

RXJO JOHNS, A.T.

Preparation of a handbook for the High Court of Niue ... pt. 2.

A. T. JOHNS

Special project LL. M. 1977

Part 2: Materials used during training sessions in Niue.



APPENDIX - in the order in which they were distributed

- 1. Introduction Handbook
- 2. Notice of preliminary and introductory meetings
- 3. Public Notice Concerning Justice Department's Training Courses and Public Lectures
- 4. Invitation to the Opening Function
- 5. Order of Proceedings at the Opening Function
- 6. Role of Congress as Guardian of the Nine Constitution
- 7. Structure of the Government
- 8. Final Evaluation form
- 9. Stark Incident See Story
- 10. "The Making of Statutory Law in Nine"
- 11. Study Guide - Reading a Statute
- 12. Court Structure
- 13. Court Staff and Court Decisions

MATERIALS USED

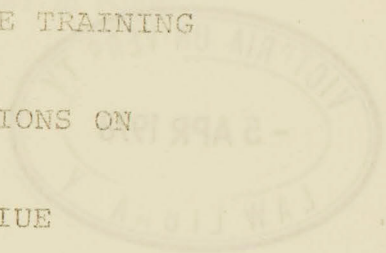
- 14. "What do we achieve by..."
- 15. "Being a Justice or..."
- 16. Details about Nine

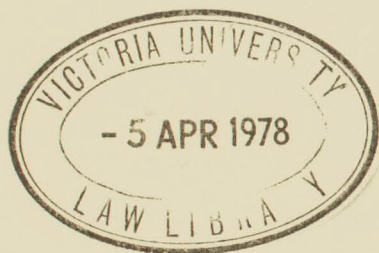
DURING THE TRAINING

- 17. Sessions on
- 18. Characteristics of the Accused
- 19. Possible Sentences
- 20. Mock Court
- 21. "The Public Defender"
- 22. "The Role of the Justice Department"
- 23. Final Evaluation form
- 24. Certificate

SESSIONS ON

NIUE





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MATERIALS - in the order in which they were distributed.

1. Information Handout.
2. Notice of preliminary and introductory meeting.
3. Public Notice Concerning Justice Department's Training Courses and Public Lectures.
4. Invitation to the Opening Function.
5. Order of Proceedings at the Opening Function.
6. 'Role of Speaker of Niue Assembly as Guardian of the Niue Constitution'.
7. 'Structure of Niue Government'
8. First Evaluation form.
9. 'Shark Infested Sea Story'
10. 'The Making of Statutory Law in Niue'
11. Study Guide : Reading a Statute
12. Court Structure
13. 'Court Staff and Court Decisions'
14. 'What do we achieve by punishing people?'
15. 'Being a Justice or Commissioner in Niue'
16. Details about Motu
17. Summary of High Court Procedure
18. Characteristics of the Accused
19. Possible Sentences
20. Mock Court
21. 'The Public Defender'
22. 'The Role of the Justice Department'
23. Final Evaluation form.
24. Certificate.

INFORMATION HANDOUT:

Justice Department,
NIUE.

30 May 1977

HIGH COURT TRAINING SESSIONS AND WORKSHOPS

JUNE 1977

Mr Tony Johns will be conducting training sessions and workshops concerning the High Court and its procedures during the first 3 weeks of June. Various groups will be involved:

1. The Commissioner of the High Court and the Justices of the Peace,.
2. Those servicing the High Court - Court Clerks, Prosecutors, Public Defenders and Interpreters.
3. The Public - others interested.

Programme:

The judicial officers - the Commissioner and Justices - will have daily workshops commencing on Friday 3rd of June, discussing High Court procedure. The judicial officers will also be invited to attend the Public sessions. (The Court Clerks will attend the judicial officer's workshops).

The Court's servicing staff will have daily sessions commencing Tuesday the 7th of June. The sessions will be related to working in the High Court. Those who satisfactorily complete the requirements of the course will receive certificates.

The Public will be invited to several sessions of general interest. The Public sessions already planned involve:

June 7, at 9.30 a.m.: Mr Terry Chapman, Secretary to the Government, speaking about "The Niue Constitution - It's main features".

Mr Chapman will be followed by Mr Sam Tagelagi, the Speaker of the Niue Assembly, who will speak about: "The Speaker - Guardian of the Niue Constitution".

June 8, 9.30 a.m. : Mr Ikipa Tongatule, Legal Officer, will speak about: "The Making of Niue's Laws".

HIGH COURT PERSONNEL TRAINING SESSIONS

Participants:

- Justice Department staff.
- Police Department prosecutors and potential prosecutors.
- Public Defender and potential public defenders.
- Court interpreters.
- Others having a real interest.

Tentative Programme: - 9.30 a.m. each day in the Court room.

Session 1

(June 7)

- i) Opening of the Course.
- ii) Terry Chapman: "The Niue Constitution - its main features".
- iii) Sam Tagelagi : "The Speaker - Guardian of the Niue Constitution".

Session 2

(June 8)

Ikipa Tongatule : "The Making of Niue's Laws".

Session 3

(June 9)

- i) Reading Statutes - Lecture, discussion and written exercise.
- ii) 'The Shark Infested Sea Story' - An exercise examining personal values.

Session 4

(June 10)

- i) The Procedure of the High Court - Lecture.
- ii) Another look at 'the Shark Infested Sea Story' - An exercise pointing out what is an offence against the law.

Session 5:

(June 13)

- i) What is your role in the High Court? - discussion on the role of Judges, clerks, prosecutors, defenders and interpreters in the Court.
- ii) Preparation for Mock Court.

Session 6:

(June 14)

Mock Court - an exercise examining Court procedure.

Session 7:

(June 15)

Sentencing - exercises examining and discussing sentencing and possible sentences.

Session 8:

(June 16)

The Public Defender - public lecture.

Session 9:

(June 17)

Public Mock Court - participants on course will present and explain the procedure of the High Court to the public.

Session 10:
(June 20)

- i) Course Evaluation.
- ii) Presentation of Certificates.

[It is hoped the Course can remain flexible. The Course will be altered to suit participants' needs.]

Course Requirements:

- (a) A high level of attendance at sessions (Around 80%)
- (b) Participation ⁱⁿ the exercises given.
- (c) Completion of an individual assignment. (This assignment is to be discussed and arranged with Tony Johns).
- (d) Attendance at 2 individual tutorials with Tony Johns. (These tutorials will be about $\frac{1}{2}$ hour each and are designed to help with any problems or points arising from the Course. The times are to be arranged with Tony).
- [(e) A visit to the Niue Assembly if an Assembly Meeting is held around the time of the Course.]
- [(f) A visit to the High Court if the course member does not regularly attend the Court.]

Tony Johns
(Tony Johns)
30/5/77.

GOVERNMENT OF NIUE

Justice Department,
NIUE.

30 May 1977

HIGH COURT TRAINING SESSIONS

Notice to participants -

There will be a preliminary and introductory meeting for those participating in the above course on Wednesday, 1 June at 9.30 am in the Courtroom.

All participants must attend.

The lectures will be:

(1) "The Niue Constitution - It's main features!"
by (Tony Johns) Secretary to
Course Organiser

(2) "The Speaker - Guardian of the Niue Constitution"
Police Department
Justice Department
John Funki
by Hon. Togiola, Speaker of
the Niue Assembly,

Tongia
Admin
on the 6th of June 1977 at 9.30 am at the Court
Public Lecture about "The Making of Niue's Law" by
Mr. Tompkins, Legal Officer.

Other public lectures will be advertised later.

(Tony Johns)
Course Organiser

GOVERNMENT OF NIUE

Justice Department,
NIUE.

31 May 1977

PUBLIC NOTICE CONCERNING JUSTICE DEPARTMENT'S
TRAINING COURSES AND PUBLIC LECTURES

The Department of Justice through Mr Tony Johns will soon be conducting a series of training sessions for those working in the High Court.


The Justice Department also believes that the Public should be informed about Niue's Court system. The Public is thus invited to the two lectures which will form part of the Opening of the High Court Training Sessions and workshops. The Lectures will be on Tuesday the 7th of June 1977 at the Court Room at 9.30 a.m.

The lectures will be:

- (1) "The Niue Constitution - It's main features"
by Terry Chapman, Secretary to
the Government.
- (2) "The Speaker - Guardian of the Niue Constitution"
by Sam Tagelagi, Speaker of
the Niue Assembly.

On Tuesday the 8th of June 1977 at 9.30 a.m. at the Court Room another Public Lecture about "The Making of Niue's Laws" by Ikipa Tongatule, Legal Officer.

Other public Lectures will be advertised later.


(Tony Johns)
Course Organiser

FAKATUFONO NIUE

Faahi Gahua Fakafili,
NIUE.

31 Me 1977

FAKAILOAAGA HAGAAO KE HE FAKAAKOAGA HE FAAHI
GAHUA FAKAFILI

Ko e Faahi Gahua Fakafili mo e lagomatai ko Tony Johns to fakahoko ai e taha fakaakoaga haggao ke he tau puhala fakafiliaga.

Kua manatu e Faahi Gahua Fakafili kua lata tonu ke iloa he tau tagata e Puhala Fakafili ha Niue. Hanei kua uiina ke he tau tagata oti ke hohoko mai ko he ua e fakamatalaaga, ko e taha vala he Fakaakoaga he tau Puhala he Fakafiliaga. Ko e tau fakaakoaga nei to fakahoko ai he Aho Ua, aho 7 ia Iuni 1977 he poko Fakafili ha hafa he mole hola hiva he pogipogi.

Ko e tau fakamatalaaga:

- (1) 'Ko e Tohi Fakavē'- fakamatala ai a Terry Chapman ko e Tohi Kupu He Fakatufono.
- (2) 'Hataki Fono - Leveki he Tohi Fakavē'- fakamatalaaga mai ia Sam Tagelagi ko e Hataki Fono he Fono Ekepule o Niue.

Ko e aho Lotu, aho 8 ia Iuni 1977, hafa he mole e hola 9 he pogipogi ko e fakaakoaga: "Ko e tautega he tau Mata Fakatufono a Niue" mai i a I. Tongatule ko e Loea.

Tony Johns
(Tony Johns)

Takitaki

GOVERNMENT OF NIUE

Justice Department,
NIUE.

30 May 1977

HIGH COURT TRAINING SESSIONS AND
WORKSHOPS

You are invited to the opening function of the above Course on Tuesday the 7th of June 1977, 9.30 a.m. at the Court Room.

Attached is the programme for the day.

You may be interested to know that Mr I. Tongatule, Legal Officer will give a public speech on "The Making of Niue's Laws" at 9.30 a.m. the following day (8.6.77).

Tony Johns
Tony Johns
(Course Organiser).

Encl:

Ofisa Fakafili,
NIUE.

30 Me 1977

FAKAAGOAGA HE TAU PUHALA HE FAKAFILIAGA

Kua uiina atu ke fakalataha mai a koe ke he hafagiaga he Fakaakoaga he tau puhala he Fakafiliaga ha Niue he aho Ua ko e aho 7 ia Iuni 1977, he hafa he mole matahola 9 he pogipogi ke he Poko Fakafili i Alofi.

Pine fakalataha mo e tohi nai e fakaholoaga he aho.

Ko e aho Lotu he hafa he mole e hola hiva to fakamatala a I. Tongatule, to fakamatala ai a ia hagao ke he 'Tauteaga he Tau Matafakatufono Tohi i Niue".

Tony Johns
(Tony Johns)
Takitaki

June 7th : 9.30 a.m.

OPENING OF HIGH COURT OF NIUE TRAINING
SESSIONS AND WORKSHOPS

Order of proceedings:

1. Welcome - Mr Tony Johns, Course Organiser.
2. Opening prayer.
3. Course declared open by the Hon. Dr Enetama, Minister of Justice.
4. Address: "The Niue Constitution - It's main features"
: Mr Terry Chapman, Secretary to the Government and Chairman of the Staff Training Committee.
5. Address: "The Speaker - Guardian of the Niue Constitution"
: Mr Sam Tagelagi, Speaker of the Niue Assembly.
6. Thanks - Mr Solomona Kalauni, Secretary for Justice.
7. Closing Prayer.

Iuni 7, 1977.
9.30 a.m.

HAFAGIAGA HE FAKAAKOAGA HE PUHALA FAKAFILIAGA
TOKOLUGA HA NIUE

FAKATOKATOKAAGA:

1. Fakafeleveia -- Mr Tony Johns, Takitaki he Fakaakoaga.
2. Liogi.
3. Fakaakoaga to hafagi he Iki Lilifu ko Dr Enetama, Ikipule he Faahi Gahua Fakafili.
4. Fakamatala : - 'Ko e Tohi Fakavē a Niue' - mo e fakaakoaga".
T.M. Chapman, Tohi Kupu he Fakatufono Ni e,
mo e Takitaki he Komiti Fakaako.
5. Fakamatala : - 'Ko e Hataki Fono - Leveki he Tohi Fakavē ha Niue'.
Sam Tagelagi, Hataki Fono he Fono Ekepule a Niue.
6. Tau kupu fakaauē : Mr S.M. Kalauni - Tohi Kupu he Fakafiliaga.
7. Liogi Fakaoti.

ROLE OF SPEAKER OF NIUE ASSEMBLY AS GUARDIAN
OF NIUE CONSTITUTION

S.P.E. Tagelagi- Speaker

Some of us may ask what is a Constitution?

Perhaps we could say that a Constitution is :-

"A legal document setting out the laws formulated and established by a nation for its own guidance in running its affairs for the betterment of the nation as a whole, socially and economically and for good Government".

The Main role of the Speaker to my mind, as guardian of the Niue Constitution, is to understand and interpret the meaning of each article contained in the Constitution and apply the intention of each article whenever applicable.

I have to be ever aware of the Constitution. On occasions, probably more often than most people realise, I have to actually interpret the Articles. In interpreting the Constitution I have on occasions sought the assistance of legal advisers.

A recent example of interpretation was the controversy about the Assemblymen's pay increase.

As Speaker I preside over meetings of the Assembly. It is my duty to maintain good order in the Assembly in compliance with the Standing Orders. These Standing Orders are a detailed set of rules concerning the running of Assembly Meetings.

Before outlining the various aspects of the Constitution of which the Speaker is responsible, brief mention should be made on the appointment, qualification vacating of office etc., of the Speaker.

APPOINTMENT

- (Article 20) (i) The Speaker is elected to office by an absolute majority of the members present and voting at a meeting of the Niue Assembly.
- (ii) Only a person who is qualified for election as a member of the Niue Assembly may be elected as Speaker.
- (iii) In any person elected as Speaker is, at the time of that election, a member of the Niue Assembly, he shall vacate his office as a member when he enters upon the duties of the office of Speaker.
- (iv) The election of the Speaker shall take place, before the despatch of any other business, at the first meeting of the Assembly after each general election, and, at a meeting of the Assembly

called for that purpose, as soon as possible after any vacancy in the office of Speaker has occurred.

