

RJJO JOHNS, A.T. Preparation of a handbook for the High Court
of Niue ... pt. 1

A. T. JOHNS
Special Project LL. M. 1977
Part 1: Report.

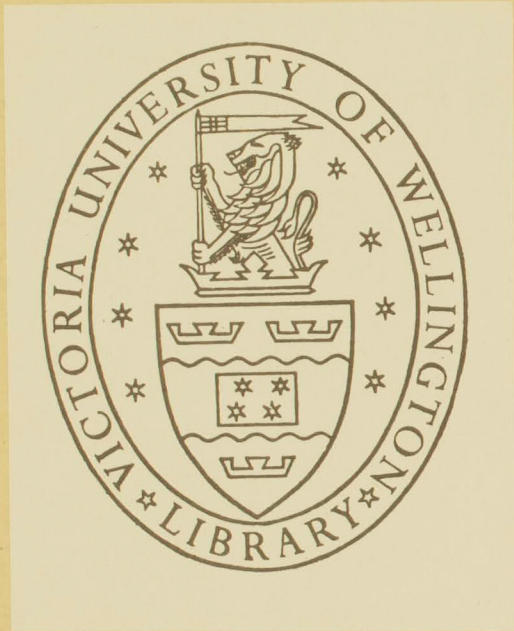


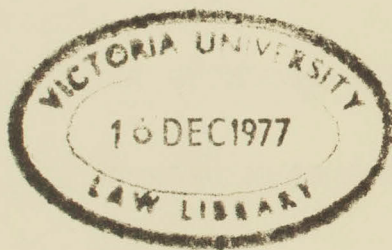
SPECIAL PROJECTS REPORT

FOR LL.M DEGREE

A.T. JOHNS,
VICTORIA UNIVERSITY OF WELLINGTON,
WELLINGTON.

1977





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TABLE

As partial fulfilment of the requirements for the Degree of Masters of Laws I present this report on my experiences in preparing a Handbook for the High Court of Niue and conducting training sessions for personnel involved in Niue's Courts.

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ESTABLISHMENT

The project is grounded in my :

- 1) Long standing involvement and interest in the Pacific;
- 2) Continuing interest in teaching;
- 3) Desire to make a utilitarian contribution while gaining a university qualification.

In 1975 I completed two papers towards the Degree of Masters of Law. The following year was spent on Niue Island. I was employed as the Legal Officer to the Niue Government. As I intended to return to university to complete the degree in 1977 some of my time on Niue was devoted to thinking about possible topics for the remaining papers. Over time the idea of a Handbook and training course evolved.

The seed of the idea for a Handbook was sown in 1975 when I was staying in the Solomon Islands. I was interested in the Local Courts there and in particular a 'Local Courts Handbook' which was about to be published. The publication impressed me as being straightforward and relevant to untrained Court personnel. In December 1976 my interest in teaching was focused onto training Court personnel with my attendance as a Niue delegate to the 'Pacific Court Seminar' in Nuku'alofa, Tonga. The seminar concentrated on the issue of training adjudicators and court personnel.

I had come to believe that training was desirable and necessary. Outlining my thoughts on training for small communities to the seminar I said:

- "(1) Who should be trained? -
All persons connected with justice in a co-ordinated programme.
- (2) Where should the training be? -
Training should be carried out at home.
- (3) Who should train? -
Local people if possible, but generally this is impossible. An alternative is to take a local person to a centre and there train him to train others. The present most practical answer will be to import a trainer.

(4) What kind of programme? -

Initially a short course purely to stimulate enthusiasm and interest in knowledge that is already available to the trainee."

I had also come to the belief that it was only realistic to acknowledge that an understanding of 'European' law was basic to Niue's legal system and should be basic in any training programme.

By late 1976 the structure of a project involving a handbook and a training programme was formulated in my mind. I wrote to some of the many delegates to the Nuku'alofa seminar seeking materials relevant to a possible writing of a Court Handbook and preparation of a training course. Sounding out people on Niue was rewarding and encouraging. It was soon evident that I was to be given considerable freedom in developing a project.

A couple of letters and a phone call established that Neil Cameron was happy to supervise such a project and that university requirements could be satisfied.

I further discussed my ideas with various people on Niue including the Minister for Justice, Secretary to the Government, Secretary for Justice, Director of Education and Chief of Police. The project was gaining momentum and ideas becoming firmer. A mid-February meeting between the Chief Justice and the Commissioner and Justices of the Peace was used by me as an opportunity to present my ideas. Interest and approval was indicated. On the 17th February I had a short meeting with possible participants to training sessions. Those invited were limited to Justice and Police Department staff and the meeting aimed at introducing my ideas and gaining views. For example, the suggestion surfaced that a course should be certificated. Considerable interest was obvious.

On February 18th the project was formalised with the Secretary to the Government writing to the Dean of the Law Faculty endorsing the project and outlining the economic and servicing assistance that would be made available.

The following week I returned to New Zealand and after discussions with my future supervisors wrote to the Dean of the Law Faculty formally outlining the project.

I proposed to :

- "(1) Prepare a Niue Courts Handbook.
- (2) Prepare and conduct training sessions (on Niue)."

The 'go ahead' was given.

MOTIVATION

Many varying factors at various levels motivated me to undertake this project :- from a simple desire to renew friendships to a response to lessen, and in part avoid, the emotional strain involved in leaving Niue in February 1977. To place my motives into a context of type and paper is difficult and limited. I shall merely list factors that come to mind.

- I wanted an opportunity to return to the warm little 'rock' in the midst of the Pacific. An opportunity to continue and renew rewarding friendships.
- I wanted to contribute something to Niue and its' people.
- I was not unmindful of the fact that through the contacts I was establishing and the specific expertise I was developing I was enhancing future prospects of my working in the Pacific if I ever desired to do so.
- I wanted to test, develop and constructively use many of the ideas I was forming in relation to Niuean people and society. So doing meant in part checking and developing my own awareness, perception and sensitivity.
- I wished to experiment with myself as a teacher.
- I wanted to prove to myself that 'aid' could make a positive contribution to a society. In so doing I wished to examine my bitterness to 'insensitive expatriate experts' and direct it productively.
- I wanted a satisfying university project.
- Enjoying developing 'practical' programmes I wanted to do something in this line. The practical orientation was probably partially motivated by a belief that I am more able in this than the 'academic' field. Perhaps I further reasoned that by avoiding the academic a degree was more readily ensured.
- An expatriate had the insight to suggest that I would want to return to Niue

"To prove to yourself that you had succeeded to such a degree (as Legal Officer) that you would be asked to return".

Individuals within the Niuean Government desired a training course and handbook at relatively low cost from someone they trusted. They were also motivated by a wish to see me return and were pleased to contribute to my attaining a higher qualification.

Received approval for the project and by returning to Niue in mid - May the time was spent in preparation. Visiting sources - including persons in the Education, Police and Justice Departments - were tapped for ideas and materials. Much time was spent drafting the handbook. While the drafting itself provided a certain basis of knowledge for teaching purposes it was clearly insufficient preparation for a training programme. Considerable time was needed to develop and 'think through' varying teaching methods and a programme. To develop some aspects of the programme two 'trial' teaching sessions were conducted.

DEVELOPMENT

Between approval for the project and my returning to Niue in mid - May the time was spent in preparation. Varying sources - including persons in the Education, Police and Justice Departments - were tapped for ideas and materials. Much time was spent drafting the Handbook. While the drafting itself provided a firmer basis of knowledge for teaching purposes it was clearly insufficient preparation for a training programme. Considerable time was needed to develop and 'think through' varying teaching methods and a programme. To develop some aspects of the programme two 'trial' teaching sessions were conducted.

CONFIDENCE

A. Basis

"We fear whether we have done the right thing or not, whether we are dealing with a case as we should (as adjudicators)..."

"I know nothing about the law - it is a bit embarrassing to be in such a position". (Deputy Registrar of the High Court)

A I M

- To engender confidence.

