2009 Churchill Fellowship
Report on Innovation in Court Based Services

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*The International Palace of Justice, Den Haag, The Netherlands*

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Summary
The purpose of this Fellowship was to review innovation in court based services, particularly the role played by the non government organisation (NGO) sector. On reflection, the scope might well have been ‘world peace in our time’ as the area of investigation proved extremely wide with many exciting, tangential areas of analysis available to me.

Much like our own, the courthouses I visited were filled with people with presenting problems court leaders, in isolation, could demonstrate they were capable of addressing. The issues are community issues and their resolution lies in the linkages between individuals, NGOs, support agencies and government. As was sagely pointed out to me by a woman on the Seattle subway, if you could eliminate mental health, substance abuse and relationship issues, my research work would be redundant.

I visited and reviewed nineteen courts and community organisations to inform my research question. At about the midpoint of my travels, call me naive, but I discovered that courts are a simply reflection of their societies. San Francisco’s highly liberal and tolerant culture juxtaposed with communities in the mid west for example and so did their courts. In Hoonah, Alaska, the functions of the court was closely targeted to its small, indigenous community because that is what society expected.

My Fellowship was undertaken to address the large numbers of Victorians- and by reference Australians- who present to court with little or no support to manage their presenting problems, particularly those without legal representation. The corollary of this initiative was to recommend what can be done to improve or create access to services that could assist them. On the basis of what has been documented, a proposal will be put to the Attorney General recommending court based advocates be sited in every Australian court.

I have not named every informant interviewed out of respect to their candidness when probed about the state of their criminal justice system and a desire by some to remain anonymous.
Acknowledgements

I am grateful for the support of my referees when the fellowship application was submitted in November 2008, Gillian Harris, then President of Court Network, and John Griffin, Director of Courts, Victorian Department of Justice.

Justice Dessau of the Family Court provided assistance in formulating a research question. Court Network Queensland State Manager Nicole Little supplied a series of useful questions to help guide the scope of the investigation and Court Network founder Carmel Benjamin AM provided mentoring and guidance that helped drive the report to achieve its goals.

I am very appreciative of the support I received from all the court leaders I visited, particularly those who shared their contacts and showed interest in the Fellowship outcomes.

My family and friends were a great source of support and assistance in the planning of the Fellowship for which I remain indebted. Those who followed ‘the epic journey’ on facebook teased me about the holiday slots I programmed in, it was certainly a challenge to switch on and switch off with half my time on message and half on holiday but somehow we got there. My eldest daughter Tessa proved to be a very worthy supervisor as she repeatedly asked “Dad, shouldn’t you be writing up your visits?”

To the many, many people I met on the Fellowship who were designing, evaluating and delivering innovative responses to the needs of our community, I salute you and your achievements. Thankyou so much for your generosity in giving your time and attention to the research.

This report is dedicated to such people who have the courage to ask “How can we achieve better results?” and refuse to accept that there is not a better way.
Context

I was awarded the Fellowship at a time I was serving as Executive Director at the incorporated association Court Network. At the time I was in the role, Court Network offered information, support and referral services to a wide range of court users. I had worked with Board, with government, the judiciary and philanthropic supporters to extend the service to more than twenty new courts, including in the state of Queensland. Full national expansion was on the agenda but was difficult to make a priority for government.

This was satisfying and productive work. Discussions were being held with court representatives in New Zealand about adopting the Court Network model in this ‘seventh state’. From ~60,000 people in 2004, we assisted over 130,000 in 2009 with more staff and volunteers in more places delivering the Court Network promise.

However, nothing material had changed in the design and delivery of the Court Network service since in early 1990’s. With the election of a labour government in 1999, a process of root and branch reform had begun in the courts. The Bracks Government had implemented better responses to victims and ‘frequent flyers’, those defendants who repeatedly appeared and reappeared in court. The scope of Court Network’s services were consequently narrowed with each reform as professionals and external support agencies entered the court. Networkers were being locked out of support situations they had been in for years. The service was not included in service mapping in future reform such as the mental health court yet was being used as a lever to draw system improvements from.

The question nagging me and the answer being put to me by numerous sources was that the Court Network service model in Victoria was reaching a stage where the range of available work would diminish to a point where only the most basic of tasks would remain for volunteers. In contrast, volunteer services in Queensland were increasing and the model we operated was nimble and responsive to change and adaptation.

It was eventually put to me by an eminent source that a large scale overhaul would be required to maintain the service’s place in the Victorian courts, that time had overrun it. The
Victorian Attorney and Department of Justice Director of Courts were tirelessly calling for better ways to do justice and improve access to justice and were using specialist courts and new NGO partners to achieve this.