(v) Before a person who has been elected Speaker enters upon the duties of his office, he shall take and subscribe before the Clerk of the Niue Assembly, at a meeting of the Assembly, the Oath of Allegiance prescribed in Article 21 of the Constitution.

(vi) The Speaker may resign his office by writing under his hand addressed and delivered to the Clerk of the Niue Assembly and also -

(a) On the entry into office of a new Speaker elected when the Assembly first meets after a general election; or

(b) If he ceases to be qualified for election as a member of the Assembly; or

(c) If he becomes a candidate at any election of a member or members of the Assembly.

(vii) If at any meeting of the Assembly the Speaker is absent or the office of Speaker is vacant, the members of the Assembly present at that meeting shall elect one of their number, not being a Minister, to preside over that meeting until the Speaker is again present or, as the case may be, until a Speaker has been elected and has entered upon the duties of his office.

THE ROLE OF SPEAKER AS GUARDIAN OF THE CONSTITUTION -

APPOINT MINISTERS

(Article 5) (i) As soon as practicable after his election to that office, the Premier elect shall nominate to the Speaker, with their consent, 3 other members of the Niue Assembly for appointment as Ministers.

(ii) Upon receiving those nominations, the Speaker shall appoint as Ministers the Premier elect and the members so nominated.

(iii) If the Premier elect has not within 7 days after his election to that office submitted to the Speaker his nominations for appointments to the Cabinet his election to that office shall have no effect, and a meeting of the Niue Assembly shall be held as soon as practicable for the purpose of again electing a Premier.

(Article 5 & 8) (iv) Appoint by instrument under the Seal of Niue, as Ministers the Premier elect and the members so nominated or as temporary ministers, members so nominated by the Premier.

(Article 7) (v) Appoint by instrument under the Seal of Niue, at the request of the Cabinet, another Minister as Acting Premier to discharge the functions of Premier, in the case of illness or absence from Niue the Premier is temporarily prevented from discharging his functions in Niue.

(vi) Revoking, at the request of the Premier the appointment of any Minister, by instrument under the Seal of Niue.

NORMAL FUNCTIONS

(Article 15) (i) Custodian of the Seal of Niue.

(ii) Authentication of any public document in relation to the Government of Niue or execute any document required by law to be executed under the Seal of Niue.

(Article 21) (iii) Taking from each elected member of the Niue Assembly the Oath of Allegiance.

(Article 20) (iv) Taking from the Premier elect and the Ministers the Official Oath.

CALLING THE ASSEMBLY

(Article 22) (i) On the request of the Premier, call meeting of the Assembly and appoint place and time for that meeting.

(ii) On the request of any 4 or more members of the Assembly who are not Ministers, where more than 6 weeks has elapsed since the time of the last meeting of the Assembly, call meeting and appoint place and time, such time to be not earlier than 5 days nor later than 10 days after but excluding the date of the making of the request.

- (Article 22) (i) Preside at every meeting of the Assembly at which he is present.
- (ii) See that every question before the Assembly is decided by a majority of votes of the members present.
- (iii) Subject to any law requiring any member of the Assembly to refrain voting on any matter concerning a contract in whose execution and enjoyment he is interested, every member present shall vote on any question put to the Assembly.
- (iv) The Speaker or other presiding officer shall not have a casting vote and the Speaker shall not have a deliberative vote, but a member presiding in place of the Speaker shall have a deliberative vote.
- (v) No business shall be transacted at any meeting of the Assembly if the number of members then present, including any member presiding in place of the Speaker is less than 10. The only exception is article 20(9).
- (vi) Any Bill or other business before the Assembly at its dissolution shall lapse.
- (Article 23) (xx) The Speaker or any member of the Assembly may speak in the Assembly either in the Niuean language or in the English language. Arrangements to be made for the translations.

HANDLING BILLS

- (Article 23) (i) Every Bill introduced into the Assembly and every Act shall be in the Niuean language and also in the English language. The Assembly may by resolution determine that any Bill or Act shall be in the Niuean language or the English language only.
- (Article 25) (ii) Any Bill or any amendment to any Bill dealing with the remuneration of the Premier, other Ministers, the other members of the Assembly who are not Ministers and the Speaker that Bill or that amendment may not be introduced unless -
- (a) There is before the Assembly a report and recommendations made by the Niue Service Commission; and

- (b) The issues raised by that Bill or by that Amendment are substantially similar to those considered in the Commission's report and recommendations.
- (Article 29) (iii) Any member of the Assembly may introduce any Bill or propose any motion for debate in or present any petition to the Assembly, and the same shall be considered and disposed of in accordance with the Standing orders.
- (Article 30) (iv) Except with the recommendation or consent of the Premier or another Minister acting on behalf of the Premier, the Assembly shall not proceed upon any Bill (including an amendment to any Bill) which, would dispose of or charge any of the revenue of Niue, or revoke or alter, otherwise than by way of reduction, any disposition thereof or charge, thereon, or impose or alter or abolish any toll, rate, due, fee, fine or tax.
- (Article 31) (v) The Assembly shall not proceed upon any Bill, or upon any amendment to a Bill, after its introduction, if that Bill or amendment makes provision with regard to measures affecting the criminal law or personal statute - unless the Chief Justice has been invited to comment on the legal, constitutional, and policy issues raised by that Bill or by that amendment, and there is before the Assembly the response of the Chief Justice to that invitation.
- (vi) If the Assembly by resolution decides to invite the Chief Justice to comment in relation to a Bill or to an amendment, there shall be sent to the Chief Justice a copy of the resolution, an account of the Assembly's discussions thereon, together with a copy of that Bill or amendment of the Bill to which it relates. But if the Assembly takes a contrary decision, the Bill or the amendment to which that decision relates shall lapse.
- (Article 32) (vii) The Assembly shall not proceed upon any Bill or upon an amendment to any Bill after its introduction if that Bill or that amendment makes provision with regard to measures affecting the Niue Public Service - unless the Assembly has before it a report made by the Niue Public Service Commission, on the legal

constitutional and policy issues raised by that Bill or by that amendment.

- (viii) If the Assembly by resolution decides to request the Niue Public Service Commission to report in relation to a Bill or to an amendment, there shall be sent to the Niue Public Service Commission a copy of that resolution, an account of the Assembly's discussions thereon together with a copy of that Bill or of that amendment of the Bill to which it relates; BUT if the Assembly takes a contrary decision, the Bill or the amendment to which that decision relates shall lapse.
- (Article 33) (ix) The Assembly shall not proceed upon any Bill or upon an amendment to any Bill, after its introduction if that Bill or amendment makes provision with regard to measures affecting Niuean land - unless the Assembly has before it a report, made by a Commission of Inquiry on the legal, constitutional and policy issues raised by the Bill or by that amendment.
- (x) If the Assembly by resolution decides that any Bill or amendment is worthy of consideration by a Commission of Inquiry, the Cabinet shall as soon as possible consider whether and in what manner it should act to enable effect to be given to the Assembly's decision; BUT if the Assembly takes a contrary decision in relation to any such Bill or amendment, that Bill or amendment shall lapse.
- (xi) On the resolution of the Assembly, the Cabinet may establish a Commission of Inquiry with appropriate terms of reference or may make any necessary alteration in the terms of reference of a Commission of Inquiry already established; and the Premier shall as soon as possible inform the Assembly of any arrangement that has been made by the Cabinet to enable effect to be given to the Assembly decision.
- (xii) Whenever it appears such arrangement has been made by the Cabinet, there shall be sent to the Commission of Inquiry designated by Cabinet, a copy of the Assembly's resolution, an account of the Assembly's

discussions thereon, together with a copy of the Bill or a copy of the amendment, and the Commission of Inquiry shall in due course make its report to the Assembly.

(Article 34) (xiii) Sign all Bills passed by the Assembly and sealed with to the Seal of Niue. On signature to Bill become Acts of the Niue Assembly.

(Article 35) (xiv) A Bill repealing or amending or modifying or extending any of the provisions of the Niue Constitution Act 1974 shall become law if -

(a) It has been passed by to Assembly in Compliance with --

(1) On both the second and final readings the Bill receives the affirmative votes of not less than two-thirds of the total membership of the Assembly; and

(2) The vote on the final reading takes place at least 13 weeks after but excluding the day of the vote on the second reading; and

(a) It has been submitted to a poll, conducted in a manner prescribed by law, of the persons who at the time of that poll eligible to vote as electors at a general election of members of the Assembly and has at that poll received the support -

(1) In the case of any Bill repealing or amending any of the provisions of sections 2 to 9 of the Constitution Act or of Articles 1 and 69 of this Constitution, or of Article 35, by two thirds of the votes validly cast; and

(2) In any other case, of a majority of the votes validly cast;

(c) Signed and sealed that the Bill has been passed in accordance with the constitution and with the standing orders of the Assembly.

- (Article 55) (xv) Receive comments from Chief Justice on Bills or amendments referred to him for comment.
- (Article 60) (xvi) Receive annual report from Audit Office of New Zealand for presentation to the Assembly.
- (Article 70) (xvii) Receive reports and recommendations from the Niue Public Service Commission as to levels of remuneration and other entitlements of the Premier, the other Ministers, the members of the Assembly who are not Ministers, and the Speaker whenever there is a general alteration of the levels of remuneration of employees of the Niue Public Service and also whenever the Commission is requested to report on the legal, constitutional and policy issues by any Bill or amendment.

GENERAL ELECTIONS

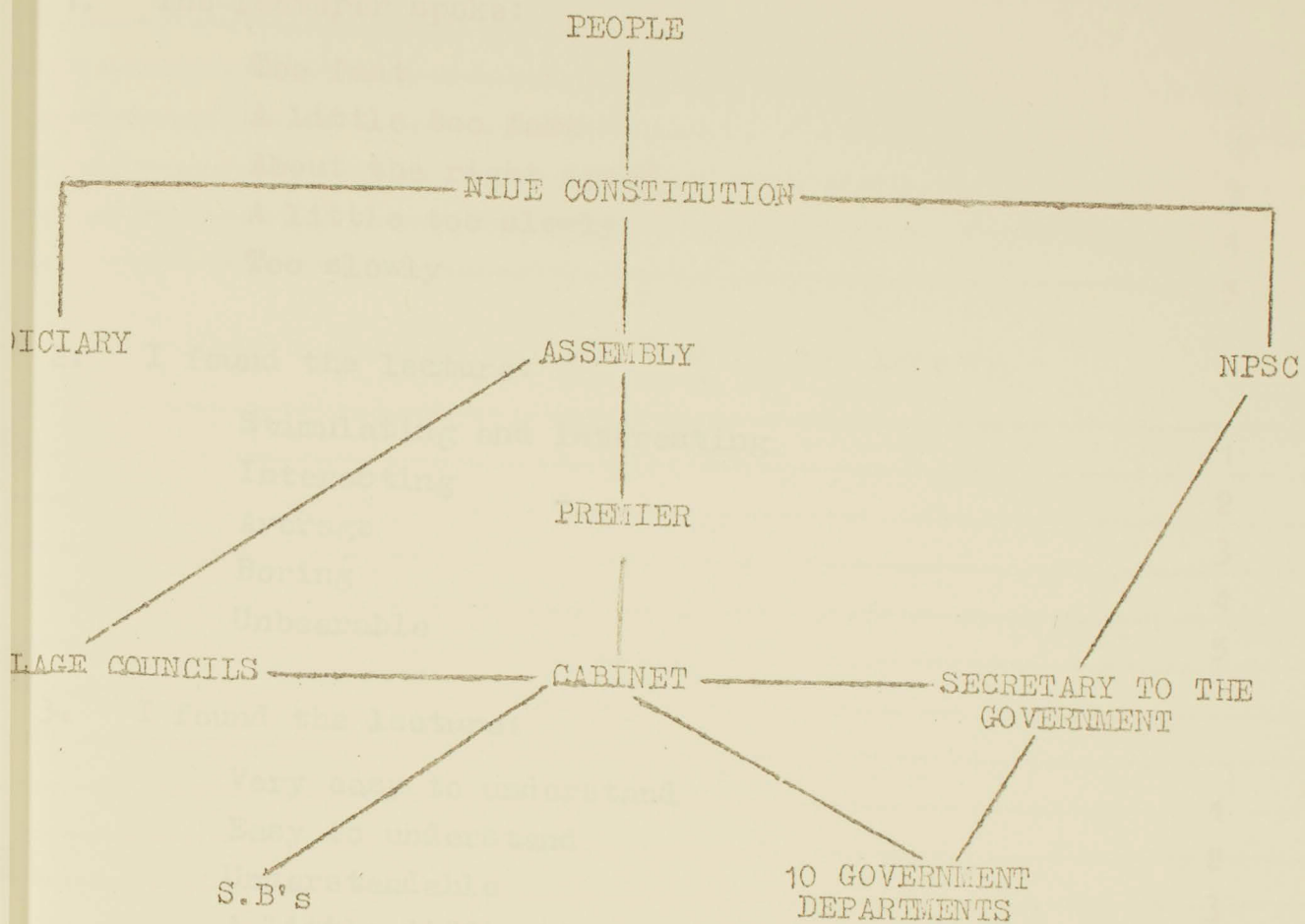
- (Article 26) (i) At the request of the Premier appoint, or if the Premier makes no such request within 7 days of any dissolution, at own discretion, appoint by notice in the Niue Gazette such time being not less than 4 weeks nor more than 6 weeks after the date of every dissolution of the Assembly, to be the time for the general election of the members of the Assembly.

DISSOLUTION OF ASSEMBLY

- (Article 6) (i) If a motion of confidence is lost, or, as the case may be, a motion of no confidence is carried, the Premier shall be deemed to have tendered his resignation from office at the expiration of 5 days after the meeting of the Niue Assembly, unless before the expiration of that period he requests the Speaker to dissolve the Assembly.

The Articles of the Constitution are both in the Niuean language and English language. On the form of the Constitution, the comment that readily comes to mind, which appears to be appropriate is that expressed by two visiting lawyers; one of whom is a District Judge for North Dallas, Texas, USA, who had the opportunity of attending one meeting of the Assembly. These two ladies have travelled widely throughout the World and the Pacific Region with their main interest being constitutional development of each nation that they visited. In their opinion the Niue constitution is the first piece of legislation that they have ever seen or experienced in their travel that has been drafted in simple language for anyone to read and understand, whereas most other constitutions contained mainly legal jargon which any ordinary person not qualified in law finds in difficult to understand.

STRUCTURE OF NIUE GOVERNMENT



evaluation:

High Court Training Sessions and Workshop

Session.....