The legal system are generally untrained and opportunities for becoming familiar with the system are restricted by cultural norms. In my opinion such restricting cultural norms include: a ready acceptance of the status quo; a tendency not to get involved in 'problem' areas; and a general lack of sharing of knowledge. Acceptance of the status quo and lack of involvement have probably been necessary for the peace and stability of the small community. Knowledge is an extremely valuable commodity in the possession of a few. These few have sufficiently heavy workloads to 'justify' limited transmission of knowledge to others.

The feelings of inadequacy were particularly evident amongst the adjudicators. All resident judicial officers are untrained. They are intimately involved in their community life.

CONFIDENCE

A. Basis

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(An adjudicator).

"I know nothing about the laws - it is a bit embarrassing to be in such a position". (Deputy Registrar of the High Court).

I perceived most of Niue's adjudicators and Court personnel as feeling inadequate in their roles.

People who service Niue's legal system are generally untrained and opportunities for becoming familiar with the system are restricted by cultural norms. In my opinion such restricting cultural norms include : a ready acceptance of the status quo; a tendency not to get involved in 'problem' areas; and a general lack of sharing of knowledge. Acceptance of the status quo and lack of involvement have probably been necessary for the peace and stability of the small community. Knowledge is an extremely valuable commodity in the possession of a few. These few have sufficiently heavy workloads to 'justify' limited transmission of knowledge to others.

The feelings of inadequacy were particularly evident amongst the adjudicators. All resident judicial officers are untrained. They are intimately involved in their community life.

Being a judge is merely one of their functions. They can not isolate themselves by a role of aloof mysticism that attaches to trained adjudicators in larger more complex communities.

Such uncertainty of status make the adjudicators vulnerable to public criticism. This coupled with an insecurity about their knowledge of the role and legal process further exasperates a lack of confidence. Their 'educated' sons and daughters return home to enhance feelings of inferiority. Their untrained Court staff are of little assistance.

It appears that Niueans are caught in a cultural conflict situation in attempting to operate an "imposed" western legal system in the context of a traditional society. But in Niue in fact there is a situation where there has been a written European legal system for over 60 years (and European Church Law for the prior 90 years) and the people appear to aspire to the European system while at the same time retaining attitudes and meanings conditioned by their Niuean cultural backgrounds. While aspiring to the European system Niueans express an ambivalence by reacting as if it were: 'a game to be won by other smart fellas'; 'too hard to understand'; and 'imposed'. This conflict or ambivalence causes confusion which comes across as a lack of confidence in court staff personnel.

On the surface, at least, it would appear a European going into this situation to run a training course on the legal system could only serve to reinforce the pressures of cultural conflict. Certainly a partial motivation for Niueans to respond to me is simply to identify with my 'Europeanness' but I believe that a

person not experiencing the cultural dilemmas can be of value. In my previous time in Niue I had seen it as important to gain some insight and perception of Niuean culture and where possible establish trusting relationships. On my return I saw my value as a type of marginal man to the experience of the Niuean legal system and therefore able to offer both an overview of these dilemmas and safe focus around which these dilemmas could be examined.

That the 'problem' is very real is pointed up by the fact that frequently an adjudicator's solution to the stress is withdrawal. During the period I was Legal Officer several adjudicators avoided taking their turns on the Bench. During the same period 3 of 7 Justices of the Peace resigned. Their replacements have yet to be found as people are generally unwilling to take on the task.

I returned to Niue with these impressions in my mind and a primary aim for the project of - to put it crudely - instilling some confidence in the system and individuals. (I admit to spending very little time questioning 'the system' itself as it appeared to be almost totally accepted - warts and all).

B. Method

Any description of how 'confidence' was 'taught' will be limited. Recording the dimensions of, for example, projecting a genuine confidence in a persons ability is far beyond my writing skills. I will briefly outline various elements and ignore the intricacies and mixings.

- Confidence through knowledge.

A training course and a workshop were conducted in Niue to add to the knowledge of those interested in the Courts. Radio broadcasts and public lectures provided the general population with some education. When completed the High Court Handbook will be a permanent source of information. It is also anticipated that information sheets will be prepared for the public - with schools particularly in mind - based on the assignment undertaken by participants at the High Court Training Course.

- Confidence through relationships.

A basic thread throughout the training programme was the concept of 'pooling' resources and working supportively together. I believe that with Niue's limited resources but intimate community the development of closer relationships would be beneficial. Those on the island with particular skills and experience related to the legal process - the Minister for Justice,

Secretary to the Government, Secretary for Justice, Chief of Police, and Legal Officer - were identified and involved in the programme. The breadth of the programme - involving public, police, public defender, court staff and judges - was also, in part, based on a belief that these groups should develop together. I generally perceived myself as responsible for bringing resources together and facilitating learning.

'thread'

The above/is subject to one basic exception - the separate treatment of the training of the Judicial Officers. The Judicial Officers (The Commissioner and 3 Justices of the Peace) attended sessions specially devised for them. I reasoned that their particular 'problems' (see earlier comments) justified this. A 'workshop' approach was adopted as I felt it best signified the appropriate respect for their status - as judges - and as it would be relatively unthreatening. The workshops took the basic form of participants sitting around a table and discussing matters - frequently joined by the Chief of Police and Secretary for Justice. Only for a few subjects - e.g. Rules of Evidence - did I 'lecture'.

(A highlight of the course for me, was when we - The Judicial Officers, Secretary to Government, Secretary to Justice, Chief of Police, Legal Officer and course participants - sat around and discussed the Public Mock Court. The atmosphere was warm. I was able to say: "Here are your resources working together".)

- Confidence through role establishment.

This element was developed through the inclusion in the training programme of topics such as a role assumption structured exercise (in session 6 of the High Court training sessions). It also underlay other concepts of the course - for example the establishment for 'judges' of their own workshops signified a respect for their higher status.

WORKSHOP SERIES

Introduction - Body Structure.

Judicial Officers Workshops

A series of workshops for Black judicial officers (The Magistrates of the High Court of Windward and the 3 Justices of the Peace). The 'servicing staff' also attended (2 Deputy Registrars and the Court Clerk from the Justice Department). The Secretary for Justice often sat in on the Workshops. Occasionally the Chief of Police attended the Workshops.

Workshops

The Workshops were at 1.00 p.m. daily for 1 1/2 - 2 hours.

- (1) Introduction to the program.
- (2) Review the draft Handbook - 'Introduction' and 'Procedure of the High Court'.

A I M Working (Session 1)

- (1) Opening of the course by the Minister of Justice
- (2) Public Lecture

- To experiment with teaching methods.

- (1) Review of the Handbook - 1st main features.
- (2) Review of the Handbook - 2nd main features.
- (3) Introduction to 'Responsibility/Accountability' - a.
- (4) Analysis of Section 1.
- (5) Value Clarification Structural Exercise - 'The Shark Infected Sea Story'.

Working (Session 2)

Edna Yorgulide (Legal Officer) - 'The Making of New's Law'.

TEACHING METHOD

Introduction - Basic Structure.

A. Judicial Officers Workshops

A series of workshops for Niue's judicial officers (The Commissioner of the High Court of Niue and the 3 Justices of the Peace). The 'servicing staff' also attended (2 Deputy Registrars and the Court Clerk from the Justice Department). The Secretary for Justice often sat in on the Workshops. Occasionally the Chief of Police attended the Workshops.

Programme:

- The Workshops were at 1.00 p.m. daily for 1½ - 2 hours.

3

- SHOP 1. (i) Introduction to the programme.
(ii) Examined the draft Handbook - 'Introduction' and 'Procedure of the High Court'.

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Morning (Session 1)

- (i) Opening of the Course by the Minister of Justice
- (ii) Public lecture -

Terry Chapman (Secretary to the Government)

'The Niue Constitution - its' main features.'

- SHOP 2. (i) Matters arising out of comments made about the draft Handbook in Workshop 1.
(ii) Introduction to 'subjectivity/objectivity'
(iii) Evaluation of Session 1
(iv) Values Clarification Structured Exercise - 'The Shark Infested Sea Story'.