After being inspired by a Queensland policewoman’s research trip to Canada, I applied for a Churchill Fellowship to investigate what innovation may look like for Court Network, what great ideas existed in other mature, civil societies and how applicable they would be to our own setting. I presented numerous documents to the Court Network Board about the case for change and some consequences and benefits of a renewal process.

I knew that broad scale transformation was required, but just nibbling at the edges with referral enhancement in the early part of 2009 proved to be a bridge too far.

That I undertook this research some time after resigning from Court Network required me to disseminate this report directly to those who would be best positioned to act on the findings: the public, to interested members of the Court Network association, CEO’s of the Victorian and federal family courts and interested members of the NGO sector such as Sisters Inside, ASCO, VACRO, Hanover Homelessness Service, Youth Projects, The Brotherhood of St Laurence and peak bodies VCOSS, NCOSS and VAADA.

*the author with Yan Sokha, Court of Appeal, Phnom Penh, Cambodia*
Schedule of Recommendations

The characteristics of program excellence I reviewed can be described as follows:

- synchronicity with community issues and political priorities
- harmony with the court’s reform agenda
- management decisions regarding the adoption of innovative approaches were free of undermining or scuttling by vested interests, that is, the leaders of innovation were equipped and empowered to lead
- value add to the life of the community and the promise of crime prevention and harm reduction

A series of recommendations has been prepared for use in the development of models by interested organisations. A shortlist of what can be achieved as a consequence of this fellowship (a far longer list exists in the pages of my notebooks) is:

- court tours and education programs at the Supreme courts of Victoria and Queensland and the High Court in Canberra to improve the public’s understanding of the justice system
- promotion of the development of a national service for court users where their functional, personal and emotional needs are met
- development work in Cambodia for the same service platform which will feed into better Australian responses to need
- the creation of community based services that better meet the needs of offenders such that the rates of reoffending are reduced

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Overview of Best Practice Sites

Notably, each court and NGO site had a set of characteristics that were configured to their local setting and the composition of their community. In fact, the recurring theme was simply courts mirror their society’s culture, settings and expectations and I would witness this again and again as I moved through the various courts on my list.

For example, at the Auckland District Court, youth services and homelessness services were prominent new features. In the major court redevelopment taking place in May 2010, space and signage was being concentrated on victim services as it was a current political priority.

New Zealand

The multi-jurisdictional court at Christchurch featured a permanent ‘Friends at Court’ volunteer service operating full time. The Friends at Court Society Inc has been operating since 1971. The service is confidential. The friends are voluntary, wear a badge for easy recognition and promise help, support and comfort and friendship.

Two volunteers were serving at Christchurch on the day of my visit. They had been at the court for many years and noted the court was better serviced with more professional staff.

The Victims Information service is located adjacent to the Christchurch court and is staffed by several psychologists who provided a background to the service and its linkages to Friends at Court. New Zealand’s 2002 Victims legislation is central to the operation of the Information service, which provides education, orientation and support services at the court.

Court registry representatives indicated that the role of Friends had reduced since the introduction of the Victims Information and security service but that their assistance was very important to the operation of the court.
The service was not operating at the Wellington court the three days I visited and registry staff and security knew nothing of the service. At Auckland, the service is in sharp decline with the Salvation Army and Lifewise taking up key roles in assisting court users.

At the Auckland Family Violence Court list, emphasis was provided on ‘the least restrictive sentence’ in the handling of cases, 90% of which according to the Judge involved drug and alcohol issues. This has provided opportunities for diversion to a host of NGOs. Lifewise provide a full time support worker to the court who operates under the raison detre ta kaihono ki te rangimarie, meaning to have many connections which are used for the betterment of peace.

With future planning, the court is considering the implementation of a ‘blue jacket’ style service as used in Melbourne, modelling it on the citizen’s advice model that operates at their international airport. The court is undergoing significant capital works with a focus on better access for victims and the use of case management style suites and offices for this target group.

**The United States**

**California, various sites**

The Los Angeles County has a range of programs that use volunteers. Their system is highly sophisticated and is managed by the court. CASA volunteers are sworn officers of the Court appointed to conduct an independent investigation of a child’s case to assist in locating a stable, secure home, locate community resources, or accompany a child called to testify in Criminal Court.

The volunteer conducts an independent investigation by reviewing all pertinent documents and records and interviewing the child, parents, social workers, foster parents, teachers, therapists, daycare providers and other relevant persons to determine the facts and circumstances of the child’s situation. To do this effectively, volunteers spend considerable time getting to know children and gaining their trust.
Domestic violence clinics, Volunteers are trained by the Office of the Jury Commissioner to help enroll the 7,000 – 8,000 jurors needed each day by the LA County trial courts.

In San Francisco, a city the local criminal justice representatives claim as progressive in comparison to other eastern seaboard centres, a range of innovative approaches the meeting the high demand of court users is apparent, including a volunteer legal service and family law self-help centre.