What to do: Circle the one number which comes nearest to your own view --

1. The lecturer spoke:

- | | |
|-----------------------|---|
| Too fast | 1 |
| A little too fast | 2 |
| About the right speed | 3 |
| A little too slowly | 4 |
| Too slowly | 5 |

2. I found the lecture:

- | | |
|-----------------------------|---|
| Stimulating and interesting | 1 |
| Interesting | 2 |
| Average | 3 |
| Boring | 4 |
| Unbearable | 5 |

3. I found the lecture:

- | | |
|----------------------------------|---|
| Very easy to understand | 1 |
| Easy to understand | 2 |
| Understandable | 3 |
| A little difficult to understand | 4 |
| Very difficult to understand | 5 |

B. What to do: Write a few comments.

1. What I thought was best about the lecture --

Lined writing area for question 1.

2. What I thought was worst about the lecture -

Lined writing area for question 2.

3. How could the lecture have been improved?

Lined writing area for question 3.

JUSTICE TRAINING COURSE

JUNE 1977

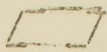
SHARK INFESTED SEA STORY

Once upon a time there was a woman named Moka who was in love with a man named Tule. Tule lived on a small island. Tule-Moka lived on another island. The sea which separated the two lovers was full of man-eating sharks. Moka wanted to cross the sea to be with Tule. Unfortunately the regular airline was broken down. So she went to ask Kapi, the island's only boat owner, to take her across. He said he would be glad to if she would agree to go to bed with him before the journey. She promptly refused and went to a friend named Tione to explain her sorry situation. Tione did not want to be involved at all in the situation. Moka felt her only alternative was to accept Kapi's terms and sleep with him. Kapi fulfilled his promise to Moka and delivered her into the arms of Tule.

When she told Tule about what she did to get across the sea, Tule told her clear off. Heartsick and upset, Moka went to Motu with her sorry story. Motu, feeling sympathy for Moka, went and found Tule and badly beat him up. Moka was very happy to see Tule getting beaten up. As the sun goes down over the horizon we hear Moka laughing at Tule.

EXERCISE:

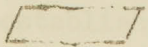
- you
1. Think about who/feel was the worst person - Put '1' beside the name.
 2. Now think about who you think behaved best - Put '5' beside the name.
 3. Next, think who was second to worst - Put '2' beside the name.
 4. Now think about who was second to the best behaved person - Put '4' beside the name.
 5. Put '3' for the other person.



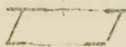
Moka



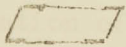
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8 JUNE 1977

"THE MAKING OF STATUTORY LAW IN NIUE"

A. INTRODUCTION:

In Niue the only recognised law-making body is the Niue Assembly which is established by Article 16 of the Constitution. The present Assembly's legislative role is quite different to that exercised by the earlier assemblies that appeared in the guise of "Island Council" and "Niue Island Assembly". The pre-1974 assemblies possessed legal competence to legislate for Niue but subject to the approval of the New Zealand administration of the time. Before 1974 the New Zealand Parliament had full competence to legislate for Niue. The examples are the Niue Act 1966 and the Niue Constitution^{Act} 1974. Also, there are a lot of other New Zealand enactments that have been made to apply to Niue. One enactment that was applied 32 years ago which no one in Niue knew anything about until recently is the Atomic Energy Act 1945. This Act was passed for New Zealand but because the New Zealand Government at the time was responsible for Niue the Act was made to extend to Niue thus it is part of the law of Niue. The position today is that before any New Zealand enactment applies to Niue there must be obtained the request and consent of the Niue Assembly. This is Article 36 of the Constitution. To date two New Zealand enactments have been extended to Niue - the Misuse of Drugs Act 1975 which will come into force in June 1977 and the New Zealand Seals Act 1977. In both these two cases the request and consent of the Niue Assembly was obtained before these enactments could become part of the law of Niue. The situation at present is that the Niue Assembly possesses competence to legislate within the territorial limits of Niue for the peace, order, and good government of Niue.

I cannot help but comment that the first Act passed by the Niue Assembly in exercising its new status is the Niue Honey Company Dissolution Act 1974. Even though this Act proved to be ill-conceived one cannot avoid the obvious conclusion that the Niue Assembly can make and unmake laws for Niue. The passing of that Act revealed the willingness of the Niue Assembly to exercise its new found powers. Of course the Assembly

soon learnt that possessing such powers does not necessarily solve all problems but it must be exercised with caution and to be jealously guarded against abuse. It must be pointed out that this Act was not used to solve the problem it was supposed to.

B. ORIGINAL IDEA FOR LAW MAKING:

One may ask who is responsible for these Acts. The layman would point his finger directly at the Cabinet and the Niue Assembly. This, to a small extent, is true. However, the original idea for legislation may have originated from the government departments, election promises, public opinion, pressure groups, or private individuals. Most of the government departments here in Niue administer statutes and the need for amendment is frequently seen first by the officials of the department. It may be that a statute has become obsolete or unworkable, or that defects are discovered and the officials will then recommend that appropriate amendments be made. The Cabinet itself, of course, decides whether or not the amendment should be made and what its scope should be.

Niue has seen very little of the other above-mentioned sources as origins for Acts of the Assembly. However, public opinion play a major part in what kinds of legislation should be passed ^{and} when a Bill is being discussed in the Assembly. Election promises and private individuals as sources of legislation have yet to make a showing. Of pressure groups one could say that the provisions in the Niue Constitution relating to the Niue Public Service is largely due to the concern of the Niue Public Service Association in safe guarding its independence. At the time of the constitutional talks the Niue Public Service Association made strong representations to the government to make special provisions in the Constitution for the Niue Public Service and this coincided well with the government's intention to do so. As a result one finds the position of the Niue Public Service an intergral part of the Niue Constitution so the Niue Public Service is a constitutional reality.

C. PREPARATION OF THE BILL:

The Law Draftsman is responsible for the drafting of the Bills. Policy decisions must be settled first by the policy makers before instructions are issued to the draftsman to produce a draft Bill. Unsettled policy matters would mean redraft after redraft which in the

long run wastes valuable time. Policy decisions in Niue remains with Cabinet. It is Cabinet that determine the final contents of a draft Bill and that also approves a Bill before its introduction into the Assembly. The Bills that are processed by the Assembly can be said to be the legislative programme that the government of the day chooses to pursue. However, any member of the Assembly can introduce a Bill into the Assembly as a private member's Bill. This is recognised by Article 29 of the Constitution but to date no such Bill have been introduced into the Assembly.

In producing the first draft, the draftsman works alone. He cannot work with other people looking over his shoulder and offering comments. No satisfactory draft can be prepared by a group of draftsmen acting as a drafting committee for they will all have different ideas about how the work should be done, there will be endless trivialities, and the final product will be at best only a compromise. Drafts can be discussed, criticised and tested in a discussion group, but the responsibility for setting up the draft or making any changes must devolve upon one person. Usually the draftsman goes over this first draft and prepares one or more revisions before discussing it with the Minister who is sponsoring the Bill. All defects and imperfections are discussed and the process continues until the sponsor and the draftsman are both satisfied with the form and content.

Before the draft Bill gets to the Assembly it must be translated into the Niuean language. The writer confesses to drafting Bills in the English language before it is translated into the Niuean language. This is done purely for convenience's sake and that for the moment the English language is the official language for the conducting of government business. Most of Cabinet's business is conducted in the English language whilst that of the Assembly is in the Niuean language, So, the business that Cabinet deals with in the English language that requires tabling in the Assembly necessarily involves translation. This kind of practice is of course costly and time consuming especially when there is only one official government interpreter and with the Legislative Section heavily committed to their other duties. Why there is a need for translation into the Niuean language is because of the commanding requirement of Article 23 of the Constitution which makes provision for the language of the proceedings of the Assembly to be in the Niuean language or the English language wherever the circumstances demand.

Both languages have equal standing in the Assembly but for one language to prevail over the other would require a direction from the Assembly as to which language prevails when ascertaining the correct meaning of an Act.

D. CONSIDERATION OF A BILL BY THE ASSEMBLY:

Assuming that a Bill is approved by Cabinet the next step would be to introduce it into the Assembly by the Minister responsible for sponsoring it. If it is a Bill concerning finance then the Minister for Finance must sponsor it for it is a matter pertaining to his portfolio. There is no binding rule relating to this practice for it is very much a matter of convention.

Before the Assembly can seriously debate a Bill certain preliminary constitutional requirements must be satisfied.

- (1) Article 30 of the Constitution provides that, "where in the opinion of the Speaker any Bill (including any amendment to any Bill) which would dispose of or charge any of the public revenues of Niue, or revoke or alter, otherwise than by way of reduction, any disposition thereof or charge thereon, or impose or alter or abolish any toll, rate, due, fee, fine or tax" the Assembly shall not proceed with such a Bill in the House until the Premier's consent or a Minister acting for and on the behalf of the Premier is obtained.
- (2) Article 31 of the Constitution provides that where in the opinion of the Speaker a Bill or any amendment to a Bill makes special provisions with regard to measures affecting the criminal law or personal status the Assembly shall not proceed upon such Bill after its introduction unless the Chief Justice has been invited to comment on the legal, constitutional, and policy issues raised by the Bill or by that amendment and there is before the Assembly the response of the Chief Justice to that invitation.

- (3) Article 32 of the Constitution provides that where in the opinion of the Speaker any Bill or any amendment to a Bill makes special provisions with regard to measures affecting the Niue Public Service then the Assembly shall not proceed upon that Bill or amendment to that Bill after its introduction unless the Assembly has before it a report, made by the Niue Public Service Commission pursuant to this Article, on the legal, constitutional, and policy issues raised by the Bill or by that amendment.
- (4) Article 33 of the Constitution provides that where in the opinion of the Speaker any Bill or an amendment to any Bill makes special provisions with regard to measures affecting Niuean land then the Assembly cannot proceed upon such Bill or such amendment after its introduction unless the Assembly has before it a report, made by a Commission of Inquiry on the legal, constitutional, and policy issues.

The present Mining Bill is a good example of the way Articles 31 and 33 operate. The Bill makes provision affecting Niuean land and the criminal law. Article 33 requires a report from a Commission of Inquiry which was tabled at the Assembly meeting held on the 26th of last month. Article 31 requires comments from the Chief Justice as to the legal, constitutional and policy issues relating to the Mining Bill. The response received from the Chief Justice, "no comment". Resolutions passed by the Assembly are actually required under the above articles before the Bills can be referred to a Commission of Inquiry or to the Chief Justice. Failure to obtain such resolutions would mean that a Bill lapses. In the case of the Mining Bill the two required resolutions were passed without much debate. Now that the Assembly has satisfied the constitutional requirements it must then proceed with the serious business of reading the Bill for the first, second, and third times. The procedure it must now follow is provided for in the Standing Orders of the Assembly. Standing Orders are rules of procedure in the Assembly which is a standard requirement for all Bills and other business of the Assembly.

(1) CERTIFICATE OF URGENCY:

Where urgency is required of any Bill the Speaker must consent to its introduction without prior publication and distribution to members. The Speaker's consent is granted by way of a Certificate of Urgency. This device has been used to process Bills through one single sitting. The way this operate is that the Speaker issues a Certificate of Urgency to enable a Bill to be introduced, first reading, second reading and third reading. This procedure, although a convenient way of processing Bills, must be discouraged. However it cannot be completely disregarded for there are certain Bills that requires urgency in the House.

(2) INTRODUCTION AND FIRST READING:

This involves the reading out of the Long Title of the Bill and explaining to the Assembly members the purpose and general intent of the Bill's provisions. After introducing the Bill the member introducing the Bill would then put the question that the Bill be read the first time. If this motion is carried then the Bill will be taken to the second reading. The second reading can be taken immediately or postponed till a later meeting.

(3) SECOND READING:

A motion is always put and must be seconded that the Bill be read a second time. Debates at this stage is confined to the principles and general merits of the Bill.

At this stage the Bill is either deferred till the next meeting or referred to the Bills Select Committee. If a motion that the Bill be read the second time is carried then the Assembly resolves itself into a Committee of the Whole Assembly at the direction of the Speaker.

(a) Bills Select Committee:

Where a Bill is referred to the Bills Select Committee then no further proceedings will be taken as regards the Bill. The function of the Bills Select Committee is to examine the Bill and scrutinise its provisions in detail. It may wish to hear representations from interested members of the community. Criticism thrown at a Bills Select

Committee is that it may deal with matters that has already been covered by a Commission of Inquiry thus wastes time and money. However, this is a matter for the Assembly to decide when considering whether or not a Bill is to be referred to a Select Committee. Since Constitution Day 29 Acts have been passed and the Bills Select Committee was never used. It is at the moment dealing with the present Mining Bill. The deliberations of the Bills Select Committee are contained in a report which must be tabled in the Assembly. This report may contain recommendations, if any, to amend certain clauses of the Bill. Once the report is tabled then the Assembly proceeds with the rest of the second reading.

(b) Committee of the Whole Assembly:

When this stage of the second reading is reached the Assembly usually debates the Bill clause by clause. In so debating amendments may be made to the Bill. These amendments usually arise as a result of the Chief Justice's comments, the Commission of Inquiry's report, Bills Select Committee report or simply from a member of the Assembly who happens to dislike a particular provision. Whatever amendments is desired must be made at this stage.

When the Committee Stage is completed the Assembly then reverts back to its normal second reading role at the direction of the Speaker.

(4) THIRD READING:

Once the second reading is completed a motion is then put to have the Bill read the third time. Third readings involves a last minute effort to tidy up the Bill as amended or unamended. Amendments to correct errors or oversights are allowed but only at the Speaker's permission. When the third reading is over then no further question is put and the Bill is then regarded as having been passed by the Assembly. Having been passed, the Bill is then regarded as an Act of the Niue Assembly.

E. HOW BILLS COME INTO FORCE:

When an Act is passed then the Speaker must assent to it pursuant to Article 34 of the Constitution. Unless the Act so provides the date of coming into force of the Act is the date the Speaker gives his assent. In assenting, the Speaker puts his signature at the end of the Act in the presence of the Clerk of the Assembly and the same Clerk of the Assembly must countersign in the presence of the Speaker. The public seal of Niue is then affixed to the Act signifying that the Act now becomes part of the law of Niue.

I.P. Tongatule
Legal Officer

READING A STATUTE

References:

Niue Constitution Act 1974

Standing Orders of the Niue Assembly

Dreidger - "The Composition of Legislation"

An Act or Ordinance of the Assembly has all or some of the following divisions. Where appropriate you will find references to Transport Ordinance shown in brackets.

The Title - This includes:-

(a) The name of the Act or Ordinance (Transport Ordinance) (Laws made by the Island Council and Niue Island Assembly are "Ordinances"; Laws made by the Niue Assembly are "Acts").