Morning (Session 2)

Ikipa Tongatule (Legal Officer) : 'The Making of Niue's Laws.'

P 3

Afternoon:

- (i) Evaluation of Session 2
- (ii) Summary of 'The Making of Niue's Laws.'
- (iii) Discussed the draft 'Directive from the Commissioner and Justices of the Peace concerning dress in the High Court.'
- (iv) Examined the draft Handbook - 'Preliminary procedure in criminal cases.'
- (v) Introduction to the Study Guide 'Reading a Statute.'
- (vi) Went through the first part of the Study Guide.

P 4

- (i) Summary of first part of the Study Guide 'Reading a Statute.'
- (ii) Examined the draft Handbook - 'The Hearing of a Plea of guilty.'
- (iii) Subjectivity/objectivity revisited.

OP 5

- (i) Examined revisions to the draft Handbook
- (ii) Outlined and discussed summation of evaluations of sessions 1 and 2
- (iii) Reading a Statute (cont.)
- (iv) Examined the draft Handbook - 'The hearing on a plea of not guilty.'

3

OP 6

- (i) Examined the draft Handout : 'Summary of High Court Procedure.'
- (ii) Examined the draft Handbook - 'The hearing on a plea of not guilty' (cont.)
- (iii) Revised main points in reading a statute.

- P 7
- (i) Examined the draft Handbook : 'The hearing on a plea of not guilty.' (cont.) and 'sentencing'.
 - (ii) 'Subjectivity/objectivity' extended.

- P 8
- (i) Discussed what might be included in the remaining Workshops.
 - (ii) The functions of the Court Clerk and Court Orderly were discussed with the Chief of Police and Secretary for Justice.
 - (iii) Structured Exercise examining sentencing

Morning (Session 8)

Public Mock Court.

Afternoon

- 9
- (i) Examined the draft Handbook - 'Sentencing' (Cont.)
 - (ii) Description of bail procedures.
 - (iii) Description of Rules of Evidence.

(Session 9)

- (i) Public discussion -
'The Public Defender' - discussion led by John Funaki (Public Defender) and myself.
- (ii) Public lecture -
Soloma Kalauni (Secretary for Justice): 'The Role of the Justice Department.'

0
Taped evaluation of the Workshops.

B High Court Training Sessions

- 'Introduction to Laws and the High Court of Niue.'

Course Requirements:

For a participant to be certificated the following requirements had to be satisfied:

- (a) A high level of attendance at the sessions (around 80%)
- (b) Attendance at an individual tutorial
- (c) Participation in the exercises given.
- (d) Completion of an assignment.
- (e) A visit to observe the High Court - if the course member did not regularly attend the Court.

Programme:

9.30 a.m. daily for $1\frac{1}{2}$ - 2 hours.

TORY

- (i) Explanation of the courses.
- (ii) The object of this course.
- (iii) Outline tentative programme.
- (iv) Outline course requirements.
- (v) Discuss assignments.

1

- (i) Opening of the Course by the Minister of Justice.
- (ii) Public lecture - Terry Chapman (Secretary to the Government).

'The Niue Constitution - its' main features.'

2

Ikhipa Tongatule (Legal Officer) : 'The Making of Niue's Laws.'

3

- (i). Summary of 'The Making of Niue's Laws.'
- (ii) Introduction of 'subjectivity/objectivity.'
- (iii) Evaluation of sessions 1 & 2.
- (iv) Introduction to the Laws of Niue.
(Laws/Acts; Ordinances; Regulations; Rules; Bylaws)
- (v) Introduction to and explanation of the study Guide 'Reading a Statute.'
- (vi) Values Clarification Structured Exercise -
'The Shark Infested Sea Story.'

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- (i) Evaluation of session 3 - followed by an instant summation.
- (ii) 'Subjectivity/objectivity' revisited.
- (iii) Outlined and discussed summation of the evaluations of sessions 1 and 2.
- (iv) Outlining assignments - Course members spoke about their assignments.
- (v) Reading a Statute (cont.)

- (i) Summary and revision - Reading a Statute.
- (ii) 'Subjectivity/objectivity' extended.
- (iii) Reading a Statute (cont.)
- (iv) Brief introduction to High Court Procedure.

- (i) Discussed the practical exercises in the Study Guide:
Reading a Statute
- (ii) Introduction to the Courts.
(Court of Appeal; High Court of Niue;
Judge; Commissioner; Justices)
- (iii) Role assumption - Course members assumed the roles of people involved in the Court and then discussed their functions.
- (iv) Introduction of the Public Mock Court.

(i) Further discussed the practical exercises in the Study Guide:

Reading a Statute

(ii) Preparation for Public Mock Court

- Replayed taped 'Shark Infested Sea Story'

- Rehearsal of the Public Mock Court.

Court Day - The course members who do not regularly attend the Court were required to observe.

Public Mock Court

(i) Public discussion -

'The Public Defender' - discussion led by John Funaki (Public Defender) and myself.

(ii) Public lecture -

Soloma Kalauni (Secretary for Justice)

'The Role of the Justice Department.'

Course Evaluation.

Individual interviews and tutorials.

Certificate presentation.

Participants:

a)

Criteria :

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

b)

Certificated:

Paki Taufitu - 28 yrs; Deputy Registrar (Justice Dept.)
Umusi Makani - 36 yrs; Deputy Registrar (Justice Dept.)
Ahoiva Levi - 23 yrs; Court Clerk (Justice Dept.)
Natule Ikihele - 26 yrs; Assist. Police Officer (Police Dept.)
Tahafa Talagi - 35 yrs; Information Officer, Court Interpreter
(Admin. Dept)
Tongiavalu Pihigia - 22 yrs; Clerk of the Assembly (Admin.Dept.)
Enoka Jessop - 36 yrs; Private business
Folomu Vemoa - 21 yrs; Livestock Trainee (Agric. Dept.)
Peni Sialemissa - 31 yrs; Administration Officer (Admin.Dept.)
Pope Talagi - 61 yrs; Assemblyman.

'Observers'

Masiniua Nosa - 48 yrs; Constable (Police Dept.)
Togiaua - approx. 45 yrs; Constable (Police Dept.)
Meni Heka - 28 yrs; Local Affairs Officer (Admin. Dept.)

All Participants were male.

Assignments :

Paki : 2 radio broadcasts -

i) 'What is Law?'

ii) 'How the Court works'

Umusi : An article - 'The Speaker of the Niue Assembly'

Ahohiva : An article - 'The role of Court Staff'

Natule : A pamphlet - 'An accused's guide to the High Court'

Tahafa : An article - 'The role of the interpreter'

Tongiavalu : A pamphlet - 'A Guide to Court Witnesses'

Enoka : A pamphlet - 'The Niue Assembly'

Folomu : A pamphlet - 'A Guide to Village Councils'

Peni : A pamphlet - 'A Guide to the High Court of Niue'

Pope : An article - 'Customary Laws'

Masiniua : An article - 'The role of the prosecutor'

Togiaua : Did not hand in an assignment.

Meni : An article - 'The History of the High Court'

General Public Involvement

The public were invited to several lectures, discussions and a Mock Court. The invitation was primarily by way of radio advertisement as a lack of paper prevented the publication of the island's newspaper. Radio programmes also involved the public.

- a) Lectures -
 - : Terry Chapman (Secretary to the Government) - 'The Niue Constitution - its' main features'
 - : Ikipa Tongatule (Legal Officer) - 'The Making of Niue's Laws'
 - : Soloma Kalauni (Secretary for Justice) - 'The Role of the Justice Department'.

- b) Discussion -
 - : 'The Public Defender' - a discussion led by John Funaki (Public defender) and myself.

- c) Public Mock Court.

- d) Radio broadcasts -
 - : 'What is Law? ' and 'How the Court works' by Paki Taufitu.
 - : Parts of Terry Chapman's and Soloma Kalauni lectures.
 - : An interview of Ikipa Tongatule about how Niue's laws are made.
 - : Two interviews of myself about the progress of the course.
 - : Many public announcements and advertisements concerning the course and public participation

- e) Newspaper -

The ship arrived with paper during the last week of the course. The newspaper that was published the following week included an article on the course.