![Judge Serco of the San Francisco Community Court](image)

The city has a large number of what my taxi driver called ‘pan handlers’, black people begging for money. I was never asked for money but observed street after street of unemployed people communing in groups, conversing, taking drugs and stealing each other’s suitcases. Whilst there are highly effective temporary social housing programs in the city, there is little for the disaffected to do and limited treatment options for their addiction and other issues.

There is a vibrant Community Justice Centre (CJC) located in a separate courthouse to the county and city courts which also houses the intensive probation and case management services that the court’s operations are engineered to mesh with including primary and mental health, addiction and housing services. Defendants can choose to be diverted to a CJC program if they qualify. Most understand that by doing so, they will be required to actively participate in intensive assistance to address causes in their offending behaviour. Observers regard the CJC is an expensive model of justice- a little like the Collingwood
Neighbourhood Justice Centre has shown itself to be- but does a better job at addressing entrenched offending behaviour.

The CJC makes referral to the Delancy Street Foundation, a residential facility for prisoners set up in 1971 by an ex-felon and a psychologist. The centre requires self referral via a letter from prison or court and is an environment clean of drugs, alcohol and violence. Residents exist on a ‘be one, teach one’ premise that requires them to mentor, provide skill development and job training support to other residents as they were supported by residents before them. This peer support, the non-therapeutic ethos, open door policy, where residents can come and go on the condition that leaving means leaving, is extraordinarily successful. On my visit, work crews meticulously move about the buildings, cleaning and maintaining them.

*With Vice President Abe outside the Foundation’s community centre and part of the bragging wall, several large wallspaces filled with awards and statements of support*

John, Delancy Street’s dominant co-founder died in the late 1980’s. He had resumed a chronic drinking habit and had withdrawn from the foundation several years before his death from a heart attack at age 48. His partner Mimi has certainly taken the organisation to new heights. Delancy Street operate five centres across the US and supervise six ‘affiliates’ including one in New Zealand. In the 90’s they completed a $30m redevelopment of the San Francisco headquarters which is now based on the waterfront, leased on a sixty year peppercorn rent from the city. The Foundation’s social enterprises return about $40m a year to the centre. Their success rate is 90%, that is, felons who leave the centre and do not
then reoffend. That compares very well to the Australian average of 51% (The Difference, 2010).

The centre is 60% funded by their businesses, 30% via ‘material aid’ gifts such as food, photocopying paper, napkins and capital equipment such as cars and cooktops and 10% from donations provided by family and philanthropic groups.

The foundation refuses government money or other sources of support that have any encumbrances, such as a recent offer of several million dollars from the Bill and Malinda Gates Foundation to do replication work. Why, said the representatives I spoke to, would they trouble themselves with confusing their priorities with those of fickle minded elected representatives?

The Foundation is highly acclaimed and their resident’s dining room has two walls covered with awards and citations from all manner of private and government luminaries. I met with a Superior Court Judge serving at the CJC who had nothing but praise for Delancy Street and their achievements.

The results do speak for themselves. However, does the model give adequate protection of the rights of residents in their choice of housing and recognition of labour? Is it enough to say ‘well at least it’s not prison’? Pictured above is a street graduate who runs a very successful shoe shine business in downtown San Francisco.

The Foundation is doing what the Americans do so well, duplicating their service model. In the coming years it is likely there will be one in most major centres throughout the world.

**Seattle**

The community court I visited in 2006 remains intact. Administrators indicate there are increasing linkages between the drug court and the new mental health court (MHC), a
voluntary program where referrals come from judges, defense attorneys, prosecutors, jail staff, and others. The key issue for the MHC is whether the alleged criminal activity is related to or caused by mental illness. MHC defendants may have a wide range of charges. They may have any type of serious mental illness, be developmentally disabled, have a brain injury, or suffer from dementia. The defendant may be a first time offender or have a lengthy record.

There were numerous court user traffic lanes between the MHC and the Seattle Mission, where many of the defendants receive services, including free legal aid. Should a defendant receive a community service sanction, they will often carry it out at the mission making it a major beneficiary of people serving volunteer hours. Students and other people also volunteer at the centre in a range of roles.

I’m not sure how I feel about this interconnectedness. It appeared a less desirable model than, for example, Delancy Street.

The focus of the Seattle Mission is on ‘barrier reduction’ so their services also include a range of free primary health and dental services. The services are largely funded by donations which have fallen by over 15% since the GFC. There have been staff reductions as a consequence.

**National CASA**

The court appointed special advocate (CASA) program has also been affected by the GFC with advertising and other noon-core expenses being affected. I still saw a bus advertisement for the CASA and was told that reduction in income had been offset by stronger alliances with corporations, for example, the highly successful business of Columbia Sportswear. In her recent biography, the Chairman donated 50% of proceeds from books sales to CASA.