(b) The year it was passed and the number in the series (1974 No. 1). Ordinances made by the Island Council of Niue from 1914 to 1947 have been numbered 1 to 50; Ordinances made by the Niue Island Assembly from 1953 to 1974 have been numbered 1 to 39 and Acts made since self-government have again been numbered from 1.

Date of Passage

This follows the title and / the number of a statute in the Act or Ordinance is the date upon which it passed (15 June 1974 is the date of passing in the Niue Island Assembly. In section 4(2) of the Transport Ordinance there is a provision that "This Ordinance shall come into force on the first day of 1975". The Transport Ordinance thus passed on the 1st of 1975).

Short Title

This is the name by which the Act or Ordinance is known. (See section 4(1)).

Interpretation Section

This is a section setting out the meanings of the words used in the Act.

Occasionally the interpretation section contains a section stating that the words, phrases and expressions used in a particular Act will have the meanings given in the interpretation section of an earlier Act - for example the Niue Constitution

READING A STATUTE

It is important for anyone associated with the Courts to be able to read and understand statutes. Many people don't bother to try to read statutes as they believe it is just too hard and the words too difficult. In fact the hardest problem is getting used to the style of writing. With practice reading statutes is not hard. This Study Guide is intended to help you develop an ability to read statutes. It will, of course, help reading Rules and Regulations as well.

DIVISIONS OF A STATUTE:

An Act or Ordinance of the Assembly has all or some of the following main divisions. Where appropriate you will find references to the Transport Ordinance shown in brackets.

1. The Title - This includes:-

- (a) The name of the Act or Ordinance (Transport Ordinance) /Laws made by the Island Council and Niue Island Assembly are 'Ordinances'; Laws made by the Niue Assembly are 'Acts'./
- (b) The year it was passed and the number in the series (1965, No.30). /Ordinances made by the Island Council of Niue from 1916 to 1959 have been numbered 1 to 60; Ordinances made by the Niue Island Assembly from 1959 to 1974 have been numbered 1 to 93; and Acts made since self-government have again been numbered from 1./

2. Date of Passing:

in New Zealand statutes in
This follows the title and / the absence of a provision in the Act or Ordinance is the date from which it becomes Law (16 June 1965 is the date of passing in the Niue Island Assembly, but in section 1(2) of the Transport Ordinance there is a provision stating "This Ordinance shall come into force on the first day of July 1965". The Transport Ordinance thus became Law on the 1st of July 1965).

Under the Niue Constitution if the Act does not specifically provide for commencement the Act comes into force upon the signing and reading by the Speaker. [Article 34 of the Niue Constitution]

3. Short Title:

This is the name by which the Act or Ordinance is to be known. (See section 1(1)).

4. Interpretation Section:

This is a section setting out the meanings of certain words used in the Act.

Occasionally the interpretation section contains a subsection stating that the words, phrases and expressions used in the particular Act will have the meanings given in the interpretation section of an earlier Act - for example the Niue Constitution

or Niue Act. (See section 3(2) "Subject to the provisions of subsection (1) of this section, terms defined in the Niue Act 1966 have the meaning so defined"). Many Acts, however, go to lengths to define the specialised terms which they are concerned. (See section 3(1)).

The Acts Interpretation Act 1924 contains a few definitions of terms, such as 'constable', 'minor' and 'month' which may apply generally unless special definitions are given in a particular Act.

It is important to understand the meanings of the words used.

5. Substantive sections:

These contain the "guts" or effective provisions of the Act or Ordinance. Each section is an independent enactment that is to be interpreted as being self contained unless otherwise stated. A section states a rule. If subject to an exception the rule will usually be followed by a proviso. (See section 12(2)).

Where a section is not self contained, the link is generally indicated by terms such as "Except as specially provided in this Ordinance" (Section 4), or "Subject to the provisions of" (Section 14). Subsections within a section however, are read in relation to and dependent on one another. (For example section 5(1) and (2) are read together as one).

6. Regulations:

Where it is intended that the detailed rules putting into practice the basic principles of the Act or Ordinance are to be contained in regulations, the Act or Ordinance must give power for the making of regulations to someone or a group and outline the scope that they are to have. The power to make regulations is generally given to the Niue Cabinet (see Section 97(1)).

In providing for regulations the Assembly is handing down to others part of its power (referred to as 'delegating authority'). Such delegation of authority mainly concerns administrative details. Greater flexibility in administration is also provided as any regulations can be amended or repealed by the group who made them without the need of going back to the Assembly. A regulation cannot go outside the scope of the powers delegated in the Act or Ordinance.

A number of Acts or Ordinances provide that any regulations made under it must be "laid on the table of the Assembly" within a certain time of coming into force. (See section 97(2)). Through this method of tabling, or even if regulations are not actually required to be tabled, Assemblymen may discuss and if necessary criticise regulations in the Assembly.

7. Repeals:

Where new law is substituted for old, the result can sometimes be achieved by adding to, deleting or amending the wording of existing enactments. At other times a completely new provision is enacted and the old law must therefore be repealed. Repealing a section removes it altogether - it no longer exists as law. Repeals will be stated. (See section 105).

8. General Penalties Section:

This is not found in all Acts or Ordinances. It is present in Acts or Ordinances where sections create offences but no penalty is provided for in those sections. The section provides the penalty (Section 103 -- "Every person who commits an offence against this Ordinance for which no penalty is provided in this Ordinance elsewhere than in this section or in the Niue Act 1966, is liable to a fine not exceeding twenty dollars (\$20)".)

9. Binding the Crown:

Where an Act or Ordinance is to apply to the Crown, this is stated (See section 104).

10. Savings Provision:

This, with the repeal section (sometimes combined) is generally found at the end of the Act or Ordinance. It is used to cover exceptions to the application of the Act to other statutes or specific circumstances (see section 105(2) (a) which was necessary to ensure that appointments under any Ordinance, that in fact continued on, did continue on under the new provisions).

11. Schedules:

Schedules form part of the Act or Ordinance but for convenience are printed last and separately so that the text of the Act itself is not loaded with detail. Forms to be used, scales of fees, lists of amendments caused by the new sections (referred to as 'consequential amendments') and so on are generally found in the Schedules. (See Schedules to the Transport Ordinance).

The Schedule to the Niue Constitution is an exception to general practice that Schedules do not contain very important matter.

PRACTICE EXERCISE:

1. What day did the Niue Act 1966 come into force?

2. Explain:

- (a) Repealing a section.
- (b) Amending a section.

In writing about paragraph (a) it is referred to as 'Section 22 (1) (a)' or merely 'S.22(1)(a)'. In talking about it one says 'Section twenty two subsection one paragraph a of the Niue Act 1966'.

The Schedule of an Act or Ordinance is divided into -

- : Numbered Schedules;
- : Numbered Parts;
- : or Articles, as in the case of the Constitution.

ARTICLE 2(1)

SUBCLASS 2(1)(a)

Articles
The Cabinet of Ministers of Niue -
(1) There shall be a Cabinet of Ministers of Niue (hereinafter referred to as the Cabinet) which consists of the Premier of Niue (who shall be a member of the Niue Assembly) and 3 other members of the Niue Assembly.

SUBCLASS 2(1)(2)

(2) Subject to this Constitution, the ...

In writing about subclass (2) it is referred to as 'Article 2 (1) (2)' or merely 'Art. 2(2)'. In talking about it one says 'the two subclasses two of the Niue Constitution 1974'.

THE EXERCISE

Describe for written purposes the following part of the Niue Act 1966:

16. Registrar and Register -

(1) The Registrar shall compile and keep up to date at his office a register of all motor vehicles registered and of all registration plates and licences issued and also of the fees received in respect thereof.

DESCRIPTIONS OF DIVISIONS IN A STATUTE:

(a) An Act or Ordinance is divided into:

For example:

PARTS

SECTIONS [s.22]

SUBSECTIONS [ss.(1)]

PART III - LICENSING OF MOTOR VEHICLES

"22. Procedure of licensing - (1)
On receipt of an application as afore-
said the Registrar shall issue a
driver's license to any applicant who
satisfies him:

PART III - LICENSING OF MOTOR VEHICLES [s.(1)]

(a) That the applicant is over the
age of sixteen years; and

(b) That by

In writing about paragraph (a) it is referred to as
'Section 22 (1) (a)' or merely 'S.22(1)(a)'. In talking about it
one says "Section twenty two subsection one paragraph a of the
Transport Ordinance 1965".

(b) The Schedule of an Act or Ordinance is divided into -

- : Numbered Schedules;
- : Numbered Forms;
- : or Articles, as in the case of the Constitution,:

ARTICLES [Art.]

SUBCLAUSE [Sub.cl.
(1)]

For example:

"2. Cabinet of Ministers of Niue -
(1) There shall be a Cabinet of
Ministers of Niue (hereinafter referred
to as the Cabinet) which consists of
the Premier of Niue (who shall be a
member of the Niue Assembly) and 3
other members of the Niue Assembly.

SUBCLAUSE [Subcl.(2)]

(2) Subject to this Constitution,
the

In writing about subclause (2) it is referred to as 'Article
(2)' or merely 'Art. 2(2)'. In talking about it one says
'Article two subclause two of the Niue Constitution 1974".

PRACTICE EXERCISE:

Describe for written purposes the following part of the
Transport Ordinance:

"6. Registrar and Register -

.....

(2) The Registrar shall compile and keep up
to date at his office a register of all motor
vehicles registered and of all registration plates
and licences issued and also of the fees received
in respect thereof.

It is of the Transport Ordinance 1965

Using the example in question 3, now, write down how you could describe that example if you were talking.

Answer: 'I would say that it was of the Transport Ordinance 1965'.

(11) See if the Acts Interpretation Act 1924 is relevant. (This act is usually not much help. See the next page)

(12) If the meaning is still in doubt refer to the leading books in the area. For example the Legal Officer has a book by Adams entitled "Criminal Law and Practice in New Zealand" which can be particularly helpful in relation to the meanings of certain offences.

(13) Consult the Dictionaries. The Legal Officer has a small but relevant "New Zealand Law Dictionary" by Dowling and Wainwright.

(14) Finally, look up a good dictionary. The Legal Officer and Administration Departments have "Oxford Oxford Dictionaries".

The following parts of the Acts Interpretation Act 1924 are of general interest for reading Statutes.

(1) Under section 2 of the Acts Interpretation Act 1924 a number of words and phrases are defined. The words and phrases defined are to have that meaning in all Acts and Ordinances unless it is inconsistent with the context or there are words to exclude or restrict such meaning.

It is often thought this Act contains lots of important definitions. There are about fifty words and phrases included, but they are often

(a) Not relevant to him - for example "Māhiti of Maori Customs", "North Island", or "Summary conviction"; or

INTERPRETING STATUTES:

When it becomes necessary to gain the meaning of a word or phrase appearing in a section, the following procedure should be used:

- (i) First, check the section itself and see if the word or phrase is defined there. (For example S.179 of the Niue Act 1966).
- (ii) Read the "interpretation" section of the Act or Ordinance itself. This is often Section 2, although certain words, etc., may be defined by a different section as applying to a particular part of the Act (for example s.161 of the Niue Act 1966).
- (iii) See if the Acts Interpretation Act 1924 is relevant. This Act is usually not much help. See the next page.
- (iv) If the meaning is still in doubt refer to the leading books in the area. For example the Legal Officer has a book by Adams entitled "Criminal Law and Practice in New Zealand" which can be particularly helpful in relation to the meanings of certain offences.
- (v) Consult law dictionaries. The Legal Officer has a straight forward "New Zealand Law Dictionary" by Mozley and Whiteley.
- (vi) Finally, look up a good dictionary. The Legal Officer and Administration Departments have "Concise Oxford Dictionaries".

More about (iii) --

The following parts of the Acts Interpretation Act 1924 are of general interest for reading Statutes.

- (i) Under section 4 of the Acts Interpretation Act 1924 a number of words and phrases are defined. The words and phrases defined are to have that meaning in all Acts and Ordinances unless it is "inconsistent with the context" or there are "words to exclude or restrict such meaning".

It is often thought this Act contains lots of important definitions. There are about fifty words and phrases included, but they are often:

- (a) Not relevant to Niue - for example: "Kahiti or Maori Gazette"; "North Island"; or "Summary conviction"; or

- (b) Defined in another Niuean Act - for example:
 "Constable" in section 2 of the "Niue Act, 1966
 for that Act; or "Land" as "Crown Land" and
 "Niuean Land" in section 2 of the Niue
 Amendment (no. 2) Act 1968 for that Act and
 the Land Ordinance 1969; or
- (c) Obvious in meaning - for example:
 "Gazette means published in the aforesaid
 Gazette";

The words and phrases that are useful include:

"Minor" means any person under the age of 20 years.

"Month" means a calendar month.

"Writing", "Written" or any similar term includes
 words printed, typewritten, painted, engraved,
 lithographed, or otherwise traced or copied.

In summary, the Acts Interpretation Act is generally not
 much assistance in finding definitions.

- (ii) Words in the singular number include the plural.
 Words in the plural number include the singular
 number.

Words referring to men include women. (For
 example "If he is about to turn" includes "If she
 is about to turn").

- (iii) To assist the interpreting of statutes a rule has
 been laid down in section 5(j). It reads as
 follows:

"Every Act and every provision or enactment
 thereof shall be deemed remedial, whether its
 immediate purport is to direct the doing of
 anything [the Assembly] deems to be for the public
 good, or to prevent or punish the doing of
 anything it deems contrary to the public good, and
 shall accordingly receive such fair large and
 liberal construction and interpretation as will
 best ensure the attainment of the object of the
 Act and of such provision or enactment according
 to its true intent, meaning, and spirit".

What this means in effect is that if the meaning of the
 words are clear that is the meaning accepted. If there is any
 doubt concerning their meaning give the words the meaning that
 will fairly 'best ensure the attainment of the object of the Act'.
 In other words the rule is based on common sense.

- (iv) Section 21 of the Acts Interpretation Act 1924 provides that if an Act which is still in force refers to an Act which has been repealed the reference to the repealed Act will be viewed as referring to any subsequent Act passed in substitution for such repealed Act, unless it is out of context. (For example section 39 of the Transport Ordinance read ".... without being guilty of the crime of manslaughter as defined in Part V of the Cook Islands Act 1915" but using the above provision it is now read "..... as defined in Part V of the Niue Act 1966" as Part V of the Niue Act is the corresponding enactment which substituted for the repealed Part V of the Cook Islands Act 1915).

Exercise:

Some time have a glance at the Acts Interpretation Act 1924 read especially: Sections 2, 4, 5, 7, 20, 20A, 21, 25).

