above n 25, 25.

<sup>63</sup> Cecilia Jacobs, 'On Being an Insider on the Outside: New Spaces for Integrating Academic Literacies' (2005) 10 *Teaching in Higher Education* 475, 484.

<sup>64</sup> See examples in Daukšaitė, above n 49, such as archaic words and expressions, inclusion of foreign words, frequent repetition of particular words rather than the use of pronouns, lengthy and complex sentences, passive constructions, highly impersonal style, vocabulary with many meanings etc.

a deficit perspective which sees only ‘poor writing,’ ‘poor English’ or ‘poor communication skills’.<sup>65</sup>

Thirdly, it is sometimes assumed in respect of law in the South Pacific that communication skills mean ‘English language skills’. Although ‘communication skills’ will include English language skills, they are far broader than that. The following section deals first with English language skills, and then with communication skills more broadly.

### 1 *Suggestions for Improving Written Communication Skills*

This section draws on interview responses, a recent review of USP Law School,<sup>66</sup> and the author’s observations. It discusses suggestions for improving written communication skills including additional support for students, requiring more writing during the degree, increasing repetition of and feedback on writing tasks, and a major restructure of the LLB’s language and writing components. Improving written English communication skills is currently a major focus of the USP Law School.

Options for additional support include optional assistance for those with weaker written skills, mandatory tutorials (either alongside or in place of another course) for those with weaker written skills, or additional English language courses for all students. Each of these has advantages and disadvantages. First, optional assistance for those with weaker skills requires students to be identified or to self-identify as having weaker skills, and to voluntarily take on additional work over and above the courses they are enrolled in. It raises issues of ‘face’; having come to university it may be difficult for students to accept they lack the necessary skills for the degree. Although opting-in for additional support may make their studies and careers easier in the long-term, it may be too much to expect of new students, borne out by the fact that optional tutorials are notoriously poorly attended. One participant said: ‘I don’t know how to help these students. I offered weekly optional writing classes, but not more than three came.’ Another teacher said:

<sup>65</sup> Maths and science teachers often note the need to use what is already known as a basis upon which to build new knowledge. Failure to link the two may lead to learners’ ‘Western knowledge’ being separated from and external to their traditional or existing knowledge. See for example Trevor Birney, ‘Adult Learning and Oral Culture’ (Paper presented at the Adults Learning Mathematics (ALM) 12th Annual International Conference, Melbourne, 3-7 July 2005).

<sup>66</sup> University of the South Pacific, ‘Review Panel Report’, above n 25; and Eric Colvin, ‘Response to the Report of the School of Law Review Panel, Updated 12.9.13’ (12 September 2013) (response to University of South Pacific, ‘Review Panel Report’).

I was *very* concerned with the standard of English literacy after the first assignment... and consequently wrote on approximately half of the students' feedback sheets that they needed additional support in this area. ... I put up the timetable for [teacher's] practical literacy sessions ... I handed out her timetable with her contact details. I also indicated that she runs one-on-one sessions too. All students seemed keen. Towards the end of this semester I checked how many/which students attended these sessions and it turned out only 2 out of 72 attended — and only for one of her sessions!

The above suggests that optional assistance is not likely to be the remedy, but mandatory classes for those identified as needing further support could also cause difficulties. At the establishment of the Law School it was already recognised that singling out particular students for remedial English would both 'embarrass students' and be seen as 'attacking national governments.'

Hence enhancement of written communications skills *within* the degree for *all* students may be a better option.<sup>67</sup> This was also the view of the external review panel which recommended in 2012 that 'at least one later-year [law] course be designated as language-intensive, and that it be resourced and taught as such'.<sup>68</sup> This unit would include close workshopping of language skills, possibly with special tutorials or workshops running in tandem with the core instruction for each course'.<sup>69</sup>