**Hoonah, Alaska**

In this remote outpost, serviceable only by boat and four hours from the state capital Junae, it is the local Magistrate that is the source of information, support and referrals. The town
has a population of several hundred people and whilst most matters are referred to the Junae court, their first mention is at Hoonah.

Brooklyn, New York

I reviewed several projects managed by the Centre for Court Innovation but spent most time at the problem solving courts, the highlight of which was the mental health court. At a morning case conference, I sat with the clinical manager and the presiding judge as some of the 132 cases listed for appearance were reviewed. Whilst respect and dignity were features of the conference, there were also some frustration regarding unexpected changes in participants circumstances and shock at the news of a suicide. Axis one diagnoses (schizophrenia, major depression, bi-polar disorder) and stable housing are a feature of eligibility for the program which diverts people from prison if they agree to participate in a 18-24 month medication and program regime.
The court has been operating since 2004 and presiding judge D’Emic has won numerous city and civil citations for his courage and vision in managing the court. The court has achieved substantial reductions in re-offending rates and better engagement by participants in health and psycho-social activities such as a clubhouse and employment preparation programs.

The court sits on level 15 of the Jay Street Supreme Court. The US and State of New York flags were presented behind the judge with the words “In God We Trust” appearing in place of a shield or coat of arms, in contrast to the State of California. The atmosphere was noisy and informal as the judge called up participants and spoke personally with each of them, at times shaking hands and at one point standing to embrace a woman who had just completed her 18 month program and had her charges (burglary and assault) dropped. Bench warrants were issued to several participants who had not appeared for their weekly or fortnightly case hearings.

Whilst entirely impressive, the court would have benefitted from a mentoring scheme for participants, as the linkages to other community supports appeared fragile.

A visit to the Centre for Court Innovation in mid-town was highly rewarding. This public/private partnership has helped drive court reform on many fronts. Through the
centre, the mental health court described above has migrated to 150 other courts in Manhattan and to other states.

**Brewster, Upstate New York**

My taxi driver drops me at the right address but something doesn’t fit. I’m outside a picturesque scene of wide open lawns, well tendered gardens and a classic, eastern upstate country residence.

It turns out to be the Delancy Street Foundation President’s retreat. The facility for residents in treatment is set across the road, a striking castle-like building with stonework turrets. It was once the home of the man who introduced the wild animal circus phenomena to America from Eastern Europe.

The New York ‘duplication’ of the San Francisco Delancy Street model has been achieved through the precise mirroring of the values of the original chapter. Set in the midst of a beautiful 60 acre exclusive upstate country setting, the Brewster chapter is a contrast in many ways to its parent. Fewer residents, a rustic setting, less business opportunities, no public exposure and feting of the organisation’s brief. Decentralized from the parent, the venue director Robert, pictured left, stays true to the controls he grew up with as a resident in San Francisco. It is policy of Delan that senior residents move between the chapters, managing them in turn as the business requires and new opportunities present. After this, who knows, he may rotate to the Alaska chapter. Why does he do it? “To be involved in something bigger that I am.”

During my visit, a father walks his young adult son into the residence asking for help. A senior resident says in reply, “We’ll that’s going to be up to him and not you, we only work with volunteers.” The young man is slump shouldered and appears anxious. They have driven from two states away. Pointing, the father indicates he has his son’s possessions in
the car boot. “If you wait outside sir, we should be only an hour, then we can let you know if you can pick him or just keep going. He won’t need his things. We want to give him the best chance.” The father is bewildered so the senior explains a little further. “All he’s going to need is an attitude for learning, he don’t need nothing more.”

The hour required is for the centre’s entry assessment. They have a set pre-screening tool that is designed to exclude people with serious mental health issues (taking psychotropic medications) and those that have offences that involve sex crime or arson. A less formal session is then conducted with a number of senior residents to confirm the applicant is ready and willing to undertake their program which is entirely about ‘the academy of lifelong learning’ and nothing to do with the actual issues they present with.

Canada
The courts offer numerous effective diversion programs. The YWCA is a major NGO linked with the court’s agenda. They provide legal and personal assistance, largely in vertically integrated family violence matters that include emergency shelter and other supports. These services are funded through the Y’s hotel, gym and other social enterprise activities. As reflected in other settings, reduction in other funding areas such as government and donations were offset at the Y through these businesses.

The court diversion services for Ontario are delivered by NGO St Josephs Healthcare. They provide a range of community based and primary healthcare programs and are partners in the courts mental health list. St Josephs also provide court support services for individuals and their families which includes pre and at hearing assistance.