1974 Amendment:

A very helpful provision for reading pre-Constitution Day statutes of Niue is provided in section 2(2) of the Niue Amendment Act 1974. It states that unless specifically amended every reference in any Act shall be read -

- "(a) In the case of a reference to the Executive Committee of Niue, as a reference to the Cabinet of Ministers of Niue:
- (b) In the case of a reference to the Leader of Government, as a reference to the Premier of Niue:
- (c) In the case of a reference to the Resident Commissioner of Niue, as a reference to the Cabinet of Ministers of Niue:
- (d) In the case of a reference to the Niue Island Assembly or to the Island Assembly (except in the definition of the term "Ordinance" in section 2 of the principal Act), as a reference to the Niue Assembly:

- (e) In the case of a reference to an Ordinance (except in the definition of that term in section 2 of the principal Act), as a reference to an Act of the Niue Assembly:
- (f) In the case of a reference to the Niue Assembly Account, as a reference to the Niue Government Account:
- (g) In the case of a reference to the Chief Judge of the High Court, as a reference to the Chief Justice of that Court:
- (h) In the case of a reference to the New Zealand State Services Commission, being a reference in relation to the Niue Public Service, as a reference to the Niue Public Service Commission."

(For example reading an Act which says "..... with the written permission of the Resident Commissioner" is to be read as "..... with the written permission of the Cabinet of Ministers of Niue"; or "shall be laid before the Island Assembly" as "shall be laid before the Niue Assembly").

PRACTICE EXERCISE:

Give the present day meaning of the following provision:

"Any exemption granted by the Executive Committee under this section shall be subject to such conditions as the Executive Committee may impose".

THE APPARENT COMPLEXITY OF STATUTES:

You may be wondering why there are so many and such technical words in statutes. Maybe the following example might help to explain:

Let us assume a section of an Act contains no definitions and is worded:

"NO PERSON SHALL SELL A FIREARM IN A SHOP"

How would you decide the following cases under that law?:

- (a) A sells a revolver to B in the Niue Hotel.
- (b) C, a retailer gives away a spear gun (propelled by rubber) to each customer in his shop who buys snorkels, flippers and an aqualung.
- (c) D, a boy of eight years, swaps his father's pistol in the restaurant for a friend's cricket ball.
- (d) E, who sells at the market each Friday, sells a man with a criminal record a rifle.
- (e) G is the owner of a store. He has a manager, H, who is in charge of the store in Alofi where a World War 1 gun with no firing mechanism is sold to the Niue Museum. G, is in Auckland at the time of the sale.

When you have thought about these situations you will realise that the words "person", "sell", "firearm", and "shop" are all uncertain.

"Person" obviously includes the normal sane adult - but what about an eight year old boy? He is a person in one sense, but not in the sense of having full legal control of his actions or property. "Sell" plainly includes an ordinary cash deal - but what about giving things away or swapping? "Firearm" must include the revolver, pistol, rifle and gun, but what about the spear gun? "Shop" generally means a retail outlet, but what about the hotel restaurant, or the market?

What do we decide? Do we say: "An old unuseable gun from World War 1 is not meant to be included as it cannot harm anyone" or "The restaurant is practically the same as a shop" or "The Assemblymen in passing the law were not thinking about small boys swapping father's pistol or retailers giving away spear guns"?

Is not the meaning and use of the section made more certain if the relevant Act or other Acts with definitions that apply contain the following sections or definitions?

Section X: "Children under 10 - (1) No person shall be convicted of an offence by reason of any act done or omitted by him when under the age of 10 years.
(2) The fact that by virtue of this section any person has not been or is not liable to be convicted of an offence shall not affect the question whether any other person who is alleged to be a party to that offence is guilty of that offence".

Section Y: Interpretation -

"Firearms" includes any weapon from which a missile can be discharged by the force of an explosion or by the force of any compressed gas or weapon which for the time being is not capable of discharging a missile but which by the replacement of any component part or parts, or the correction of any defect, would be so capable, and also includes any weapon which is for the time being dismantled, but does not include any firearms of the type commonly known as humane killers, or bolt or stud guns.

"Goods" means all kinds of movable personal property including animals.

"Sell" includes an agreement to sell as well as a sale and also includes barter and an agreement to barter.

"Shop" means any place in or about which, or from which directly or indirectly goods are sold to the consumer.

[NOTE: The above is merely an example developed for this Study Guide.]

PRACTICE EXERCISE:

Now taking the above example, the definitions outlined and any other interpretation device you think appropriate write:

- (a) Whether in your opinion the following have broken the law under the provision that "No person shall sell a firearms in a shop".

A

B

C

D

E

F

G

- (b) An explanation of each of your answers.

Reading a Statute - Study Guide

ANSWERS:

1. 1st January 1967.
- 2(a) A repeal cancels a section.
- 2(b) An amendment reforms or alters a section.
3. Section 6(2) or S.6(2).
4. Section six subsection two.
5. "Any exemption granted by the Cabinet of Ministers of Niue under this section shall be subject to such conditions as the Cabinet/Ministers of Niue may impose."

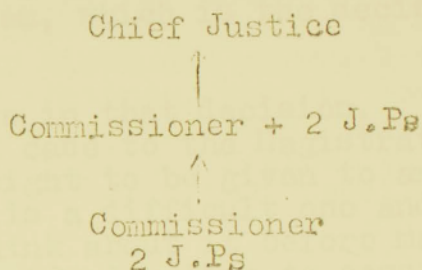
HIGH COURT HANDBOOK

ADDITIONAL NOTE

COURT STRUCTURE:

COURT OF APPEAL (N.Z.)

HIGH COURT OF NIUE -- Within the High Court:



COURT PERSONNEL:

New Zealand (

Niue Cabinet
appointments {

Judges of the Court of Appeal

↑
Chief Justices of the High Court

↑
Commissioner of the High Court

↓
Justices of the Peace

[NOTE: A Justice of the Peace never sits alone.]

ADDITIONAL NOTE:

COURT STAFF AND COURT DECISIONS

The Handbook discusses the need for Court staff not to appear to be influencing Court decisions. Two pieces from other books are of interest:

A. Island Courts in the Gilbert and Ellice Island Colony (1965) by D.R. Barwick at page 6:

"It must.....be remembered at all times that the Clerk of the Island Court is not a member of it. It is the three Island Magistrates, acting together, who make up the Court and it is the decision of them all, or of the majority of them, which is the decision of the Court.

The Clerk should have no voice in that decision. He should not give his views on the facts of the case to the Magistrates, nor should he indicate his views as to the weight to be given to any evidence given before Court. If the case is a difficult one and the Magistrates wish to discuss it together and think about it before making their decision, they may adjourn the Court and retire to consider their judgement. It must be remembered that not only should justice be done but it should also be seen to be done. That is to say, nothing should be done which would give a party or some other onlooker cause to think, or even suspect, that everything was not being done properly and fairly. For this reason, it is better for the Magistrates to decide if they can without leaving the Court, or, if they do leave the Court for them to be seen to retire together to some nearby place of their own and decide without delay, if they can.

For the same reason, it is important that the Clerk should not retire with the Magistrates, if and when they rise to consider their judgement in any case, for even if they act correctly and do not hear what the Clerk thinks of the case, someone in Court may think that they have not reached their conclusion solely on their own and because of that be dissatisfied with their judgement.

It is not intended, however, that the Magistrates should not ask the Clerk any question about the law, or about the proper way to take some step in the proceedings, if they think he can help them from his knowledge and experience. If he can assist the Court in these matters (but not in advising as to anything on which the Court must reach a decision on the facts) he should do so. He should do so in open Court, in the hearing of all, too, so that it can be seen he is only assisting by seeing that the right procedure is followed and to prevent mistakes. At all times the Clerk should be deferential to the Magistrates and equally helpful and polite to all persons who have business in the Court."

Court

✓The Clerk -- is like Niue's Clerk. A Magistrate -- is like 2 Justices or a Commissioner.✓

Practice Direction issued by Lord Goddard in England in 1953:

".....when, and for what purposes, [is it] proper for a clerk to justices to accompany them when they retire to consider their decision, or to remain in their room while the case is under consideration....."

"There are two questions which arises in this connection. The first is: On what matters may magistrates consult their clerk? The second, and one of equal importance, is: In what manner should they consult him?"

On the first question, it is clear that they may seek his advice on questions of law, or of mixed law and fact, and also on questions regarding the practice and procedure of the court. The latter are, indeed, questions of law. There are other matters on which justices may require the assistance of their clerk and on which they are entitled to ask his advice. They may, for instance, ask him for information of the sentences which have been imposed by their bench, or by neighbouring benches, in respect of similar offences to that which they are trying. It is, indeed, most desirable that penalties for such matters as obstruction by vehicles, lack of lights, and other what may be called public order offences should have some degree of uniformity. Moreover, it would be proper for the clerk himself to call the justices' attention to the fact that a question of law does, or may, arise if they do not appear to be already aware of it. It would then be for them to consider whether they wanted his further advice on that question. In no circumstances, however, may justices consult their clerk as to the guilt or innocence of the accused, so far as it is simply a question of fact, but, if a question arises as to the construction of a statute or regulation, they may consult him on whether the facts found by them constitute an offence, because that would be a question of mixed law and fact. They may also properly ask the clerk to refresh their memory as to any matter of evidence which has been given. They can take with them, or send for, any note the clerk may have taken, and if there is anything in the note which needs elucidation, or if they think something has been omitted or wrongly taken down, it would be perfectly proper for them to consult him. They must not ask his opinion as to the sentence which they ought to impose, but they may, as I have said, ask for information as to the sentences imposed for comparable offences, and they most certainly may consult him on what penalties the law allows in any particular case if they already do not know it, and on any consequential matters that may follow on conviction. One obvious instance would be with regard to certain motoring offences, whether reasons which they are prepared to give can amount to special reasons or not disqualifying a driver according to the decision of this court on that subject. They may also want to know whether it is a case in which they can require sureties for good behaviour in addition to imposing a penalty.

As regards the manner in which justices may consult their clerk, the court, I think, made it clear in the East Kerrier case that the decision of the Court must be the decision of the justices, and not that of the justices and their clerk, and that, if the clerk retires with the justices as a matter of course, it is inevitable that the impression will be given that he may influence the justices as to the decision, or sentence, or both. A clerk should not retire with his justices as a matter of course, nor should they attempt to get round the decisions to which I have referred merely by asking him in every case to retire with them, or by pretending that they require his advice on a point of law. Subject to this, it is in the discretion of the justices to ask their clerk to retire with them if, in any particular case it has become clear that they will need his advice. If, in the course of their deliberations, they find that they need him, they can

send for him. On this matter I would stress one further point and that is, that if the clerk does retire with the justices, or is sent for by them, he should return to his place in court as soon as he is released by the justices, leaving them to complete their deliberations in his absence and come back into court in their turn. I wish to add that the rulings this court has given on the subject derive from, and are really part of, the rule so often emphasised that justice must not only be done but must manifestly appear to be done and, if justices bear that in mind, I feel they will have no difficulty in loyally following the decisions of this Court."

✓The Clerk - is like Niue's Court Clerk. A Magistrate - is like 2 justices or a Commissioner.✓

This study shows that, if people see what the law will do to them if they commit a crime, they are less likely to do anything for which they can be arrested, tried and punished.

Thus, if a man does not commit a crime because he is scared of what the law will do to him if he does, this is known as "special deterrence".

This man was not scared by what the law would do to him and went on and committed the crime anyway, but his example will get other people who will get other people off following his example. This is known as "general deterrence".

This means that people are scared from committing crimes, and there are several ways of doing this.

The most efficient way of seeing that a crime will not be repeated is to do away with the criminal, and although this sounds very hard, it has been found in the past that certain crimes had to be paid for in a way. Today many countries have done away with the death penalty.

Imprisonment is obviously a most effective way of preventing crime, and qualification from driving can be a form of prevention.

"An eye for an eye, a tooth for a tooth". How many times have you heard this saying?

Retribution means paying someone back for what they have done to you and the law tries as hard as it can to make those who have been tried feel that the crime has been "paid for".

The law takes upon itself the task of seeing that punishment given to wrongdoers both punishes him and makes other members of society feel that "something has been done". If, for example, we see someone who is being fined, we feel satisfied that they are paying for their wrongdoing and for their lack of interest in the safety and convenience of other people.

ADDITIONAL NOTE

WHAT DO WE ACHIEVE BY PUNISHING PEOPLE?

We are all involved in this, because when the Law punishes a guilty person, it does so on our behalf. Punishment of offenders is hoped to have an effect both upon the person being punished and society as a whole: both parties are expected to gain. The four headings below will explain this more fully.

Deterrence 2

This simply means that, if people see what the Law will do to them if they commit a crime, they may be much less likely to do anything for which they can be arrested, tried and punished.

Thus, if a man does not commit a crime because he is scared of what the Law might do to him if he does, this is known as "special deterrence".

If this man was not scared by what the Law could do to him and went ahead and committed the crime anyway, the punishment he will get when he's caught may well put other people off following his example. This is called "general deterrence".

Prevention

This means to stop people from committing crimes, and there are different ways of doing this.

The most efficient way of seeing that a crime will not be repeated is to do away with the criminal, and although this sounds very hard, it has been found in the past that certain crimes had to be paid for in this way. Today many countries have done away with the death penalty.

Imprisonment is obviously a most effective way of preventing crimes. Disqualification from driving can be a form of prevention.

Retribution

"An eye for an eye; a tooth for a tooth". How many times have you heard this saying?

Retribution means paying someone back for what they have done to you, and the Law tries as hard as it can to make those who have been injured feel that the crime has been "paid for".

The Law takes upon itself the task of seeing that punishment given to a wrongdoer both punishes him and makes other members of society feel that "something has been done". If, for example, we see careless drivers being fined, we feel satisfied that they are paying for their carelessness and for their lack of interest in the safety and convenience of other people.

Reform

Reform means that, in punishing a person for what he has done, the law can help him to see the error of his ways.

There are problems with imprisonment as many prisons are old and overcrowded, and it is hard to keep "tough" prisoners from mixing with less serious offenders and having a bad influence on them.

As a general rule no one of these headings (or principles) is any more important than the others. Adjudicators have a duty to consider all four aspects when sentencing.

The paper is based on research made in a group discussion held in April in November 1975.

Introduction:

There are only 400 inhabitants. Five of these people are adjudicators. There are also a number of other public functions. Each one of them is intimately related to the and the people of our island. (The other functions and officials mentioned here are the only non-judicial officials. All judicial officials are listed by name below.)

The Specialization of the Adjudicators:

He is also married and has a young family of 5 children.

Functions of the Adjudicator:

- (a) - He is Past Master and involved in church affairs.
- (b) - He is a Head Teacher and Secretary of his Village Council. Vice-Chairman of the Village Savings and Loan Society and also involved in church affairs.
- (c) - He is a public officer (a chief cook), member of his Village Council and President of his Church.
- (d) - He was previously an assemblyman and a pastor.