Currently students must complete the first year course *English for Academic Purposes* as a compulsory part of the law degree, but the students mentioned in the teachers' comments above, for example, had already completed this core course. It may be that the course is not well matched to the needs of law students, and needs better attention to the context for which they are learning.<sup>70</sup> 'Attempts to teach writing skills in [a] decontextualized environment ... can lead to alienated and counter-productive educational practices,' making 'integrated teaching in writing skills vital'.<sup>71</sup>

In response to the report of the external review panel, the School of Law resolved that 'the LLB curriculum should include intensive training in English expression,' beginning with generic English skills then stepping up 'towards English expression in specific forms of legal writing and drafting'.<sup>72</sup> The School of Law thus proposed two new core courses for first year students, *English Skills for Law Students* and *Legal Writing*, and another legal

<sup>67</sup> 'Language teaching is something from which all students benefit, not just remedial students.' Wesley, above n 7, 3.

<sup>68</sup> University of the South Pacific, 'Review Panel Report', above n 25, 12, 50.

<sup>69</sup> *Ibid.* Although the Report referred to a later year course, the School is trying to take a broader approach, including courses in each year of the degree.

<sup>70</sup> An English course specifically for law students was proposed in 2008 but has not yet been introduced. Tamtam, above n 34.

<sup>71</sup> Wesley, above n 7, 3.

<sup>72</sup> Colvin, above n 66, 2.

writing course for second year students. In the third year the existing compulsory course *Legal Drafting* would be designated as language intensive.

The proposed new first-year course is jokingly called ‘the paragraphs and commas class,’ but it has far broader aims than merely formal or technical grammar. The course aims to integrate the development of communication and reasoning skills, and to assist students to develop the skills needed both to think and to communicate like lawyers.<sup>73</sup> It is envisaged that the course will introduce the IRAC method (issues, rules, application, conclusion) to assist students to learn legal problem solving processes. It is also proposed that students will work repeatedly on one piece of work; submitting work, receiving feedback, revising and adding to the work, submitting work, receiving feedback, revising and adding to the work and so on, rather than focusing merely on submission as an end point and then moving on to a new piece of work. New complexities and issues will be added to the task to ensure progress and development of skills and abilities, and so as to harness the value, and application, of assessment and feedback.<sup>74</sup> Interview participants who had received such feedback valued it highly. As one said, ‘feedback from supervisors really helps a lot. I draft the report, send it to the supervisor, who amends it and discusses it and explains why it has been changed. I’m confident in what I do now, because when he amends it he explains why.’ Another noted that ‘every drafting task is a check list on your progress, the less corrections the more you’ve improved.’

The anticipated new course has not yet commenced, and will face a number of challenges. The School has noted that ‘an English program for LLB students needs to be firmly anchored in the Law School and taught by Law School staff, to ensure all elements form part of an integrated whole’,<sup>75</sup> but it may be difficult to find someone with the knowledge of both English language teaching and the needs of South Pacific law students and lawyers to design the course, and to teach it. Additional resources will also be required to offer classes small enough for students really to develop the required skills, and perhaps even to stream students so they receive the guidance they need, rather than taking a one-size-fits-all approach.

As noted above, the external review also recommended that at least one later-year course be designated as language-intensive, and that it be resourced and taught as such. It is anticipated that *Legal Drafting*, a compulsory final year course, will be modified to enhance English language skills.<sup>76</sup> The external review

<sup>73</sup> Research participant; and see Hardy, above n 61.

<sup>74</sup> All suggestions supported by Hardy, above n 61.

<sup>75</sup> Colvin, above n 66, 2.

<sup>76</sup> Colvin, above n 66.

recommended that this later-year unit include ‘close work-shopping of language skills, possibly with special tutorials or workshops running in tandem with the core instruction’.<sup>77</sup> It suggested that additional tutorials and workshops ‘focus specifically on (advanced) writing skills, [but in addition] every error in grammar, syntax and expression might be addressed and corrected’. Similar to the new first-year course, significant resources would be required to achieve this, in both the design and the teaching phases.