- f) Other -

The public were invited to the opening of the course.

TEACHING METHOD:

Lecture

Formal public lectures were presented by the Secretary to the Government, the Legal Officer and the Secretary for Justice.

a) Intended purpose:

- to involve the Speakers in the course;
- to identify persons with particular skills and knowledge; and
- to share the Speaker's knowledge with the course participants and the public.

b) Format:

Formal lectures which were open to the public and recorded by Radio Niue. This environment was intended to provide for the Speakers

- respect and status; and
- a reasonably unthreatening situation.

c) Experiences:

- i) At the Opening Session the Secretary to the Government gave an address on the main features of Niue Constitution. The address was in Niuean and an organisation chart (on a blackboard and as a handout) was used as a teaching aid. The address was followed by an hour of lively discussion.
- ii) The Speaker of the Niue Assembly was also to address the Opening Session. Shortly before the session, a message was received informing me that the Speaker was ill and would not be present. Several other attempts to provide an opportunity for the Speaker to present the paper he had prepared were to no avail.
- iii) The Legal Officer presented a paper on 'the Making of Niue's Laws'. At the outset a prepared paper was distributed to the audience. The speaker then proceeded to read it through and occasionally expanded a few points. The address was given in English and was followed by few questions.

iv) The Secretary for Justice spoke in Niuean when presenting his paper - an English version was distributed to the audience. His address included the use of a blackboard organisation chart. Limited discussion followed this address.

) Evaluation:

Was the purpose achieved?

- Three speakers were involved in the course and one withdrew after preparing a paper. In my opinion no other method would have seen the involvement of the speaker who withdrew, but a less formal - more discussion orientated - setting may have been less threatening. The speakers took a keen interest in their subjects spending many hours in preparation. All speakers attended other sessions of the course.

- The speakers were identified as having particular knowledge and skills. As this was the first occasion for such lectures the impact was marked (e.g. The High Court Personnel participants asked that the Secretary to the Government attend later sessions to answer more questioning on the Constitution). The Secretary to the Government created a 'bonus' with the audience identifying and learning from and about the depth of his spoken Niuean.

- As portions of the lectures were broadcast, knowledge was shared with an indeterminant number of Niueans. Few of the general public attended the lectures. The lack of public attendance is difficult to analyse. My speculation would include; lack of familiarity with such learning situations; feelings that the setting is too high-powered for an 'average' Niuean to attend; and the time of day.

(The course participants found the lectures of interest. The Secretary to the Government's lecture and enthusiasm was particularly welcomed).

The Legal Officer's address was viewed as having "lots of hard words and being too hard to understand." (This being the case an interview was prepared for the radio, the lecture not being broadcast).

e) Observations:

- a lecture in the Niuean language by a stimulating speaker followed by open discussion is the most desirable form.
- if the lecture is given in English the speaker should speak slowly and avoid using complex words, terms or concepts.
- the use of the blackboard and charts as aids is desirable.
- where possible copies of the lecture should be distributed to the audience.

TEACHING METHOD:

Structured Exercises

Identifying the teaching that can be categorised as structured exercises is somewhat difficult. A problem occurs with the various evaluation exercises used during Workshop 2 and 3, and Sessions 3, 4 and 10 which could well come under this heading. This is particularly so for the evaluation exercises used early in the course and workshops. Their primary purpose was to provide, in a structural way, participant involvement, some objective insight and interest. Their evaluation value was secondary. Despite this no 'evaluation' exercises will be dealt with in this section. This section will deal with:

- 'The Shark Infested Sea Story'.
- 'Sentencing Exercises'.
- Mock Courts.

These three exercises were interlinked but for convenience will be distinguished.

a) Intended purpose:

- to involve participants
- to teach
- to be interesting, stimulating and enjoyable.

b) Origins:

i) 'The Shark Infested Sea Story': Having successfully used the values clarification exercise called 'The Alligator River Story' on several previous occasions to introduce the topic of 'Laws', my teaching style and myself, something similar seemed appropriate for Niue.

ii) 'Sentencing Exercise'. While I was looking for a technique to make points about the need for objectivity in the Courts a friend gave me a list of sentencing factors Leslie Wilkins had handed out during a public lecture in 1976. At first I felt that I could develop the list in relation to objectivity, but it was not long before I viewed the examination of factors in determining sentencing as a valid separate issue.

STRATEGY NUMBER 50

Alligator River²²

PURPOSE

In this strategy, students reveal some of their values by the way they react to the characters in the story. Later on, in examining their reactions to the characters, students become more aware of their own attitudes. This strategy also illustrates how difficult it is for any one teacher to say, "I have the right values for other people's children."

PROCEDURE

The teacher tells either the X rated or G rated story of Alligator River (see below), depending on the age of the students. Following the story, the students are asked to privately rank the five characters from the most offensive character to the least objectionable. The character whom they find most reprehensible is first on their list, then the second most reprehensible, and so

²² The author first heard a version of this story from Rose Ann Lowe of Akron, Ohio, who attributed it to the David Frost Show.

on, with the fifth being the least objectionable.

After students have made their own rankings, groups of four are formed in which they share their thinking and discuss all the pros and cons with one another.

Following the discussion, the teacher might ask voting questions (see Strategy Number 3) to find out how the class ranked each of the characters. (For example, "How many felt Abigail was the best character? How many felt she was the worst character?" Incidentally, this would also be a good way to form discussion groups, with those who ranked a given character first or last in the same group.)

The teacher can also ask some thought-provoking questions about the character they ranked as most offensive. For example: Is that the kind of person you least want to be like? What kind of person would be the opposite of this character? Write a description in your Values Journal (Strategy Number 17). List three things you could do or are now doing to be like the opposite of the person you rated as worst. Then, the teacher might ask the students to form into groups of three to share what they have written. Or a few students could volunteer to read what they wrote to the whole class.

The Alligator River Story

Rated "X":

Once upon a time there was a woman named Abigail who was in love with a man named Gregory. Gregory lived on the shore of a river. Abigail lived on the

the two lovers was rearing with man-eating alligators. Abigail wanted to cross the river to be with Gregory. Unfortunately, the bridge had been washed out. So she went to ask Sinbad, a river boat captain, to take her across. He said he would be glad to if she would consent to go to bed with him preceding the voyage. She promptly refused and went to a friend named Ivan to explain her plight. Ivan did not want to be involved at all in the situation. Abigail felt her only alternative was to accept Sinbad's terms. Sinbad fulfilled his promise to Abigail and delivered her into the arms of Gregory.

When she told Gregory about her amorous escapade in order to cross the river, Gregory cast her aside with disdain. Heartsick and dejected, Abigail turned to Slug with her tale of woe. Slug, feeling compassion for Abigail, sought out Gregory and beat him brutally. Abigail was overjoyed at the sight of Gregory getting his due. As the sun sets on the horizon, we hear Abigail laughing at Gregory.

Rated "C":

Once there was a girl named Abigail who was in love with a boy named Gregory. Gregory had an unfortunate mishap and broke his glasses. Abigail, being a true friend, volunteered to take them to be repaired. But the repair shop was across the river, and during a flash flood the bridge was washed away. Poor Gregory could do nothing without his glasses, so Abigail was desperate to get across the river to the repair shop. While she

bad glided by in a rowboat.

She asked Sinbad if he would take her across. He agreed to on condition that while she was having the glasses repaired, she would go to a nearby store and steal a transistor radio that he had been wanting. Abigail refused to do this and went to see a friend named Ivan who had a boat.

When Abigail told Ivan her problem, he said he was too busy to help her out and didn't want to be involved. Abigail, feeling that she had no other choice, returned to Sinbad and told him she would agree to his plan.

When Abigail returned the repaired glasses to Gregory, she told him what she had had to do. Gregory was appalled at what she had done and told her he never wanted to see her again.

Abigail, upset, turned to Slug with her tale of woe. Slug was so sorry for Abigail that he promised her he would get even with Gregory. They went to the school playground where Greg was playing ball and Abigail watched happily while Slug beat Gregory up and broke his glasses again.