Thus, besides their judicial functions, they have other functions to perform. Let it not be neglected that they, like all Niueans, have many other community roles to perform. They have family, church, village and national obligations and connections. Each man has, plant and share within the community. Their day-to-day lives involve constant with potential.

ADDITIONAL NOTE:

BEING A JUSTICE OR COMMISSIONER IN NIUE

(This paper was presented to the Pacific Courts Seminar in Tonga in 1976).

This paper is produced to help discussion.

[The paper is based on comments made in a group discussion held in Alofi in November 1976.]

"Introduction:

Niue has only 4000 inhabitants. Five of these people are adjudicators. Others perform similarly important public functions. Each one of them is intimately related to the land and people of our island. (The Chief Justice and Appeal Court Judges are the only non-resident judicial officers. All resident judicial officers are Niuean by birth).

The Commissioner of the High Court of Niue:

He is also Director of Health and has a young family of 8 children.

Justices of the Peace:

- (a) - He is Post Master and involved in church affairs.
- (b) - He is a Head Teacher, Secretary of his Village Council, Vice-Chairman of the Public Service Savings and Loan Society and also involved in church affairs.
- (c) - He is a public servant (a chief cook), member of his Village Council and President of his Church.
- (d) - He was previously an Assemblyman and a pastor.

Thus, besides their judicial functions, they have other functions to perform. Let it not be neglected that they, like all Niueans, have many other community roles to perform. They have family, church village and national obligations and connections. Each must fish, plant and share within the community. Their day-to-day lives involves contact with potential

complainants and offender^s alike.

Because they are so intertwined within the community the problems of influence, pressure and possible bias are very real. This is not only in the minds of the people but discussions also revealed that they are very real to the judicial officers and others with similar functions.

Impartiality

After some self-reflection discussion disclosed that impartiality in Niue is impossible. (Training can be directed to understanding this situation).

Public Reactions to Adjudicators:

Points discussed revealed:-

- Some of the public view adjudicators as 'God Almighty'.
- Generally the families of people penalised by an adjudicator thank him for his considerate decisions.
- On occasions adjudicators have been threatened and abused. Any overt reaction to such by the adjudicators is unlikely in this community. It would be viewed as 'throwing his weight around'. In any event he still has to live with that person and their family.
- "Some people in the community don't speak to me and my family."
- A friend of one of the adjudicators expected his judicial friend to sit on his case. When the adjudicator said he couldn't, the friend said, "Oh, I thought you were my friend."

Changes in the Lifestyle of Adjudicators:

Points discussed revealed:-

- Judicial Officers said:

"My social life has had to change. I have to be more selective with my friends and be careful of others at the Club".

"I am isolated a bit in the community. I have to refrain from certain things. Friends don't involve me in some things anymore".

- The Chief of Police stated:

"I make an individual effort to be secluded from the public. I am now obliged to live centrally in Alofi in a Government house. I would prefer to live in my own village home.

I'm not too involved in social activities. I'm better off in my own little corner I have to play a part in the community in Niue though".

Personal feelings:

"Some times it's a real strain. On occasions after a Court Session I have to go somewhere silent."

Conflict of Roles:

- This can be portrayed through this very recent example: "Mr X assaulted an employee of the Health Department early one morning. The Director of Health (cum Commissioner) was called to the scene. Because of the circumstances the Director became involved in the arresting of Mr X. Mr X escaped. The Director was then naturally concerned for the safety of his staff. He therefore put the pressure on the Police Chief to detain Mr X. Later the issue of bail arose. Here again the Director wished Mr X to remain in custody, When the application for bail was heard the Commissioner, through normal arrangements, was meant to be presiding.

The conflicts between the roles of citizen, Director of Health, and Commissioner are evident.

[FOOTNOTE; The Commissioner went to considerable lengths and sought much advice to ensure that the conflict he experienced did not jeopardize a fair hearing for Mr X. He did not sit on the bail application or at any subsequent hearing. What cannot be overlooked is the considerable personal involvement and emotional strain in such an experience. Today he remains a major witness in a forthcoming case against Mr X.]

- In nearly all cases on Niue all the adjudicators, like every citizen, have heard via an extremely efficient 'coconut wireless' all the evidence and the 'gruesome' details before a Court hearing.
- Frequently relatives appear before adjudicators. In the complex Polynesian family structure it is sometimes difficult to decide whether someone is so closely related as to warrant an adjudicator stepping down.
- Some adjudicators feel intensely a conflict between their Christian belief and their adjudication roles. "Jesus is here to save the people and not to punish them".

Problems with appointing Adjudicators:

Difficulties have and are being experienced in encouraging suitable people to act as adjudicators. Nearly all those who are now adjudicators were reluctant to take up the task. Some of the points above throw light on why people are so reluctant (fear of the unknown; community pressure; conflict of roles, etc.).

Conclusions:

Now we are a self-governing country it is very important that respect develops for our Court system. Localisation of judicial functions has been rapid. Along with localisation has come an increase in strains and tensions on the 'elder' members of our community who directly participate as adjudicators. They are continually involved in their society and have to go to extreme lengths in their role as adjudicator to maintain 'respect'. This respect is so much part of being a Polynesian elder and is important to Polynesian life."

JUSTICE TRAINING COURSE

JUNE 1977

SENTENCING:

DETAILS ABOUT MOTU

1. 18 years old
2. Niuean
3. Has 1 subject in School Certificate.
4. Is Single.
5. ^{Moka} Abigail is Motu's sister.
6. Is not homosexual.
7. Male
8. Good Health.
9. Average Intelligence.
10. Average Personality.
11. No drug use.
12. Spends about \$10.00 a week on Alcohol.
13. Has lived in Alofi all his life.
14. Independent.
15. Arrested twice before: 1975 - allegedly converting a car.
March 1976 - obscene language charge.
16. Stable early home background.
17. With his sister.
18. Sees mother twice a week on average. Father died 2 years earlier. Lives with his sister.
19. Showed talent in technical drawing at school. Has not worked at all since leaving school over a year ago.
20. Unemployed.
21. 16 when first arrested.
22. 17 when first convicted.
23. Never been in Prison.
24. Has spent his whole life out of Prison..
25. \$10.00 fine
26. One prior conviction.
27. Was previously convicted for obscene language.
28. Never escaped from prison.
29. Was first arrested for allegedly having converted a car.

- first
30. Was/convicted for obscene language.
 31. Presently charged with causing grievous bodily harm (involving breaking a collar-bone) when he brutally attacked Tule. Tule was taken unawares and had no time to resist.
 - 32: "I was so ^{angry} about what my sister told me about her boyfriend Tule that I just lost my cool and looked for him and hit him".
 33. No weapon was used.
 34. No person aided Motu in the offence.
 35. No previous convictions for assault.
 36. Prison conditions are claimed good. Not at present overcrowded.
 37. Prison staff consist of ^a full-time prison warder, who has no training in prison work and 2 part-time assistant warders.
 38. While awaiting trial Motu has been out on bail.
 39. Gardening is the main prison work.
 40. Has not been in prison.
 41. Has no money.
 42. No dependent family. Mother has little money since father died. Would be great assistance if Motu contributed some earnings and did some bush work.
 43. Has reasonable chances to get work, but is not interested in seeking work.
 44. Never been to Prison.
-

MOCK COURT EXERCISE

JUNE, 1977.

NOTE: This is based upon a draft of the 'High Court of Niue Handbook' which may be altered before being published.

Any comments are welcomed.]

SUMMARY OF HIGH COURT PROCEDURE

Preliminary Steps and the Charge:

- (a) All stand.
- (b) Justices and/or Commissioner enters.
- (c) Prosecutor and Defender nod to the Bench.
- (d) Justices/Commissioner nod back.
- (e) Justices/Commissioner sit down.
- (f) All sit down.
- (g) The Clerk reads out the name of the accused.
- (h) If represented by the public defender or other agent he will stand up and say:

"If it pleases the Court, I appear for the accused."

- (i) If an interpreter is needed he is sworn in by a Court Officer/Clerk.
- (j) The Clerk reads out the charge.

The accused must know exactly what wrong is supposed to have been committed and what law he is supposed to have broken. The charge shows this.

The Clerk must be sure that it is a case that those on the Bench can decide. If not, no plea is taken and remand or bail are decided and the case adjourned.

The Plea:

The Clerk asks the accused.

"How do you plead? Guilty or not guilty."

If he pleads 'guilty' the Bench should make sure that the accused really means this.

(Enter a plea of not guilty if the accused is:

- i) in doubt whether to plead guilty or not; or
- ii) can not or will not speak or plead;
- iii) Pleads 'guilty' but adds some 'ifs' or 'buts').

If at any time during the hearing the Bench thinks the plea should be changed to 'not guilty' they should consider them. A plea can be changed from 'guilty' to 'not guilty'. The case then starts again.

3A. A Plea of Guilty:

- (a) The police prosecutor reads out the summary of facts.
- (b) The police prosecutor may read out previous convictions. He will:
 - i) read the list;
 - ii) show it to the accused and his agent.
 - iii) Hand it to the Bench if the accused agrees the list is correct.

- (c) The Bench should find out if the accused agrees with the summary of facts as read out.
The public defender or another agent may speak for the accused.

If the accused agrees with the summary of facts there is no need to call witnesses.

If the accused disagrees with important facts stated, the evidence should be heard. This may require an adjournment.

- (d) The Bench should ask the accused if he has anything to say: The Bench should assist the accused by asking questions.

Finding out the important true facts and asking questions about age, earnings, and so on helps the Court to make up its mind about the sentence.

- (e) Decide, write down and announce the sentence.

(Now see 'Possible Sentences').

3B. A Plea of Not Guilty:

- (i) The Prosecution Side for a Plea of Not Guilty.

If the accused pleads not guilty the Court must hear all the evidence.

- (a) Someone on the Bench tells witnesses to leave the Court.
- (b) An adjudicator asks the prosecutor to call his first witness. (This is usually the person who made the information).
- (c) The witness is sworn in.
- (d) Witness tells his story. (Examination-in-chief).

The prosecutor can help questions (e.g. "Where were you on the 13 June 1977?"; "What happened?")
Leading questions must not be asked.

The witness tells the Court the whole story.

- (e) An adjudicator tells the accused that he or his agent can ask the witness any questions about what he has told the Court. (cross-examination).

When the cross-examination has ended, the prosecutor may re-examine the witness, but generally only on matters which came up in cross-examination.

The Bench can ask questions too.

- (f) The prosecutor then calls the next witness. He is sworn and tells his story in the same way.

The accused if asked if he or his agent has any questions to put to the witness.

So it goes on, witness after witness, until the prosecutor tells the court he has no more witnesses.

ii) The Defence Side:

- (a) An adjudicator now speaks to the accused. - "It is now time for you to tell your story if you want to. You have three ways to choose from -

First - You can say nothing.

Second - You can go into the witness box and swear to tell the truth and tell your story. If you do this, the prosecutor or the Court can ask you questions afterwards.

Third - You can tell your story from where you are standing without swearing to tell the truth. The Court will give this Statement the weight they fell fit and take it into consideration when deciding if the prosecution has proved its case."

- (b) An adjudicator now asks the accused or his agent to call any witnesses if he has any.

The defence witnesses are called one by one, to tell their stories. (Examination-in-chief).

Every witness must be sworn.

Cross-examination by the prosecutor and possibly re-examination.

The Bench can ask questions.

- (c) An adjudicator asks if the defence has any more witnesses. If the accused or his agent say 'no', the Court has heard all the facts and must decide about the case.

4. The Judgment:

The Court should look at each point in the charge and see if the prosecution side has proved it and that the defence side has not put a better or truer story.

The Court should ask itself:-

- : Is there evidence to show that some wrong was done?
- : Is this wrong against the Law which the accused is charged under?
- : Is there evidence to show that the accused did this wrong?
- : Is there evidence to show that the accused wanted to do this wrong or did not care what he did?

If the answer to all the questions is "yes" then the Court will tell the accused he is guilty.

If however the Court is not surd about these questions, if it knows law has been broken, but is not sure it was this accused who did it, then the Court should find the accused NOT Guilty.

An adjudicator tells what the Court has decided - Guilty or Not Guilty - but not yet the sentence.

The Sentence:

If the Court has judged the accused to be Guilty, the Court must next think of what sentence to give.

Before deciding on the punishment an adjudicator should ask if the accused wants to say anything.

The prosecutor usually says whether the accused has any previous convictions.

In sentencing the Court should consider:

- (a) The Offence
- (b) Characteristics of the accused.
- (c) The highest penalty that can be imposed under the law.
- (d) Other sentences that have been imposed for similar offences (conviction).

Possible Sentences:
(Combinations of).

- i) Discharge without conviction.
- ii) Convict and discharge without sentence.
- iii) Give suspended sentence.
- iv) Fine
- v) Prison
- vi) Labour instead of prison
- vii) Convict and order to pay compensation.

The sentence is announced.

JUNE 1977

SENTENCINGSENTENCING FACTORS
CHARACTERISTICS OF THE ACCUSED

<u>Number</u>	<u>Characteristics</u>
1.	Age
2.	Race
3.	Education Level
4.	Marital Status
5.	Relationship to the victim
6.	Homosexuality
7.	Sex
8.	History of Mental or Health Problems
9.	Intelligence test score
10.	Personality test score
11.	Drug use
12.	Alcohol use
13.	Indications of being wanderer.
14.	Being easily influenced.
15.	Number of prior arrests.
16.	Early home background.
17.	Where living just before this court appearance.
18.	Contact with family members.
19.	Ability as a worker.
20.	Recent jobs
21.	Age when first arrested.
22.	Age when first convicted.
23.	Amount of time spent in Prison.
24.	Amount of time spent outside Prison.
25.	Previous sentences imposed.
26.	Number of prior convictions.
27.	Type of prior convictions.
28.	Escaping from Prison History.
29.	Reason for first arrest.
30.	Reason for first convictions.
31.	The present offence - police's story.

32. The present offence - the accused's story.
33. Use of weapons.
34. Partners in the offence.
35. Number of previous convictions the same as present offence.
36. Prison conditions.
37. Prison staff.
38. Length of time he has been in prison awaiting trial.
39. Type of work at the prison.
40. Previous behaviour in prison.
41. Money he has.
42. Dependent family.
43. Chances of work when he is released.
44. Number of times he has been in Prison.

Assessing Factors

In assessing the Court should consider

1. The offence
2. Characteristics of the accused
3. Highest penalty that can be imposed under the law
4. Other sentences that have been imposed for similar offences.