Further, and more problematically, *Legal Drafting* already has a very large job to do. Local lawyers are repeatedly calling for better skills in drafting correspondence, charges, statements, pleadings, submissions, contracts and reports, and it will be difficult to ensure that a course from which students are already demanding more also covers the most basic level of language correction and development.<sup>78</sup>

It might also be asked whether there is value in the most basic level of language correction and development where every error in grammar, syntax and expression is addressed and corrected. It is not certain whether perfect English is necessarily required or effective communication is sufficient; or whether Standard English is required or South Pacific English is satisfactory. Given that even Supreme Court judges and university English teachers are unlikely to use perfect Standard English, it may be both unrealistic and unnecessary for students and lawyers to be able to do so. At the very least, teachers need to familiarize themselves with the norms of South Pacific English, and should not expect students to conform to the teacher’s own English pattern, or assess students on that basis without putting these issues into context.

## 2 *Suggestions for Improving Non-Written Communication Skills*

The above discussion has concentrated mainly on the development of written skills. While oral and other communication skills are important for lawyers, they were not the subject of any review recommendations made to the School of Law. However, research participants clearly identified the need to improve these skills, and made a number of suggestions for doing so.

Generally participants suggested that more oral practice throughout the degree would assist in improving both language skills and confidence. Many participants saw *any* practice of oral communication skills, be it mooting, workshops, or even speaking

<sup>77</sup> University of the South Pacific, ‘Review Panel Report’, above n 25.

<sup>78</sup> The question of online students arises again; while the course is not aiming to develop oral skills, it is aiming to develop very practical skills, and online ‘work-shopping of language skills’ is unlikely to produce the best results. This however is beyond the scope of this paper.

in class, as excellent preparation for future lawyers. Workshops on advocacy skills were also seen as likely to ‘help to build confidence and ability’ and ‘help them to voice their ideas’.

Participants commonly reported having spent most of their time outside the Law School classroom with their own language groups, and so rarely speaking English to one another. One method of encouraging the use and development of oral communication skills in English is to provide ‘study buddies’ from different language groups where English is their only common language.<sup>79</sup> If such pairs were required to do group work and presentations together they would need to speak in English to do so.<sup>80</sup> However, making such arrangements amongst students of numerous ethnicities, cultures, and nationalities is challenging.<sup>81</sup>

Another way to improve oral communication skills is to require students to speak in class. Socratic teaching was seen to ‘develop confidence ... there is a place for Socratic teaching at USP, especially by third year. They should develop and show confidence.’ Cross cultural sensitivity is required here, and especially early in the degree it would be best to use simple, non-demanding questions to draw students out. South Pacific students often don’t like to be singled out and may not offer an answer even when they have one. As one teacher noted, ‘some students are doing work and doing well but you never hear from them. They don’t want to look at me and they don’t want me to look at them.’ This echoes the comment of a Melanesian participant in an earlier study: ‘I sit, listen, and try and understand but I don’t always talk or participate, not because I do not know the answer but because I am respecting the teacher’.<sup>82</sup>

South Pacific students will also generally see books and teachers as the ‘authorities’, so it is best with early year students not to expect them to question what they have learned or to argue against another’s point of view. These skills can come later once students have built some level of confidence in speaking in class, and using legal English in particular.

Simple non-demanding discussion will give students an opportunity to build confidence in their oral ability without needing to worry about correctness of content, or making fools of themselves. Teachers should take account of cultural mores so as not to embarrass or humiliate them, but also to demand enough that even shy students do learn to speak in class. In such cases

<sup>79</sup> For example a Solomon Islander and a Ni-Vanuatu could not be paired as they could speak to one another in Bislama / Pijin, but students from the Western Pacific could be paired with those from the East.

<sup>80</sup> This may improve not only communication skills, but also teamwork and collaboration skills. However, if one student is a strong English speaker and the other weak, this could actually hinder the weaker student’s willingness to speak English, and decrease his or her confidence in speaking English.

<sup>81</sup> Corrin Care, above n 13, 179.