TO THE TEACHER

This strategy often generates a good deal of emotional involvement. Students may attempt to attack and criticize each other's rankings. If listening to, or intolerance toward, others' ideas prove to be a problem, you can use the Values Focus Game rules (Strategy Number 18) or Rogerian Listening (Strategy Number 51).

Factors that would be used for determining recidivism from
lecture (1970) by Leslie Wilkins on a visit to D.F.

and of Parolee's in connection of by my individual

NUMERIC LIST OF INFORMATION ITEMS - NARRATIVE
FORM WITH 50 ITEMS

<u>Number</u>	<u>Title</u>
1	Age
2	Ethnic group
3	Type of admission to the system
4	Educational level and adjustment
5	Marital status and relationship
6	Homosexuality
7	History of mental problems
8	IQ score
9	SAT score
10	Drug use
11	Alcohol use
12	Indications of "nomadism"
13	Susceptibility to influence
14	Number of prior arrests
15	Early home environment
16	Living arrangement prior to incarceration
17	Contact with family members
18	Job skill
19	Recent employment history
20	Age at first arrest
21	Age at first conviction
22	Longest prior incarceration
23	Longest time spent in the community
24	Number of prior convictions
25	Type of prior convictions
26	Prior parole and probation revocations
27	Escape history
28	Reason for first arrest
29	Reason for first conviction
30	Instant offense - official description
31	Instant offense - inmate's description
32	Use of weapons
33	Codefendants
34	Number of previous convictions for instant offense
35	Mitigating factors
36	Time served prior to present hearing
37	Time remaining to full term expiration
38	Time remaining to mandatory release
39	Parole eligibility
40	Detainers
41	Academic progress in the institution
42	Vocational training in institution
43	Institutional work experience
44	Number and type of disciplinary infractions
45	Number of prior incarcerations
46	Changes in attitude noted
47	Letters and visits from family
48	Release plan living arrangements
49	Release job prospects
50	Financial resources

iii) Mock Court: On 4 or 5 occasions in the past I had conducted Mock Courts with school children to examine some basic Court principles and procedures. It had generally been great fun involving everyone and probably informative. I had also participated in a successful Mock Court where the participants were all experienced in Court work. I saw no reason why this technique could not be used on Niue in teaching Court procedure.

c) Development:

To stimulate the development of the exercises and my ideas I decided to carry out a 'trial-run'. The Director of the Y.M.C.A's Diploma and Community Work Course - whom I happen to live with - welcomed the use of his 25 or so students as guinea-pigs. A morning was set aside for my purposes. In preparing for the trial many details hitherto unthought of arose and were resolved. Geoffrey (the Course Director) contributed his expertise to the preparation.

i) Preparation:

During preparations I aimed for a flowing session with each exercise linked to the next. It dawned on me that the 'Alligator River Story' could be used beyond the scope I had previously used it. The story pointed up values well, but why not also use it to introduce offences against the law? What offences had there been committed (Thereby pointing out distinctions between values and offences) in the story? By using the same characters and facts in the Mock Court and sentencing Exercises the whole session could be connected. From Wilkin's list of sentencing factors a comprehensive insight into sentencing was evolved. The list was simplified and a series of exercises built around it.

ii) Form of the trial-run:

- Introduction and Explanation:

"This is an experimental model which we will evaluate at the end of the session".

"The object of the session is to provide insight into Laws, Legal process and sentencing".

- Alligator River Story:

A tape recording of the story was played through twice.

"Shows varying attitudes

.Now view this in the context of the law. What offences have been committed?"

- Mock Court:

"The object is to examine legal process

. We will use the fact situation relating to Slug in 'the Alligator River Story'

. Volunteers for the various characters -

3 Justices, 1 defender Slug

. - please".

(5 minutes to prepare)

The Court scene was then enacted.

The scene was followed by a discussion led by myself and centred on a series of questions relating to the roles of particular characters.

"How did you feel as the accused ?

. . . . Mr. Justice why did you ignore the public?"

- Morning Tea

- Sentencing:

1. A list of sentencing factors was distributed to each student.

"What 8 or less sentencing factors do you view as most important?"

(5 minutes)

2. The students were asked to form into groups of 3.

"In your group agree on 8 or less most important factors".

(5 minutes)

3. A list of specific details about Slug covering the factors listed in the previous handout was distributed.

"What 8 or less characteristics would you view as most important in sentencing Slug?"

(5 minutes)

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MOCK COURT PROCEDURE

OUTLINE

1. All Stand
2. Justices (3) Enter
3. Prosecutor and Defender Bow to Justices.
4. Justices Bow Back
5. Justices Sit Down
6. All sit down
7. Clerk call out name of Accused. "Call Slug"
8. Slug comes to Dock
9. Clerk reads out Charge
10. "How Do you Plead"
- 11.A If Pleads "Not Guilty"
 - (a) Case for prosecution.
 - statement by counsel
 - witnesses
 - cross - examination
 - (b) Decision as to whether there is a case to answer
 - (c) Case for the defence:
 - statement counsel
 - witnesses
 - cross-examination
 - (d) Summing up by prosecution
 - (e) Summing up by Defender
- 11.b If Pleads "Guilty"

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

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SENTENCING FACTORSCHARACTERISTICS OF ACCUSED

<u>Number</u>	<u>Title</u>	<u>Number</u>	<u>Title</u>
1.	Age	41.	Dependent family
2.	Race	42.	Chances of a job when he is released.
3.	Education Level	43.	Number of times he has been in Prison.
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 a 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.	Number of prior convictions		
26.	Type of prior convictions		
27.	Escaping from Prison History		
28.	Reason for first arrest		
29.	Reason for first conviction		
30.	The present offence - police's story		
31.	The present offence - the accused's story		
32.	Use of weapons		
33.	Partners in the offence		
34.	Number of previous convictions the same as present offence.		
35.	Prison conditions		
36.	Prison staff		
37.	Length of time he has been in prison awaiting trial.		
38.	Type of work at the prison	<u>BUT REMEMBER:</u>	
39.	Previous behaviour in prison	- The Offence	
40.	Money he has	- Characteristics of Accused	
		- Highest penalty under the law	
		- Consistency.	

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SUBJECT: Group Work

TUTOR: Geoffrey Henley

DETAILS ABOUT SLUG:

1. 20 years old
2. European
3. Has U.E.
4. Is Single
5. Abigail is Slug's sister
6. Is Straight
7. Male
8. Epileptic
9. Average Intelligence
10. Average Personality
11. Minimal drug use
12. Spends about \$20.00 a week on Alcohol
13. Has lived in Wellington 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 once a fortnight on average. Father died 2 yrs earlier.
19. Showed talent in technical drawing at school. Has not worked
 since leaving school.
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. Was previously convicted for Obscene Language
26. One prior conviction
27. Never escaped from prison
28. Was first arrested for allegedly having converted a car
29. Was first convicted for obscene language
30. Presently charged with causing grievous bodily harm (involving
 breaking a collar-bone) when he brutally attacked
 Gregory. Gregory was taken unawares and had no
 time to resist.
31. "I was so angry about what my sister told me about her boyfriend
 Gregory that I just lost my cool and looked for
 him and hit him".
32. No weapon was used.
33. No person aided Slug in the Offence
34. No previous convictions for assault
35. Claimed to be good. Not at present overcrowded.
36. Claim to be rehabilitation orientated
37. Has been out on bail
38. Gardening
39. Has not been in prison
40. Has no money
41. No dependent family. Mother has little money since father died.
 Would be great assistance if Slug contributed
 some earnings.
42. Has reasonable chances to get a job, but is not interested in
 seeking job.
43. Never been to Prison.

4. The students were asked to return to their groups of 3.
"In your group agree on 8 or less most important characteristics in relation to sentencing Slug".

(5 minutes)

5. A list of possible sentences was then distributed and each possible sentence was briefly explained. Factors that might be considered along with the characteristics of the accused

" - the offence, maximum penalty and a need for consistency in sentencing - were pointed out.