The United Kingdom
Numerous useful sites were visited in the midlands and in London and a visit to the annual conference of the Centre for Social and Economic inclusion provided excellent insights both into systemic issues for the UK and present environmental issues with their serious economic downturn. For example, the Ministry of Justice is considering laying off 15,000 workers to save £2b from their annual budget as part of the government’s austerity
measures given their sovereign debt issues. Something policy makes do want to achieve is prevent a spike in long term unemployment and the knock on issues it creates with offending behaviour, family violence and other issues that fill the courts.

The department itself was concerned with other matters than innovation during my visit, the new governments enforced austerity measures designed to push their budget back into black. The responsible minister was talking of 15,000 jobs being shed from courts and prisons, not a helpful way to approach innovation but certainly requiring it in terms of keeping facilities function.

There are numerous volunteer models that are in use to assist victims, the accused and witnesses. A new organisation is also emerging, the Personal Support Unit (PSU), which delivers assistance in the civil and family courts. It celebrates ten years of service next year. The organisation is largely self funding and is driven to avoid endemic issues with the other court support organisations, the witness and victims services where volunteers have become the focus of the service rather than the service recipients. To do this, the PSU is recruiting two types of volunteers, those who wish to occupy their time and those who wish to help their careers with exposure to the courts.

It was a pleasure to meet and sit with the PSU’s founder and President, Lady Bromshire. She was able to describe the challenges and satisfaction of launching and adapting the service to best reach its goals. She was able to do this, she reported, because she had once been a court user herself, going through a very difficult family court matter where her husband had retained an expensive party of barristers and supporters. Once the matter finalised, she immediately set to work with launching the PSU, a service offering gladly received by the court.

The President has appointed a manager and there is clarity with the separation of duties. Six other staff work at the PSU and they are extending to two more courts in the midlands later this year.
The Netherlands

Both the International Criminal Court (ICC) and the Palace of Justice, home to the International Court of Justice (ICJ) were excellent destinations. With the latter, a feature of the court is the permanent court of arbitration The Carnegie Foundation runs tours of the court and manages the facility. The palace was built between 1899 and 1913 following a $1.5m donation from Mr Carnegie, a wealthy American leader of industry of his day. The palace regularly receives gifts from countries around the world to adorn the building with. Yes, it’s highly competitive. An example of the gifts: the Japanese Government supplied a silk tapestry that covers four walls of an upstairs meeting room, perhaps ten metres wide and fifteen metres long. It reportedly took 15,000 Japanese craftspeople five years to make the tapestry. For their part in the context of gifts, the Australian government supplied one oak desk and one silver ink well. Nice.

The court has been operating since the Tzar of Russia held a peace conference in The Hague in 1908. Simmering tensions in Europe made him believe war was inevitable unless world leaders could agree some way of resolving disputes in a managed, non-aggressive manner responded and were hosted by Queen Beatrix. Representatives of all countries were invited to the forum, 32 The conference agreed on key points of unity between nations in 1913 and unfortunately we all know what happened shortly thereafter.

The ICJ continues to hear matters between countries in a manner similar to the alternative dispute resolution process, as it is known today, although the court’s recommendation for settlement is non-binding. For example, in 1997, Brazil and Peru were involved in an escalating border conflict. The court offered to hear their issues and resolution was eventually reached. Some of the arms that had been amassed at the border by both parties were melted down to make an impressive crucifix which now stands at the head of the stairs of the building. Numerous cases are heard each year lasting for some weeks such that the building is used approximately 65% of the time.

The ICC, as is widely known, plays an important role in the settlement of UN prosecutions. The building, stark and harsh, is a clear symbol of the graveness of the matters heard there.
Staff at the site were helpful but there was very limited activity during my visit (the court only functions for just over six months every year) and defendants are well supported or as is more often the case, tried in their absence.

**France**

I am very grateful to the translators who helped make the days at the Palace of Justice so worthwhile. The setting of France’s main court is complicated by Saint Chappelle, a very popular 12th century church awash with tourists. Appellants, advocates, and court staff conflux with the masses of foreigners, making for a very confusing traffic and functional environment. There is a further awkward planning issue: the door to the Bureau for Victims opens onto the main thoroughfare for parading defendants between heavily armed military police. There are frequent, chance door stop meetings between victims and their alleged attackers which is all too unfortunate.

Inside a typical courtroom, the prosecution shares the same elevation as the judge and the exchange of views on the evidence, the claims of the prosecutor or a heavy penalty and obfuscating by the defence are heated and interspersed with random comments from the gallery, the defendant themselves and their supporters. In fact, it was my first impression that the prosecutor was an associate to the judge such was the rapport and closeness between the two and the vastness of the prosecutor’s gown and desk at which she sat, close by the window. The defence has a small box to the left of the Judge and slightly in from of the dock so that *des advocates* can confer with their clients.