<sup>82</sup> Pakoa, above n 10, 8.

teachers need to build sufficient rapport with the students to help them develop the required skills.<sup>83</sup> One teacher favoured introducing advocacy skills into the classroom: 'Every week some students act as counsel and some as judges. It's active. They learn confidence and how to formulate and present an argument ... they learn to present things from both sides.' This kind of activity helps students not only to speak, but also to think, reason and argue.<sup>84</sup>

More mooting and even compulsory mooting was frequently suggested as a way to develop oral skills, especially by local lawyers. One stated: 'There should be more mooting, it makes it more interactive, it brings people out'. Another suggested that it would be

better to get everybody involved, make moots compulsory ... [otherwise] there becomes a big gap between those who do moot and those who don't. It should be compulsory, building up from year to year, first year, second year, third year, fourth year. It gives confidence when you need to go to court.

The importance of taking cultural matters into account in the development of communication skills was made clear throughout the research project, especially by local participants: 'Solomon Islanders want to join in moots but they're too shy. They need to make it compulsory so there's no choice, you need to push them to do it. Also Ni-Vanuatu students face the same problems as Solomon Islands students.' Making mooting compulsory, possibly even as assessment in core courses, was repeatedly mentioned. Indeed while mooting is optional, the shyest students for whom mooting would be most beneficial will be those least likely to take part. However, more resources would be needed to make the mooting program compulsory. With so few staff at the School of Law, even as an optional program involving only a small proportion of students, most teachers dedicate considerable time to judging and assessing moots. Substantial resources would be needed if the mooting program were to become compulsory.

<sup>83</sup> At the Compatibility or Conflict? Law and Culture Conference, University of the South Pacific, Port Vila, Vanuatu, September 2013, one student related the following:

I was in [teacher's] class, and she had a really hard time getting the students to speak in class because we were all so shy and scared to speak. Then she saw us dancing and performing our tradition and singing at Open Day, and the next day in class she said 'I saw yesterday that you have voices and can perform in front of others so please do so in class. Speak up. Speak to me.' And it was really hard, but what she said really encouraged us, and now I can take the microphone, and I'm shaking while I'm talking, but I can do it.

<sup>84</sup> Felicia R Walker, 'The Rhetoric of Mock Trial Debate: Using Logos, Pathos and Ethos in Undergraduate Competition' (2005) 39 *College Student Journal* 277.

Like mooting, internships and clinics would also assist students to better develop their English language and general communication skills.<sup>85</sup> First, such placements would offer opportunities for practicing the skills. Secondly, interaction with real clients and real legal tasks will bring home to students the importance of developing such skills, and thus encourage them in their university learning. Many interviewees noted that only 'real practice' showed them the importance of skills development.

### *C Teacher Development*

In addition to resources directed to course design, program design, and actual teaching, resources for the development of teachers are also needed. As mentioned above, law teachers are unlikely to have the expertise or (conscious) skill in developing communication and language skills in a law classroom, and may expect to be delivered English speakers to whom they will then teach law. Resources to aid teacher development might include seminars or master classes from experts in the area, videos and books in the library, funding for professional development and training, and online resources.

The aim of any resources provided would be to build on the often considerable skills these teachers already have, and to develop those into specialist skills for teaching law in, and for, the South Pacific environment. If the Law School is to take a role in developing the English language and other communication skills of its students, it needs teachers who are both willing to do so, and supported to do so. In terms of willingness, it should be made clear to potential staff that this is a core part of teaching law at USP.

Further, and very importantly, teachers need to understand and be sensitive to local cultures if they are to help students develop their communication skills. NGO workers coming to PNG, employers of South Pacific seasonal workers in Australia and NZ, and law and justice sector advisors travelling to Vanuatu and Solomon Islands are all given cross cultural training in preparation for their roles with those from other backgrounds. Research regarding the seasonal workers found that a better appreciation of diverse cultures and communicative styles would enable employers 'to communicate more effectively with their workers, and manage cross cultural issues and barriers'.<sup>86</sup> For the workers, better intercultural communication would improve satisfaction and help to minimise workplace conflict. In PNG it was recognised

<sup>85</sup> A law clinic commenced in Port Vila in 2002, another in Suva in 2011, and a pilot internship program commenced in Port Vila in 2013. The Port Vila clinic closed in 2013 due to staff difficulties. It is hoped that the law clinic will re-open shortly, and that the internship program will be continued.