SENTENCING

POSSIBLE SENTENCES

Combinations of:

1. Discharge without conviction.
2. Convict and discharge without sentence.
3. Give suspended sentence.
4. Fine
5. Prison
6. Labour instead of Prison
7. Convict and order to pay compensation.

Sentencing factors:

In sentencing the Court should consider:

1. The offence
2. Characteristics of the accused..
3. Highest penalty that can be imposed under the law.
4. Other sentences that have been imposed for similar offences. (Consistency).

SENTENCING:

MOCK COURT PROCEDURE

OUTLINE

1. All Stand.
2. Justices or Commissioner Enter.
3. Prosecutor and Defender nod to the Bench.
4. Justices nod back.
5. Justices sit down.
6. All sit down.
7. Clerk call out name of Accused. "Call.....".
8. Accused comes forward and stands before the Bench.
9. Clerk reads out Charge.
10. "How do you Plead".
11. (a) If Pleads "Not Guilty"
 - (i) Case for prosecution
 - statement by prosecutor
 - witnesses called
 - cross-examination
 - (ii) Case for the defence
 - statement by defence counsel
 - witnesses
 - cross-examination
- (b) If Pleads "Guilty"

Hear what is necessary to assist sentencing.
12. Announce decision.
13. "Anything to say before sentencing".
14. Sentence.

Additional Note:

Public Defender:

The Report of the Select Committee on the Appointment of a Public Defender - 1971

INTRODUCTION:

1. Background --

At the Assembly meeting on 7 April 1970, the following motion by the Member for Alofi North was accepted for consideration --

"That this Assembly should seriously consider the question of appointing a public defender to represent people who appear before the High Court".

Instead of debating the motion, the Assembly decided to appoint the following Members to form a Select Committee to examine and report with recommendations on the desirability of appointing a public defender:

<u>Messrs</u> -- Ehetama	Member for Namukulu
F.F. Iui	Member for Alofi North
Togakilo	Member for Mutalau
M.Y. Vivian	Member for Hakupu
P. Halo	Member for Avatele

2.

3. Activities --

The Select Committee held four meetings but did not invite the public or any Government official to give evidence.

FINDINGS:

4. The Need --

Examination of crime statistics for the period 1967-1970 revealed that whilst there is a fairly high rate of petty offences which go before the High Court, the incidence of serious crime in Niue is minimal. However, the Committee considers that as a matter of principle, people who are charged with criminal offences should be afforded the opportunity of being adequately represented in Court. Having agreed that the Government should provide some form of public defending service, the Committee decided to consider how this service could best be provided without being extravagant. It therefore sought information from the Government of the Cook Islands on the service it provides.

5. The Service in the Cook Islands --

A public defender was first appointed in the Cook Islands in 1967 and the person who has held that post since then is a retired Superintendent of the Cook Islands Police.

When a person is charged with a minor offence the High Court or the Registrar of the High Court refers the case to the public defender, if, after a means test, it is decided that the defendant is not in a position to pay the counsellor's fees himself. This means that a person charged with an offence in the Cook Islands can either appear on his own behalf or asks the public defender to represent him or can be referred to the public defender by the High Court authorities. The public defender is not a member of the Cook Islands Public Service, so a defendant who requests his services pays his own fees but where a defendant is referred to the public defender by Court authorities, the Government pays the fees at the following rates:

- (a) All guilty pleas irrespective of the nature of the offence - \$10.50
- (b) Not guilty pleas where the defendant is charged with an offence for which he is liable to a term of less than two years' imprisonment - \$10.50
- (c) Not guilty pleas where the defendant is liable to a term of more than two years' imprisonment - \$21.00

All offences termed serious are automatically referred to the public defender. Although the Court deals with offences numbering well over 1,000 each year in the Cook Islands, the public defender handles an average of only 65 cases a year and only about a quarter of these were termed serious, i.e. offences where the maximum prison sentence exceeds two years.

6. Legal Aid in New Zealand --

There is no formal provision in New Zealand for legal aid in civil cases. In criminal cases legal aid may be granted by the Court. Counsel is assigned from a list of available lawyers and is paid by the State at the same rate as if he had appeared for the prosecution.

It is interesting to note that the administration of legal aid in New Zealand is mainly in the hands of the profession through the New Zealand Law Society whose policy it is in respect of civil cases to see that no one with a good case was denied access to the Courts because of a lack of means.

7. Crime Statistics in Niue --

The following is the crime statistics for Niue for the period 1967-1970:

<u>Court Conviction</u>	<u>1967</u>	<u>1968</u>	<u>1969</u>	<u>1970</u>
Assaults & affrays	47	55	45	62
Indecent assaults	-	-	1	1
Liquor offences	38	46	36	36
Conversion of motor vehicles	1	3	4	3
Theft	22	31	23	31
Unlawful trespass	13	23	14	11
Obscene language	25	20	14	28

Disorderly behaviour	18	28	9	30
Grievous and/or actual bodily harm	2	8	3	4
Burglary	1	23	1	-
Perjury	-	-	-	-
Minor offences	129	211	218	168
Traffic offences	<u>165</u>	<u>478</u>	<u>272</u>	<u>268</u>
Total	461	926	640	643

Three convictions in 1967 were regarded as serious, 15 in 1968 and 11 in 1969. (The figures for 1970 was not available at the time of printing.) This means that over a period of three years there were 29 convictions for offences which attracted maximum prison terms of more than two years.

Convictions which resulted in prison sentences for the period 1967-1970 were 35, 49, 36 and 12 respectively, a total of 132.

TYPE OF SERVICES CONSIDERED:

8. Panel of Public Defenders -

The merits of appointing a number of local residents of, say, up to six (6), were considered, the idea being to invite suitable applicants from the general public to constitute a panel of public defenders. From this panel, a person requiring representation could choose to ask any one of those on the panel to act as his counsel. This approach has the advantage of ensuring that a person charged with an offence can choose whom he wants whereas with one public defender, a clash of personalities or some other personal animosity might prevent a person so charged from seeking counsel assistance. One disadvantage with this approach might be over the lack of sufficient suitable persons. This approach would be similar to the practice at present whereby some people volunteer their services at no cost to the Government or the defendant.

9. One Public Defender -

From the point of view of expertise, thorough experience and practice in Court Room performance and a sound knowledge of law, a single public defender could and should provide the public with a better service than those on a panel could provide. Another advantage would be that one person might be easier to obtain which would not be the case in forming a panel.

10. Cost of Providing a Service -

It is a difficult to estimate what it will cost the Government to operate a service as this will depend on the quality of the service which the Assembly will adopt from the alternatives set out later in this report.

SUMMARY OF RECOMMENDATIONS:

11. As mentioned earlier in this report, the Select Committee considers that as a matter of principle, the Government should provide the people with the opportunity to be adequately represented

in Court. The Committee also feels that the service could best be provided by one person. It is therefore recommend -

- (a) That the Government provide a public defending service.
- (b) That the service be provided by one public defender.

12. Difficulty was experienced by the Committee in resolving the question of whether the public defender should be an expatriate or local person. It is therefore recommended that the Assembly resolve this question without the benefit of a firm Select Committee recommendation, by adopting one of the following alternatives:

(a) Local Appointment -

If it is decided that a local person should be appointed public defender, then it is almost certain that we would have to look to the Niue Public Service for someone suitable. If this alternative is adopted the person appointed would have to cater for both minor and serious offences. Without doubt the biggest advantage here would be the cost factor and it is pointed out that the extent of financial commitment for this service is a major consideration.

(b) Local Appointment and Expatriate Assistance -

This suggestion is that a local person be appointed to deal with minor criminal offences but the services of a qualified expatriate lawyer should be sought and paid for by the Government from time to time to deal with more serious offences. A criteria for seeking qualified assistance would depend on the extent of the seriousness of the offence and therefore should be flexible. This suggestion is made in the realisation that regular means of transport to and from overseas is now possible. This alternative would naturally cost more to provide than the first alternative.

(c) Expatriate Appointment but not Necessarily a Qualified Lawyer -

This alternative would cost more to provide than the first alternative but it is a moot point as to whether it would cost more than the second alternative. If this suggestion is adopted, the person appointed should also provide the service normally provided by a solicitor. One member of the Committee suggested that the type of person to look for should be someone of the calibre of the Chief Officer of Police and that people who use the service should meet part of the expenses.

(d) Qualified Lawyer -

One Member of the Committee felt that a qualified lawyer should be sought to deal with all criminal and civil cases and also as a public solicitor. He suggested

that the VSA (New Zealand) Organisation and the New Zealand Law Society should be approached in the first instance to see whether they can offer the services of a suitable person. In the case of the New Zealand Law Society, the idea is to ask them whether they know of a young man recently graduated from University with a law degree who would be interested in gaining experience in Niue as part of his training to become a barrister. If a person of this calibre could be obtained it would greatly reduce costs and a VSA person would naturally cost even less.

The cost of a practising lawyer would naturally be very high.

13. In considering the above alternatives, the Assembly should take into consideration the fact that unless the public defender handled every case which went before the Court, the work would occupy him part-time only. Of considerable significance also is the fact that the Government's first obligation is law and order, peace and good Government.

14. Miscellaneous Suggestions -

- (i) That the merits of introducing a local law examination which would qualify a person to act as a counsel similar to the one conducted in Tonga, be looked into by the Niue Public Service Staff Training Committee.
- (ii) That a Niuean should be encouraged to understudy the public defender if it is decided that an expatriate appointment should be made.
- (iii) That education policy should take into account the need to have a local person trained to fill the public's need for a barrister and solicitor service.
- (iv) That if an expatriate appointment is made, the public defender should also act as a public solicitor.
- (v) That people who use the service should meet part of the costs."

Public Defender : Niue's Experience and Future

(This paper was presented to the Pacific Courts Seminar in Tonga, 1976).

1. INTRODUCTION

Prior to the appointment of Niue's first public defender - some 18 months ago - an accused generally did not have representation in Court. The prosecution and bench were for decades on nearly all cases in the invidious position of having the function of aiding a defendant as well as their other roles. For extremely serious cases (e.g. murder), legal assistance was provided by Crown Counsel from New Zealand. This last occurred in 1967.

In recent times the practice grew of volunteers - by leave of the Court - occasionally taking the role of defender. They felt justice would be better served by their presence. They appeared primarily in serious cases. The principle of 'a defence' was established. Out of this volunteer system grew the present post of public defender.

In 1971 the Select Committee on the Appointment of a Public Defender recommended that "the Government should provide the people with the opportunity to be adequately represented in Court". The Committee also felt the service could be best provided by one person.

Present Situation

Since its inception the post has been held by John Funaki. He earlier functioned as a volunteer. The position is a part-time one. John's primary employment is in the Treasury Department as Airline Agent, Taxation Officer and Compiler of the Price Index. He previously worked in the Justice Department, but has no legal qualifications. As public defender John receives fees paid by the Government - over and above his normal salary - amounting to \$5.00 per case involving less than six months imprisonment or a \$50.00 fine, and \$10.00 for those involving a more serious penalty. The service is free to the public. Volunteers remain entitled to appear in Court, but this rarely happens.

2. THE ROLE OF THE PUBLIC DEFENDER

In earlier times Niue's Courts appeared to place emphasis on what could be called a 'fixed penalty' system: Breaking into the Nurses' home was worth three months' jail and that was that. Over time, rightly or wrongly, much greater recognition has been given to the circumstances of the offence and offender. The fixed penalty system has become a flexible system. Parallel to this has been the growth of representation in Court.

Points from discussion:

- The public defender provides a 'balance' for the prosecution in Court. The prosecutor now feels much freer to carry out his role fully without the inhibition and heavy responsibility of 'defending someone as well as prosecuting'. The Court also to some degree is relieved of a similar responsibility.

- "The public defender can keep the police in line".
- The public defender sees his role as purely reflecting his client's views to the Court - he "accompanies the defendant to Court".
- Many saw the position as significant because many defendants -
 - "cannot express themselves"
 - "are scared"
 - "will plead guilty just to get rid of the case".

3. THE PUBLIC VIEW OF THE PUBLIC DEFENDER

Points from discussion:

- "Someone who is against the police"
- "Someone who will get us off"

The public defender thought that the public would question "Why should someone try to defend a 'bad person?'"

NOTE - The public defender said that the public viewed him with suspicion. He frequently receives "sour looks and abuse", but this does not extend to his private life.

NOTE - The negative reaction to the public defender can be partially explained in that Niueans generally cannot conceive how someone who is guilty can plead 'not guilty'. In fact, when asked to plead in Court a Niuean is asked "Mooli" or "Nakai Mooli", which means "True or not true" rather than "Agahala" or "Nakai Agahala" (Guilty or not guilty). The truth is Niueans are not concerned with niceties of proof.

In preparing training programmes the question of pleading and its proper role need to be examined. The concept of pleading "not guilty" on some occasions when one is actually guilty needs considerable reflection in relation to the Pacific Way.

4. PUBLIC AWARENESS OF THE PUBLIC DEFENDER

Though the public was initially well informed about the public defender, our discussions revealed that the level of public awareness is now low. A small percentage of cases are defended by the public defender. Serious cases are the higher proportion of defended cases.

Points from discussions:

- "People fear they have to pay"
- "Too new for people to understand"
- "Just don't know of its existence"
- "Some defendants in a small place with such intertwined relationships desired the minimum disturbance to be created by any Court appearance. They avoid seeing anyone or involving anyone in their appearance"
- "Public are too scared"
- "See him as a Tagata Fakatufono (Government man)".

Many Niueans view the Court as one of the Government Departments. It is sometimes referred to as "the Court Department". This is partially a colonial hangover as the Chief Executive Officer (the Resident Commissioner) was automatically the Judge of the High Court as well as the Government's Chief Administration Officer. This changed only in 1974. The Court's location - in the past next to the Resident Commissioner's Office and is now still within Government buildings - also possibly helps explain this view.

The police chief informs "serious offenders" of the existence of the public defender. The Court sometimes adjourns and advises defendants to seek the services of the public defender.

5. TRAINING OF THE PUBLIC DEFENDER

The public defender has no specialised training for his role. There is a proposed scheme whereby the public defender may go to Samoa for short-term practical experience.

Points from discussion:

Some people viewed legal training as essential for the public defender but others were primarily concerned that a 'balance' in levels of training between police, public defender and the judicial officers be maintained. (It is important that the adjudicators retain and develop confidence in their role and do not feel inferior or inadequate).

A view was expressed questioning the need for technicality in our Courts. A desire for common sense and good judgement was expressed. The apparent developing trend towards technicality was explained through a fear of those locally involved that a higher court may view their actions as against 'British Justice'. The adjudicators appeared to be doing what they felt others required.

The Secretary for Justice revealed that past experience in restricted training was inadequate as most personnel (including adjudicators) on Niue are highly mobile job-wise and are unlikely to remain in any position very long.