Proceedings are drawn out and in rooms without air-conditioning or adequate lighting (like the Victorian Supreme Court but several times worse), the exchanges and recycling of events proved exasperating to most in the room.

In the first case observed, a woman calling herself ‘Mona Lisa’ refuses to declare her identity. The judge tries several approaches to encourage her to comply with the obligation she has to prove or declare her identity. 40 minutes later, the Mona Lisa is returned to the
cells for a further week to consider her position. A person known to the defendant stands, kicks the wall and sprays obscenities at the judge as she storms from the courtroom. The gendarmes do not react. The judge looks aside impassively.

Liberty, fraternity, equality.

Whatever her crime, surely this cycle can only be repeated so many times.

The next case is of a genre known to the seated members of the gallery. A seedy looking drug user who wishes to reform at any cost, provided the Judge will not send him to gaol, is begging for his freedom. Law students across from him, clerks and court security laugh as the pleading reaches a crescendo, promising he will ‘never touch drugs again’. The judge too has seen it before. She refers him for a forensic drug treatment assessment and back to the holding cells.

There have been numerous recent French reforms to victim services in the past year which include free legal advice and representation for victims. A minimum entitlement of 1,500 euros crime compensation (defence counsel had previously been successful in knocking
claims down to 1 euro) and better community supports for victims such as the not for profit victims help service that operates in large areas around France.

The victims bureau has also recently separated their work into lines of activity, family violence, criminal assault, petty and major crime. There are close linkages between these court programs and community based groups that operate largely as volunteer and peer support models. Together, the groups take joint responsibility for five areas of assistance to victims mandated by the Ministere de la Justice, providing legal advice and court information for the users day in court, mediation and conciliation services, compensation and prevention assistance. This latter point is an interesting one. Whilst translation was an obvious issue, what this appeared to mean was individual and group counselling for victims to assist them with avoiding future incidents.

This appears to mean that the state wishes to provide assistance to victims to review the circumstances of the crime and their place in it. Whilst it does not imply that the victim is at fault, it does take a proactive stance on the identity and psychology of the victim, as we see occur with defendants and the causality of their offending behaviour.

There has been significant, recent debate and discussion about the arrangements for such defendants. Several weeks before my visit, a freelance writer was caught taking cocaine whilst seated on the bonnet of his car and was sent to the city lockup, an oxidised, severe looking nineteenth century building conveniently located placed next to the Palais de Justice (and yes, the Saint Chapplle as previously stated) on the banks of the Siene. With a maximum visit of 40 hours capped by legislation, the cells are communal and the sites of frequent violence and serious abuse. After his release and the finalisation of his sentence, a two month suspended gaol term, the author wrote a gripping, tell all public letter in Le Monde which shocked the city. There has subsequently been fierce debate regarding the conditions in the lock up and better managing who goes in and who can be sent elsewhere.

In conclusion, the presence of Gendarmes, military police in the courts, the prominence of the defence next to the judge and the stories about the rights of defendants suggest the rights of the accused are very much secondary to the defence of the state.
Switzerland

The sharp appreciation in the Swiss Franc and the significant cultural and linguistic differences between Cantons (where for example, German, French or Italian may be the dominant language), made the task of penetrating into the nuances of Swiss innovation difficult. I spent most time at Bern and disappointingly, this yielded few useful insights.

Albert Einstein spent the years 1902-1909 in Bern in self imposed exile from Germany. In 1949, he said of his time there “I like the Swiss very much, because they are... more humane than other peoples I have lived among.”

There appeared quite reasonable justification of this in the Bern local court which had a look and feel more of a business centre than a court (refer to the novel smokers booths below). In contrast to the French position with victims for example, the Bern Canton seemed to accept responsibility by the state. Only victims who have suffered physical, moral or sexual injury can benefit from the law on the assistance to victims of criminal offences: close relatives of the victims, such as spouses, partners, parents, children, brothers and sisters, can also benefit partly from the law.

The federal law on the assistance to victims of criminal offences is divided into three parts. The first part deals with counselling. Victims can get assistance at counselling services all over the country in medical, psychological, social, financial or legal matters. Immediate help is free. Assistance on a longer period of time is also free if the victim's personal situation calls for it.

The second part of the law deals with the victims' rights in the criminal proceedings. Members of the police force and, and interestingly the judiciary, have a legal duty to protect the victims' personal rights: they must refrain, when necessary, from revealing the victim's identity, they must deny the press and the public access to court meetings when the interest of the victim requires it or when the victim has requested it, they must avoid any confrontation between the victim and the offender when such a meeting would be
unwelcome to the first. Victims have the right not to testify on matters that concern their intimacy. They can demand compensation.