<sup>86</sup> Pyone Myat Thu and Roannie Ng Shiu, 'The Australian Seasonal Worker Program: A Cross-Cultural Perspective' (2013) 3 *In Brief* <[http://ips.cap.anu.edu.au/sites/default/files/SSGM\\_IB\\_2013\\_3.pdf](http://ips.cap.anu.edu.au/sites/default/files/SSGM_IB_2013_3.pdf)>.



that a better understanding of local culture would help expatriates settle in, and interact with local colleagues.<sup>87</sup>

Expatriate teachers in the USP Law School could do much more to further develop the communication skills of their students if they were themselves better oriented to the local environment, and understood more about the existing skills, communication patterns and cultures of those they are teaching.<sup>88</sup> Why do the students appear shy? Why will they not speak out in class? Why will they not join moots without compulsion? Why will they not seek help? Assisting teachers to understand these things should be part of a mandatory orientation program, not something left to individual teachers' interests.<sup>89</sup> Understanding such matters could go a long way in helping teachers to help their students.

In addition, it is important for teachers to see their own modes of communication in the local context. Raising their voices, asking direct questions, challenging others, sitting on desks, and looking directly at senior people may be seen as inappropriate, arrogant, rude, or insulting in some cases. Thus teacher development must include not only putting students' behaviour in context, but understanding also how their own behaviour may be interpreted by the students.

While there is also both need, and scope, for further developing lawyers' communication skills in practice, that is beyond the scope of this article. It is important to keep in mind, however, that the development of lawyers' communication skills is not completed during the law degree, and that what is done in Law School should take account of what lawyers' need in their working lives and the opportunities available to meet those needs. While little regular continuing legal education is presently available in either Solomon Islands or Vanuatu, groups such as the Pacific Islands Legal Officers Network, the Victorian Bar and New Zealand Aid run frequent workshops to help build specific skills. The Law School's program should complement whatever is already available in practice.

<sup>87</sup> Melanesian Institute for Pastoral and Socio-Cultural Services, 'MI holds orientation course for expatriate NGO workers' (Media Release, 20 March 2013) <[http://www.mi.org.pg/Pages/News/Melanesian%20Institute\\_%20News\\_Orientation%20Course.html](http://www.mi.org.pg/Pages/News/Melanesian%20Institute_%20News_Orientation%20Course.html)>.

<sup>88</sup> Jillian Thiele, writing on sociolinguistics in Papua New Guinea, notes the difficulty of helping students improve their language skills if teachers themselves don't understand the reasons why certain language issues occur. Jillian Thiele, 'Benefits of Teaching Sociolinguistics' (Paper presented at the Linguistic Society of Papua New Guinea Conference, Papua New Guinea, 24-25 September 2013).

<sup>89</sup> See also University of the South Pacific, above n 25, recommending 'that new members of staff should receive a specific induction into the SOL, its programmes and teaching methods.'

## VI CONCLUSION

Many legal skills are identified as necessary across multiple jurisdictions, with the need for ‘communication skills’ widely recognised. While accepting that the need to ‘communicate in ways that are effective, appropriate and persuasive for legal and non-legal audiences’ is required of lawyers everywhere, this article has shown that communication skills may require both very different methods of learning and teaching, and very different content, depending on the environment. The ability to move back and forth between multiple languages, to communicate in a local language with a client who knows nothing of formal law, and to communicate in formal English with an expatriate judge who knows little of local language or custom, all require a breadth of communication skills rarely needed in developed legal systems. An ability to write contracts, court documents and law reform proposals, while also being able to explain legal processes to uneducated and illiterate clients, and to navigate local cultural hierarchies, all illustrate the complexity of the communication skills required, and the importance that they are contextualised. The development of communication skills for South Pacific lawyers is far more complex than it may at first appear.