6. The students were asked to return to their groups of 3.
"Decide upon Slug's sentence".

(5 minutes)

7. Each group announced their sentence.
8. One group was asked to explain its reasoning.
9. Discussion followed.

- Discussion and evaluation of the mornings activities chaired by the Course Director.

- The students were asked to write an assignment answering the following questions:

1. Examine and evaluate the learning programme you have just experienced under the following headings:
 - Method of presentation
 - Clarity of material
 - Logical development of subject
 - More appropriate methods of achieving the same objects.
2. Examine and evaluate the learning programme you have just experienced with a view to suggesting improvements or making comment in the light of the fact that it will be used on a small Polynesian island.

(The answers were collected a week later)

- I wrote down my impressions of the 4 assignments which were distributed to the students.

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P O S S I B L E S E N T E N C E S

1. Combinations of:

1. Discharge without conviction
2. Convict and discharge without sentence
(with or without conditions)
e.g. pay costs of Public Defender
3. Give suspended sentence
4. Fine
5. Prison
6. Labour instead of Prison
7. Convict and order to pay compensation.

+ + + + + + +

iii) Assessment and Rethink

The session was well received and most feedback was complimentary. The session flowed well and developed logically. An apparent lack of grasping the object of the programme, a negative undercurrent and a preoccupation with the Mock Court - viewed as a "shambles" by some students - led me to reflect upon the assignments and write (18/5/77)

". . . General themes:

i) The objects were not clear

Despite the fact that the objects of the mornings programme were spelt out on three occasions several students stated they were unclear as to the objects of the programme Possible solution : At the end of sessions lead discussions on the objects and concepts of the lesson.

ii) Negativism towards 'the system'

An attitude of cynicism towards the Courts seemed to pervade the replies.

I reflected :

- Did I 'inspire' this mood?
- Is it a N.Z. student attitude?

In Niue I intend to encourage and create confidence - not undermine.

Thanks for the insight.

iii) Classes preoccupation with the Mock Court

During the session the Mock Court took up no more than a third of the time and was not intended to be the feature. It did create intense feeling. (Discussion after the Mock Court featured personal criticisms of why things had gone wrong). The intense feeling is also expressed in the assignments with most students centring their answers on the Mock Court. Several students in fact entitled the assignment 'Mock Court'.

The intensity of the response created ^{and} an apparent 'black out' in relation to what could be learnt (other than on a very personal level) was cause for reflection:

- would the Mock Court have been better later?
- perhaps the group hadn't developed sufficient trust in me at that stage
- more and clearer instructions may be needed for the Mock Court

(Give a class overnight to develop their cases)

- Be very aware of the 'taking personally' aspect as in Niue this is even more likely to occur.
- The Mock Court should/can be fun.

Possible Solutions:

Do not use the Mock Court until all the class and I feel comfortable together.

Give more time for class members to prepare.

Give fuller and more individualised instructions.

In relation to the 'problem' of students taking the activity so personally as to submerge learning - it may be better initially, or even as an alternative, develop the class awareness of specific roles. Time could be spent with a group discussing roles. (e.g. Court staff relating to the public; Upholding justice; Educating citizens; etc.)..... "

Of the sentencing exercise I wrote:

"We had spent much time and discussion thinking through the sentencing exercise - maybe that is partly why it went so well. I was confident"

Specific faults were also pointed up by the session:

For examples - The description of possible sentences I gave was inadequate; some students were not clear what 'intelligence test score' meant; two errors in the 'details about Slug' were revealed, and so on.

13)
40.

A second trial-run:

Realising I would be teaching people with differing levels of English comprehension I decided to test with a group which both represented this element and knew me (as would be the case in Niue).

- Periodic Detention detainees.

- Alligator River Story

Played a tape of the story through twice. I then handed out paper and pencils so the response could be recorded. A list of the characters names was already on a blackboard.

"Put '1' beside the character whom you find worst . . .

Put '5' beside the character whom you find best."

(most reprehensible had given way to 'worst')

('least objectionable' had given way to 'best').

The varying responses were then discussed.

- What offences are involved in the story?

These were listed on the blackboard.

- What factors are involved in the sentencing of an offender?

Again suggestions were listed on the board. With the list on the blackboard I asked the detainees to identify the 5 most important factors.

The Alligator River Story was well received and enthusiastically answered. One detainee had difficulty with the verbal instructions and confused the numbers for 'worst' and 'best'.

The exercise gained 'Periodic Detention style' approval with one guy saying: "That story's too short".

The listing of the offences involved was well grasped and quickly disposed of.

The unprompted asking to list sentencing factors was speedily and concisely carried out. ("Background, Age; Past Conviction; Job; Motive - Reason; Size; Race; Mood; Intelligence; Medical; Appearance; Police Statement, and Injury sustained;") The interest of several participants was lost. I attributed this to the fact that several could not read the list.

After the session I went through the handouts that had been used at the previous trial-run to check that they were clearly understandable. Minor changes were suggested (for example: What did 'straight' mean?)

d) Eventual presentation

i) Shark Infested Sea Story

- Specific purpose

- : to introduce laws/values.
- : to identify the diversity of values in the group.
- : to involve the participants
- : to be interesting, stimulating and enjoyable.
- : to introduce my teaching style in a positive light.

- Form

The 'Alligator River Story' had been converted into the 'Shark Infested Sea Story'. The story was set more in a Niuean context and several passages had been simplified - for example : 'When she told Gregory about her amorous escapade in order to cross the river, Gregory cast her aside with disdain' had become 'When she told Tule about what she did to get across the sea, Tule told her to clear off'. Full written instructions had been developed.

Soon after my arrival in Niue I had asked the Justice Department staff to give names for the 5 characters in the story. This created considerable involvement and fun - I learnt much about the connotations in the name 'Kapi'.

The Justice Department's typist was happy to make a tape recording of the story.

This structured exercise was initially used at the second Judicial Officers Workshop, and at the first a High Court Training Session which I conducted. Concerning the latter session I wrote in my diary:

".... My primary concern was a feeling that the group needed an interesting and enjoyable first session by me - particularly after yesterday's mediocre lecture - and that this would not be provided by the study guide. I therefore went on to the 'Shark Infested Sea Story'.

- Presentation

1. Introduction - People have varying values.
2. A copy of the story was handed out to each participant.
3. The tape of the story was played through twice.
4. I read the 'Exercise' instructions which were written below the story through twice.
5. The participants were given approximately 5 minutes to prepare their responses.
6. The responses were gathered in and I quickly scanned them.
7. We discussed the responses:

"Why would someone suggest Moka was worst, etc."

- Evaluation

My diary notes:

(Workshop): ... "The exercise was openly and warmly received.

The forms were soon completed and a lively discussion ensued

I wonder if the object really got across - but it was enjoyed....."

(High Court Session): "...Again a great success - enjoymentwise...."

At the individual interviews each course member stated he enjoyed the story. It established a common bond amongst participants which remains evident in the 'Dear Tule' letters I have received in New Zealand. While it was clearly an interesting and enjoyable introductory session it is questionable whether the point that individuals have varying values was conveyed. At the individual interviews at the end of the course I asked each participant the object of the Shark Infested Sea Story session. The usual response was: "To find out who was the worst (or in the wrong)."

Two participants were preoccupied with looking for offences. Two believed it was a thought stimulating exercise. One suggested it was "just a bit of fun" and there was one who suggested it was "to find values".

The responses reinforced the experience of the first trial run where despite stating the object of the programme on 3 occasions the point was not recalled. With the Shark Infested Sea Story memories could well have been blurred over time and with the subsequent use of the story for differing ends.

The grasping of an issue concerning 'values' was difficult for both the trial and Niuean groups^{as} - on reflection - they interpreted me as acting within a 'lawyer' label involving 'rights', 'wrongs' and

[INSERTED]

JUSTICE TRAINING COURSE

JUNE 1977

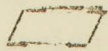
SHARK INFESTED SEA STORY

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.