The third part of the law deals more specifically with compensation: victims get compensation from the state for the financial and moral damage they have suffered, if they cannot obtain such compensation from the offender (for instance because the offender is unknown or without financial means). Compensation for material damage is limited to 100'000 francs (approximately A$110,000) and takes into account the damage suffered and the financial means of the victim. Victims get no compensation from the state for material damage if their financial means exceed a limit set by law. Compensation for moral tort is granted regardless of financial means on the basis that the victim has to deal with severe personal suffering.

How this informs the question of innovation in court services is difficult to qualify. Clearly, by providing greater funds for the management of victims issues before and into court, the Swiss have made a strong and useful framework for managing stakeholders issues and protecting people’s rights and likelihood of secondary trauma and the other suffering that comes with being a victim.

The Bern Federal Court was a secure site and attempts to confirm pre-arranged meetings were fruitless for the reasons noted. Yet, the order and civility of the Swiss system made it a high benchmark for the other sites I visited as so much more development work was in place such that far less in terms of court services fell between the cracks.

**Italy**

The courts related NGO sector in Rome appeared vibrant and dynamic, a reflection of the country’s cultural settings no doubt. With the incidence of drug and alcohol a significant issue with the country at present, I focussed on the programs and the settings for pre and post court assistance. The community Lautari, with headquarters in all major Italian regions,
a sense of the basis on which services were designed and delivered. There was an emerging movement of ex-addicts who form a support and mentoring network that operates a little like narcotics anonymous. Several of these people were in attendance at court the day I visited, providing outreach and support services and publicising their work enthusiastically.

This group reminded me of San Francisco’s Delancy St and the CASA, where the recipients are the focus and confluence of the services being delivered, not the people doing the delivery.

The Corte di Cassazione is overwhelming in its size and design, magnificent but medieval somehow.

During a break in meetings, I went with my son to visit St Peter’s Basilica. He was determined to visit the tombs below the church in the hope of viewing some skeletons or mummies and so we went there and encountered one of the most moving events of my fellowship journey. The walkway through the tombs was cosseted by stone foundations of the basilica and quite narrow. The procession of tourists and visiting Italians became slow and congested after most of the tour was complete. Ahead, a large crowd was gathered around the tomb of Pope John Paul who passed away in 2005. There were more than basilica guards attempting to move people along but people were dropping their knees and weeping openly at the foot of the memorial. Men, women, all ages and appearances.

As I understand Catholicism, and I am not familiar with it, the Pope is Christ’s representative on earth. His memorials upstairs were certainly not receiving this much attention, nor were the numerous other papal shines and effigies, nor Mary Jesus mother.

I was taken with this scene given the Fellowship’s focus on leadership and innovation. While there are politics, struggles and issues within teams and with developing strategy, there must always be a leader. People respond to the leader according to their own set of needs. And the outpouring to John Paul was a lament of his leadership style and the love he showed to his followers. Clearly, many people loved him and on our visit that day, we met many who clearly still do.
Cambodia

I was shocked to witness the state of this country yet to recover from the aftermath of several ruinous civil wars and foreign military involvement, direct and referred, by China, Vietnam, America and Thailand following independence from France in 1953. The country struggled for decades to form a cogent political identity and a lengthy struggle between royalist and communist forces filled the vacuum. The four year rule of the Khmer Rouge, where the country was returned to ‘the year zero’, came to an end after Vietnamese forces occupied Phnom Penh in 1979, removing the Pol Pot regime and dissolving the so called Democratic Party (DK). The country has been rebuilding since the signing of the Paris Peace Accord in 1991 when Vietnamese troops eventually withdrew and the UN assisted with the administration of democratic elections.

As a result of complex amnesty arrangements, only one member of the DK leadership group responsible for the extermination of an estimated two million citizens between 1975-1979 has been tried for his crimes. This occurred in 2007. He will be released in 2025. Three other DK leaders have been detained, but a new Special Court presided by a foreign judge has yet to try them. They have been in detention for almost twenty years in hotel standard accommodation.

The Cambodian political identity is complicated by key players switching sides. For example, senior members of the DK ‘defected’ to the Royal Government immediately after Pol Pot’s death in a remote village on the Thai border in 1998. No one seems to accept responsibility for the trashing of the country and those who are seemingly walk free.

In developing its justice system, Cambodia is still reconciling itself to this tortuous past and attempting to manage continuing crime from DK supporters in regional areas who continue to capture and kill civilians and cause other problems for the royal government.