The Legal Officer suggested that as Niue has such a mobile employment force and limited qualified personnel the emphasis on training should be to "train qualified people to be trainers here on Niue". The significance of practical training was also stressed.

6. GENERAL POINTS

The discussion raised these questions:

a. Should the public defender be a full-time position?

(This question is clearly related to whether he should be in the public service or not).

Unless the public defender is full-time the risk of a conflict of roles is foreseeable. Originally it was government's intention that

It be a full-time appointment. The difficulty in finding a suitable 'unemployed' person, there possibly being insufficient work, and the relative priority of this position in using a valuable member of this small society, meant a full-time post was not established. At present there are problems related to the availability of the public defender. Though Niue is only small in population there are significant distances (it is 42 miles around the island) between potential clients and the public defender. There is no telephone links between most villages. Public transport is limited to working hours. The public defender is not readily available during working hours.

b. Should the public defender be a public servant?

Many Niueans are apprehensive of 'Government' generally. In Niue the great majority of potential public defenders are public servants.

c. Should everyone be defended?

The public defender felt that he was defending mainly "people related to public servants". The police chief referred "serious offenders" to the public defender. Our discussion also revealed a lack of public awareness of the public defender.

BUT: if everyone were defended the present structure (a part-time public defender) would have to be changed.

7. THE FUTURE

The most desirable developments appear to be towards:

a. Two part-time public defenders rather than one full-time. Though such part-time work involves conflicts with other duties, the practical circumstances of Niue and the desirability of a choice of defenders are important. Two defenders can also share problems and lessons.

b. Desire for separation from the public service, but the practical situation means this is impossible.

c. Making the public defender more readily available to the public.

d. Greater public awareness of the services. This point was stressed in discussions. The radio and newspaper were suggested as media.

e. Possibly representing all people appearing in Court.

f. Greater practical training of the public defender, but stressing that this training must be consistent with that of adjudicators and police alike."

SOME THOUGHTS ON THE MOST DESIRABLE DEVELOPMENTS FOR THE PUBLIC DEFENDER -- May 1977

- a. Several part-time public defenders are needed. Niueans should have a choice of public defenders and no one who wants a defender should miss out.
- b. The public defenders need training.
- c. The method and amount of payment to public defenders needs re-examination. Public defenders should be paid by the hour - being paid when he is readily available to the public.
- d. Public defenders should be readily available near the Courtroom before each Court sitting.

1. Introduction:

The identity of the department is the same as any other Government department - it forms part of the whole government structure. The objective of the Department of Justice (recently re-organised and officially known as Department of Justice, Land Affairs and Survey) is to provide the people of Niue with a service which is related (or are related) to its new name. The organization chart will help you to see how the structure of the staff establishment is organized and, the relationship of one section of the department to the High Court. I will confine my task to a particular section of the department responsible for servicing the High Court.

The part played by this section, particularly those specially appointed to service the Court (see paragraph(f) of the explanatory notes) is strictly in accordance with the established guidelines which are contained in the Rules of the High Court (1916) and its amendments. Sub-section 2 of Section 62 of the Niue Act 1966 have this to say - "The Registrar shall keep records of the High Court and shall perform all such administrative duties in respect of that Court....."

If we are to accept these words at face value or follow literary the work required of the administrative officers of the Court is restricted to the safekeep of records. This is not the case! I think its fair to say that the officers responsible for servicing the Court contributed in some way to the administration of Justice on Niue. In fact, the establishment of the judicial body is one thing and the servicing of that body is another. For the wheels of the Court to function properly and effectively these two parts of the machine must be geared to work together in harmony.

For the purpose of this paper I would now deal briefly with the various functions and duties performed by servicing staff of the department so that you will gain a better appreciation how they fit in to the picture.

2. Criminal Procedure:

The principle authority for making rules governing the administration of the Court can be found under Part III of the Niue Act 1966, principally Section 70 (previously section 118 of the Cook Islands Act 1915). The passing of the High Court Rules of 1916, therefore, were formulated subject to the provisions of the 1915 Act. (See Sections 253 to 249 of the Niue Act 1966).

The rules referred to, together with five(5) Amendments passed to date, which form parts of the original rules, spells in details how criminal matters which requires attention and disposal by the Court, should be processed. In other words, the Court officers responsible for the processing of documents relies heavily on requirements stipulated by rules. Generally speaking, the Court rules are often referred as 'machinery provisions' but never-the-less, it has a place in the process of administering justice.

**For example,

/in instituting a criminal charge against a person strongly suspected of doing something wrong in law, a formal charge must be laid in proper or subscribed form; important facts such as name of the offender, nature of the crime committed and the authority upon which the charge is laid (Section 253 of the Niue Act 1966). It follows that once written information is lodged with the department, the Court proceedings commence by issuing a summon to the person named in the charge requiring him to

appear before the Court at the time and place mentioned in the summons. It is important to note that all summons are issued under the Seal of the Court, therefore, any person who refused or failed to appear as required shall be considered guilty of contempt of the High Court. (Section 74 of the Niue Act 1966.) I will deal with the concept of 'contempt' separately.

3. Enforcement of Court Orders:

Before the Court issue an order or deliver its decision from the Bench on any case before it, it is normal practice to go through a proper hearing procedure. But once the decision is made and delivered, either orally or in written form under Seal, such decisions are correctly recorded in the Court Minute book, criminal record book as well as on the information itself.

At this stage, it is now the responsibility of the administrative officers to see that the term and conditions specified by Court order or decision must be carried to the letter. In other words, the servicing staff are under legal obligation to enforce the order or decision - quite a responsible task! Of course the onus is on the convicted person to abide rigidly by the order and failure to do so could lead to further legal proceedings. There are two ways open for handling cases of disobedience or default in complying with an order of the Court.

- (1) Issue and execution of Warrant of Committal (1916 Rules of the High Court)
- (2) Institute charge for contempt of Court. (Section 101 of the Niue Act 1966)

In practice, a warrant of committal is issued and served only on a person who deliberately ignore without good reasons to pay his fine, i.e. person convicted and fined and given a specified time to pay off his fine. In executing such a warrant the officer (usually the Constable) arrest the convicted person and put him in gaol to serve a term of sentence which is equivalent to his fine. However, if a convicted person is able to settle his fine in full when arrested the warrant is considered lapse or no longer valid. Once again the initial action or drawing up of a warrant is the responsibility of the department.

On the other hand, if a charge of contempt is preferred once again the department will initiate formal Court proceedings on behalf of the State and, this is processed in the normal way. The important point to remember is that the department through its Court officers are under obligation to look after the interest of the State, i.e. responsible for the enforcement of orders, decisions, directions, etc.

4 Civil Proceedings:

Under the Rules of the High Court and its amendments, certain parts of the rules laid down specific guidelines how civil matters are to be processed before presenting a case to the Court. For the sake of natural convenience these rules are in three parts.

- (1) criminal procedure (already dealt with briefly)
- (2) procedure laid down for civil actions, such as claims for recovery of debts etc., etc.
- (3) procedure for processing petition for divorce.

The basic principles governing the processing procedure

for (2) and (3) is practically the same, though differ somewhat in details.

As with the criminal procedure the action or proceeding to the Court commence with a written notice on proper form, followed by summons to interested parties. Civil matters before the Court are normally conducted in an informal manner or less formal compared with criminal hearings but this does not affect the legality of its dealings nor its judgements, i.e. it is still the judgement of the High Court.

The processing of documents both before and after the Court hearing will fill many pages but it is to be hoped that what little is said or in written form now will give you some idea as to the role played by the Department in the High Court of Niue.

5. Conclusion:

The High Court is established for a purpose, i.e. to administer justice - to see that justice is not only done but seen to be done but this realization will not come about without the existence of the number of people described in the explanatory note to operate and fulfill its aim and objectives. The services provided by the department of Justice contributed towards the attainment of this aim and objectives - no more and no less.

** In instituting action to the High Court, whether civil or criminal proceedings it is of paramount importance to rigidly follow the requirements laid down by rules.

EXPLANATORY NOTES

PEOPLE

JUDICIARY

CONSTITUTION

ASSEMBLY

N.P.S.C.

SEC. TO GOVT.

N.P.S.

1 2 3 4 5 6 7 8 9 10 11

(GOVERNMENT DEPARTMENTS)

(a) Establishment of the Niue High Court:

- Article 37 of the Niue Constitution 1974, previously formulated under the authority of Section 53 of the Niue Act 1966.
- Article 74 was included in the Constitution for identification purposes, i.e., the same Court, therefore earlier dealings to remain unchanged nor superseded by Article 37.
- Charged with all jurisdiction in both civil and criminal (including Tokelau Islands by virtue of Section 4 of the Tokelau Islands Amendment Act 1970.)

(b) Appointment of Judges/Commissioners:

- Article 38 provides that the High Court shall consist of the Chief Justice and other Judges and Commissioners.
- Article 45 provides the procedure for appointment.
- Article 46 limits the appointment to 68 years, except those appointed pursuant to Article 47, i.e., temporary appointments.
- Section 55 of the Niue Act 1966 was the authority for appointment prior to the advent of the Constitution.

(c) Powers of the Judges and Commissioners:

- Section 58 of the Niue Act 1966 gives the Judge or Judges all powers in administering of Justice in the High Court.
- Article 39 (plus rules of the High Court) spells out in details the powers and limitation of the Commissioner's jurisdiction otherwise he exercise all powers of the Judge. (Sec. 60 of the Niue Act 1966 for example)

(d) Appointment of Justices of the Peace:

- Article 53 provides for the appointment of Justices.
- Article 78 re-affirm previous appointment, i.e., Justices who hold office by appointment under Section 61 of the Niue Act 1966, also Sec. 60 of the Niue Amendment Act 1970.
- Jurisdiction of the Justices are provided by law, i.e., rules of the High Court.

(e) Oath of Allegiance and Judicial Oath:

- Article 54 provides that before Judges, Commissioners etc., takes up office or exercise judicial duties they are required by law to be sworn in!
- Similar provisions are contained in Section 728 of the Niue Act 1966, except that pursuant to sub-clause (3) of Section 728, Judicial officers are entitled as of right to make their affirmation instead of taking an oath.

Note:

Judicial officers appointed under the sub-headings (b) and (d) are made by State, therefore, generally referred to as political appointments, i.e., not an employee(s) of the Niue Public Service (See Article 62 of the Constitution).

(f) Appointment of Registrar, D/Registrar and other Court Officers:

- Sections 62 and 63 of Niue Act 1966 provides for the appointments of Registrar and other Administrative officers to service the Court.
- Appointments are made from employee(s) of the Niue Public Service pursuant to the provisions of Part XXXI of the Niue Act 1966, i.e. Public Service appointments.

(g) Seal of the High Court:

- Section 64 of the Niue Act 1966 requires the Court to have a Seal for the sealing of all orders, warrants, records and other instruments requiring to be sealed. (Custody of the Seal (normally under the Registrar).

(h) General:

It must be emphasised that the High Court (applies to other Courts as well) is an independent body and does NOT form part of the Niue Government structure.

EVALUATION

HIGH COURT TRAINING SESSIONS

What to do? - Circle the one number which comes nearest to your own view -

The training course -

1. Length of the course:

- The course was too long. 1
- 2
- The course was just about the right length. 3
- 4
- The course was too short. 5

2. Length of the sessions -

- The sessions were too long. 1
- 2
- The sessions were just about the right length. 3
- 4
- The sessions were too short. 5

3. Amount of work:

- There was too much to do on the course. 1
- 2
- There was just about the right amount of work to do on the course. 3
- 4
- There was not enough work to do on the course. 5

4. Number of participants:-

- There were too many participants on the course. 1
- 2
- The number of participants was about right. 3
- 4
- There were too few participants on the course. 5

5. I found the course -
- Stimulating and interesting 1
 - Average 2
 - Unbearable 3
 - 4
 - 5
6. The course contained for me -
- A great deal of new information. 1
 - Some new information. 2
 - No new information. 3
 - 4
 - 5
7. Was this course well administered and organised?
- Very well 1
 - Average 2
 - 3
 - 4
 - Poorly 5

Please write your answers to the following questions in the spaces below.

1. What parts of the course did you find particularly hard to do or understand?
-
-
-
-
-
-
-
-

3.

2. What parts of the course did you find most enjoyable?

3. How can the course be improved?

What to do: Circle the one number which comes nearest to your own view -

Tony Johns teaching:

1. How well prepared is Tony Johns for his sessions?

- | | |
|-----------|---|
| Very well | 1 |
| | 2 |
| Average | 3 |
| | 4 |
| Poorly | 5 |

2. Tony Johns spoke:

- | | |
|-----------------------|---|
| Too fast | 1 |
| | 2 |
| About the right speed | 3 |
| | 4 |
| Too slowly. | 5 |

3. Tony Johns spoke:

- Too loud 1
- 2
- About right volume 3
- 4
- Too soft 5

4. Tony Johns spoke:

- Very clearly 1
- 2
- Average 3
- 4
- Not clearly 5

Please write your answers to the following questions in the spaces below:

1. What I thought was best about Tony Johns' teaching and running of the course.

2. What I thought was worst about Tony Johns' teaching and running of the course.

5.

3. How could Tony Johns' teaching and running of the course be improved?

5. How well does Tony Johns get difficult point across to the participants?

- Very well 1
- 2
- Average 3
- 4
- Poorly 5

6. How well does Tony Johns gain and handle participants questions and comment?

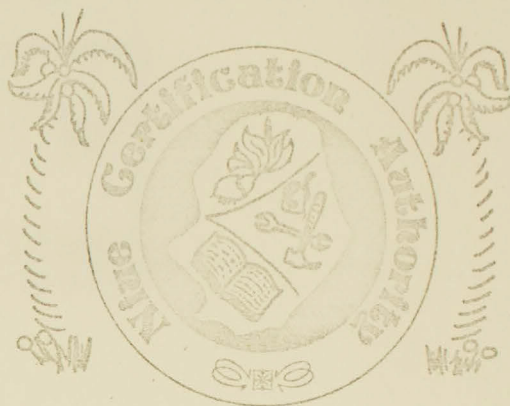
- Very well 1
- 2
- Average 3
- 4
- Poorly 5

7. Is Tony Johns easy to approach and question outside sessions?

- Very easy 1
- 2
- Average 3
- 4
- Difficult 5

8. What overall evaluation would you make of him as a teacher?

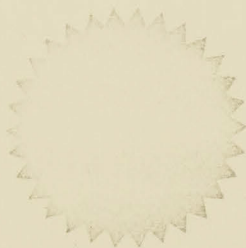
- Excellent 1
- 2
- Average 3
- 4
- Poor 5



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Dated at Alofi This.....Day of.....19.....



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