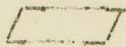
When she told Tule about what she did to get across the sea, Tule told her to clear off. Heartsick and upset, Moka went to Motu with her sorry story. Motu, feeling sympathy for Moka, went and found Tule and badly beat him up. Moka was very happy to see Tule getting beaten up. As the sun goes down over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

EXERCISE:

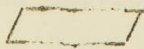
1. Think about who/feel was the worst person -- Put '1' beside the name.
2. Now think about who you think behaved best -- Put '5' beside the name.
3. Next, think who was second to worst -- Put '2' beside the name.
4. Now think about who was second to the best behaved person -- Put '4' beside the name.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



Moka



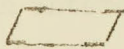
Tule



Kapi



Tione



Motu

'offences' not 'values.' All this does not lessen the point that if a particular concept is to be taught it needs to be clearly identified and frequently reiterated.

It may be better to more frequently state the concept and to centre discussion on it rather than regarding the point as self evident. The possibility of confusion being caused through the use of the same story for varying purposes need also be considered against the advantages.

One participant, who later ceased to attend the course, could not complete the form. I understand this was due to difficulties in comprehending the English language.

An interesting and unexpected consistency occurred in the responses. - Of the 16 people who did the exercise 12 thought Tione (who would not get involved) was the best behaved person. (My experience with using this exercise in New Zealand has never revealed any consistency in responses). Obviously little can be taken from such a small Niuean sample but it has stimulated reflection upon Niuean society and the difficulty in involving people in the legal system.

Presentation

1. Introduction - The object of the exercise was to explore the concept of 'offences' not 'values.'
2. Consistency question (a) The most important of the factors that affected the group's behaviour was:
(i) The fact that the group was small
(ii) The fact that the group was made up of people who were not used to working together
(iii) The fact that the group was made up of people who were not used to working together
(iv) The fact that the group was made up of people who were not used to working together
3. The list of factors that affected the group's behaviour was distributed.
What 3 or 4 most important factors do you view as most important?
(5 minutes)
4. The participants were asked to divide into 2 groups.
The 1st group decide on the 3 most important factors.
(5 minutes)
A couple of minutes were then spent without partners being written.
Were there any differences?
Reflect on what you have just done to the exercise.

ii) Sentencing Exercise

- Specific purpose

- : to stimulate thought about the sentencing process
- : to foster mutual understanding
- : to involve participants
- : to be interesting and enjoyable

- Form

This structured exercise was used during a Judicial Officers Workshop. The Workshop had been dwelling on the sentencing portion on the draft Handbook. My diary notes:

"After two days of ploughing through the draft I felt a change to something more 'interesting' was desirable".

The exercise was not utilised in the High Court Sessions. Though originally intended to be so used it was omitted when programme reductions were required.

The sentencing exercise was presented basically in the same way as at the trial. Minor faults had been corrected and the materials had been adapted to the Shark Infested Sea Story.

Presentation

1. Introduction - The object is to think about sentencing.
2. Continuity Agents : (a) The tape recording of the 'Shark Infested Sea Story' was replayed.
(b) Each character was discussed in the light of the question
Have they committed an offence against the law?
(Motu was isolated as having committed an offence)
3. The list 'Sentencing Factors': 'Characteristics of the Accused' was distributed.
"What 8 or less sentencing factors do you view as most important?"
(5 minutes)
4. The participants were asked to divide into 2 groups :
"Now as a group decide on the 8 most important factors".
(5 minutes)
A couple of issues were then posed without answers being sought:
"Were there many differences?"
"Reflect upon how the group came to the decision".

JUNE 1977

SENTENCINGSENTENCING FACTORSCHARACTERISTICS OF THE ACCUSEDNumberCharacteristics

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.

5. A list of specific 'Details about Motu' was distributed and read out:
"Which 8 facts do you view as most important in sentencing Motu".
(5 minutes)
6. The participants were asked to return to their groups:
"Now as a group decide on the 8 most important facts in sentencing Motu".
7. Distributed the handout detailing possible sentences and sentencing factors.
I summarized the previous days discussion on sentencing factors and outlined Motu's offence, the maximum penalty that could be imposed and the only other sentence imposed for the offence in recent years. The possible sentences were outlined.
8. While remaining in their groups :
"Now sentence Motu".
(5 minutes)
9. The 2 groups reformed as one workshop and announced their sentences.
10. Discussion led by myself as to the reasoning behind the sentences.
11. "Reflect on how the group came to the decision".

Changes in presentation from the trial run included:

- An alarm clock was used to further pressurize the 5 minute decision making period. (The 'pressure' feature was particularly complimented by the trial group)
- Thought provoking questions were added in particularly in relation to the group dynamics. No responses were sought.
- The list of 'Details about Motu' were read out as well as distributed. This was done to assist overcoming any reading difficulties.
- A list of factors a Court should consider when sentencing was added to the handout detailing 'possible sentences'.

Evaluation

In my view the exercise was undertaken with interest and enthusiasm. (Both the Secretary for Justice and Chief of Police remained throughout). The discussions were lively, concise and interesting.

The greater familiarity of the participants with the subject, through their experience and the previous workshop, eliminated the inadequacies found in the trial-run concerning knowledge of possible sentences.

[INSERTED]

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. ~~Abigail~~^{Moka} 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.

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).

The structure catered well for the Niuean/English 'problem'. After stating clear instructions I could withdraw allowing each participant to think them through and develop answers. As instructions and handouts were reasonably concise someone with difficulties could ask another to translate problem areas. As the group decision-making did not require my participation it could be conducted in the Niuean language - which was ^{generally} ~~greatly~~ the case.

It is difficult to really assess what a participant 'has got out of' such an exercise.

Sentencing is a sensitive subject particularly for those closely associated with it. In my view this method intimately and unthreateningly provokes thought about the subject and provides the possibility of fostering mutual understanding.

iii) Mock Courts

- Specific purpose

- : to teach about Court procedure
- : to involve the course members
- : to involve and teach the public
- : to be a climax to learning about Court procedure and the course
- : to be interesting and enjoyable.

- Introduction

The experience of the trial Mock Court was limited by time and obviously the structure is amenable to considerable variations. ^{but the} ~~but the~~ trial did point up several possible problems:

- personal tensions preventing learning
- insufficient time to acquaint themselves with the Mock Court
- insufficient knowledge to be comfortable in the Court.

With the former problem specifically in mind it was decided to place the Mock Courts near the end of the course. The course would hopefully evolve to develop trusting and comfortable relationships between participants. During sessions prior to the Mock Courts I would allude to the issue of people taking criticism personally. A ten session course would provide the flexibility and time for participants to acquaint themselves with Mock Courts and court procedure. Considerable information would be fed in.

Mock Courts were utilised in the High Court Training Course. The numbers involved in and nature of the Workshops made this technique unsuitable for them.

In planning the course the idea of using a Mock Court as the climax was well accommodated within the thought of having such an exercise late in the course. By making it public the notion of public participation was added. This addition would deepen participant involvement - as participants aspired to a 'good performance' - thus enhancing the climax.

- Form

This structured exercise technique was pivotal in the teaching of court procedure. It is necessary to place it in context:

Session 5 included a discussion on criticism as a means of learning and briefly introduced High Court Procedure.

Session 6 introduced the Courts outlining the various courts and judicial officers and their jurisdiction. It also included a Mock Court designed to examine the functions of Court personnel. At the end of the session the Public Mock Court was introduced and roles allocated.

Session 7 was spent rehearsing procedural aspects for the Public Mock Court.

The Court Day provided an opportunity to observe the High Court.

Session 8 involved the public performance of the Mock Court followed by discussion.

(a) Session 6 (Role assumption Mock Court)

Form:

The course was being held in the Courtroom. Prior to session 6 the furniture was arranged in its Court setting.

During the session I asked participants to assume the roles of Court personnel. I selected the individuals for the various roles - Adjudicators, Court Clerk, Prosecutor, Public Defender, Accused, Court Orderly, and Public. (Each role - except 'the public' - had 2 representatives). The participants were asked to take up their positions in the Court. The individuals were then asked to think about their functions in the Court. Each was asked to describe that function. I 'conducted' the responses.