It was Sigmund Freud who said “What is unresolved we see in everything.” There is clearly significant work to do in resolving Cambodia’s human rights and justice issues and fears in
the populace about a return of the DK given the widening gap between the rich and poor. I saw more Hummers and Lexus vehicles on the roads of Phnom Penh than in any other city I visited. With so much at stake for the emerging ruling class, I suspect there is little such threat. There is a consensus view that Malaysian style democracy is the future for Cambodia where a strong majority party, the Cambodian People’s Party, maintains political stability and through new misinformation legislation, controls the opposition parties through the police and the courts.

Several foreign NGO’s I visited discussed the issue of corruption which is widely accepted at all levels of their society. An example: a case of land ownership goes to court and the finding is with the complainant. When the court order arrives in the mail, the order is for the other party because they have subsequently paid for the order to be written the way it has been.

A view is held that the poverty of the masses cannot be adequately addressed until the culture of the ‘pyramid scheme’, where each person in the hierarchy is taking bribes and passing bribes up the line, is confronted. Attempts to do this often lead to the question “what is corruption?” when so often it is people scratching to make a living. For example, it was explained to be that a teacher in 1970 earned approximately US$120 a month and was comfortable and enjoyed a balanced life. Today, a senior member of the government with many years of high responsibility earns $40. If educated, intelligent people cannot survive on their wage, what else are they to do? Many have their children working from a very young age to support them. On Maslow’s Hierarchy of Need, clearly basic conditions must be attended to before matters of a civil society and sturdy democratic structures can be considered.

I spent several days with the Coffey International justice development consultancy and then a similar Australian group implementing a $27m Ausaid grant. Through overseas aid monies, these groups were implementing systems and controls to encourage impartial, independent judicial decision making and integrity in the management of evidence, court processes and court management. Numerous meetings were held with judicial and court leaders to develop an understanding of Cambodia’s priorities in the immense job of building a justice system that can protect its citizens, especially its vulnerable, such as the children who suffer
a comparatively high rate of sex related crime from whom it is claimed the police and other authorities are direct beneficiaries.

I also had very useful discussions with the Danish Human Rights Commission (DHRC) who in 2003 sponsored a Legal and Judicial Reform process subsequently adopted by the government and effected through a Council for Legal and Judicial Reform. The DHRC funded the next cycle of work in 2005, the Plan of Action for Implementing the Legal and Judicial Reform Strategy in 2005 with 63 immediate priorities. The plan is overwhelmingly broad and covers everything from the establishment of model courts, judicial education, case management protocols for document storage and retrieval, the separation of the powers of government from the military and so forth.

So much to achieve. And the expectations of donors and the international community so great. But incredible progress in so short a time.

An Australian observer shared the following anecdote. As the country develops, so too do the mechanisms to deal with historic dysfunction. In the military, a culture of ‘patronage’ had developed where many soldiers were given promotion to positions that did not previous exist. When a 2009 skirmish on the Thai border called for a response from the Army, the government quickly discovered that of the Kingdom’s 160,000 soldiers, most were over 55 and many were generals. All the generals agreed that they could win a war with Thailand without accepting there were few soldiers to fight it until they themselves were ordered to battle. Then reality set in.

Politically, there is a similar situation with nine deputy Prime Ministers.

In their justice reforms, the Cambodians have a very difficult environment to manage with surprising progress being made given the complexity of each of the elements they have to control and move to maturation. I had many useful meetings with judicial and ministry leaders about their timetables for development, from issues such as set administrative procedures for courts, a building program (the court of appeal has only one room between nine judges) and then support services.
I enjoyed a dinner one evening with the presiding judge, investigating judge and prosecutors for the DK trial #002, the first successful prosecution of a Khmer Rouge officer, in this case, the General who ran the S-21 torture camp. The trial cost US$200m and was widely publicised in the media internationally.

Pictured left, President of the Kandal Court In Van Vibol at a press conference held shortly before our meeting, releasing the victim’s statements from DK trial #002.
Conclusion

I am very grateful to the Churchill Trust for the Fellowship opportunity.

As detailed in the introduction, there are numerous, immediate opportunities I will be discussing with court leaders and longer term NGO related activities that will promote improvement to court services in Australia.

A shortlist of what can be achieved as a consequence of this fellowship (a far longer list exists in the pages of my notebooks) is:

- court tours and education programs at the Supreme courts of Victoria and Queensland and the High Court in Canberra to improve the public’s understanding of the justice system
- promotion of the development of a national service for court users where their functional, personal and emotional needs are met
- development work in Cambodia for the same service platform which will feed into better Australian responses to need
- the creation of community based services that better meet the needs of offenders such that the rates of reoffending are reduced
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<tr>
<td>CASA</td>
<td>Court Appointed Special Advocate</td>
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<td>Court User</td>
<td>person who uses the court including victims, defendants and those who attend with them</td>
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<td>GFC</td>
<td>Global Financial Crisis</td>
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<td>MHC</td>
<td>Mental Health Court</td>
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