(b) Session 6 (Introduction to Public Mock Court)

The Public Mock Court was outlined. Volunteers were called for the various roles. It was stipulated that course members were not to act their usual roles (for example : a Police Constable was not to be the prosecutor). I reasoned that during the exercise considerable learning would be achieved through critical analysis of 'actions' and that it would be unwise to do this - particularly in front of the public - with the 'real' people. Later discussion with the Chief of Police revealed that he disagreed with this reasoning and felt "that they have to get used to criticism". He did agree, though, that the individuals concerned were likely to take criticism personally thereby

inhibiting learning.

Volunteers flowed in and with the addition of some manipulation by me it was not long before roles had been allocated in a reasonable balance. All course participants were involved and the Justice Department's typist welcomed the opportunity to be a 'witness'.

The 'case' was spelt out. Motu's part in the now familiar Shark Infested Sea Story being the basis. Motu was alleged to have assaulted Tule. Factual details were provided through the distribution of the handouts 'Details about Motu' and 'Characteristics of the Accused'. These had originally been designed for the sentencing Exercise but served the dual purpose well. An itemised summary of the High Court's procedure which had been produced through consultation with the Workshop and Secretary for Justice was also distributed.

The 'prosecutor' and 'public defender' were asked to prepare the information and summonses required for Motu's trial.

(c) Session 7 (Rehearsing procedure)

At the outset the tape of the Shark Infested Sea Story was replayed in an attempt to speedily re-orientate participants to their roles.

The session was spent rehearsing the procedural aspects of the Mock Court. All participants took up their positions and the case gone through. Factual information such as witnesses' testimony was omitted. When concerns or particular teaching points arose I interpreted (e.g.)

"The witness doesn't know where to go - who's going to assist him?".

"Did the accused have time to see and check that list of previous convictions? "

The Secretary for Justice and Chief of Police assisted by clarifying points that were raised.

(d) Court Sitting

Between Session 7 and the 'performance' participants had the opportunity to observe a sitting of the High Court.

[INSERTED]

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.

[INSERTED]

JUSTICE TRAINING COURSE

JUNE 1977

SENTENCING

SENTENCING 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.	Contract 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.

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 or has had brought to its notice facts that suggest 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 chose 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.

(e) Session 8 (Public Mock Court)

The public had been invited via considerable radio advertising. School pupils had been invited through contact with their school teachers.

I briefly introduced the Mock Court and the 'actors'. I pointed out that the actors were learning and it was likely that I might interrupt to make teaching points. The Public Mock Court proceeded with the minimum of interruptions. The Secretary for Justice and Chief of Police sat ready to overcome any 'breakdowns'. At the end of the 'performance' I spoke summarizing my impressions and correcting the major errors. Questions were invited from the audience.

Once the audience had left a much more detailed discussion was held concerning general procedural principles. The participants were joined in this discussion by the Secretary to the Government, Legal Officer, Commissioner of the High Court, Secretary for Justice and Chief of Police.

- Evaluation

(a) Role Assumption Mock Court (Session 6)

This was an example of the use of a Mock Court for a precise purpose - that of identifying the functions of Court personnel. The exercise took in all 15 minutes and in my view clearly achieved its purpose.

The participants with humour and keenness accepted this exercise. The discussion was valuable and very concise.

The exercise also gave an introduction to further Mock Courts and for me some 'feel' as to how they might proceed.

(b) Public Mock Court

This Mock Court exercise featured :

- Information input.
- Evolution over a period of days.
- Pressure from 'going public!'
- Wide involvement.

Through handouts, the 'acting through' of the Court procedure and the ready availability of 'experts' (Secretary for Justice, Chief of Police and Legal Officer) a considerable amount of information was made available to course participants.

How much was absorbed is open to question but the Public display revealed a considerable increase in knowledge from the rehearsal.

One element that deserves consideration is the effect of the personalisation of the roles upon learning. Clearly the participants took the roles they had been given seriously and learnt much about them, but I wonder if their learning was rather more restricted to their roles than needs be. It was evident at the 'rehearsal' that boredom, lack of concentration and disinterest arose chiefly amongst those whose roles were not for the time before the session. I would partly attribute this to participants being narrowly interested in their 'performance' of their role. Ill-ease at the rehearsal was also contributed to by the length of time it did take to explain and establish various points during the rehearsal. At that stage some participants had insufficient knowledge to permit the rehearsal to flow at more than a halting pace.

In rethinking the programme I would suggest that if time permitted a lecture outlining Court procedure be presented prior to the individual roles being allocated. If time did not permit this, some method to ensure the 'Summary of High Court Procedure' is digested might be devised (e.g. test).

The personalising of roles and the realisation that each had to 'perform' in public caused course members to become particularly involved (For example : the 'Court Clerk' spent considerable time learning about his role from the Court Clerk and Chief of Police after his dismal rehearsal). Considerable initiative was shown by the course members. (For example : of their own initiative they dressed for their parts - The sight of a huge mass of a man with a bushy moustache wearing earrings and a dress to be Moka was) Regular radio advertising further enhanced the pressure to 'do well', as well as inviting public attendance.

Eventually the numbers involved were considerable: Probably 150 people crowded into the Court room and crammed against the louvered windows for the public display. More significant though, to my mind, was that nearly everyone associated with the course was involved: the Justice Department's typist was a witness; the Chief of Police and Secretary for Justice had participated throughout; The Commissioner of the High Court contributed to the discussion after the display, and so on.

TEACHING METHOD

The co-operation engendered by this exercise was also significant (One minor example: the Police Department lent the 'Court Orderly' a uniform to wear). For me the climax was the tremendous feeling of togetherness as we sat around in discussion after the Mock Court.

A negative aspect is worthy of note. With the pressure and considerable involvement created by such an exercise there is a risk that factual detail be neglected and that the performance become paramount. In my view this did occur to some extent towards the end of the Public Mock Court as concentrations and knowledge of procedure lapsed and confidence in their acting abilities built up. This point is not insignificant as the tendency for court personnel to 'act' in real Court situations is common and certainly does not need reinforcement.

One further minor point might well be included:- By excluding the participants with the roles of witnesses, they miss out on much of the learning.

The participants views can best be summarised by quoting from individual interviews:

- "Most enjoyable" (8 of the 12 participants specifically included the Mock Court in stating the parts of the course they found most enjoyable in the final evaluation).
- "It is a good way to learn - practical practice".
- "The Mock Court was most important as it gave the public an idea of how a court works".

Structured exercises such as those used in this project are an extremely valuable teaching method. They involve participants in generally practical learning experiences while being enjoyable. In recommending improvements to the course a common attitude was the desirability of an even greater use of structured exercises.

TEACHING METHOD

Formal Evaluation methods

Evaluations evolved to be so much part of the teaching programme that they can be properly included within this portion on 'Teaching method'.

This part is generally restricted to formal or structured evaluation methods. While recognising the importance of such informal methods as the casual questioning as to how something went, such methods are so difficult to order that I have avoided them.

a) Origins and Purpose -

At the outset I viewed evaluations within the limited framework of a method to gain feedback for myself and to provide some information to assist my university supervisors in assessing the project. I accumulated several examples of evaluations.

Over time I came to the view that evaluations could be an intimate part of the programme providing some learning and an important opportunity for involvement by the participants.

b) Evaluations of Sessions 1 and 2:

Following the first two public lectures evaluations were carried out

i) Specific purpose

- : to test evaluation technique while relatively uninvolved myself
- : to familiarise participants with evaluation techniques
- : to provide feedback for the speakers
- : to provide participant involvement
- : to be part of the learning concerning 'subjectivity/objectivity'

ii) Format

The form which follows was distributed to participants.

[INSERTED]

Evaluation:

High Court Training Sessions and Workshop

Session.....

A. 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 --

2. What I thought was worst about the lecture --

3. How could the lecture have been improved?

The participants were asked to complete the forms and it was pointed out that the second page could be detached from the first if the preservation of anonymity - for the first page at least - was desired. The form was read out in its entirety.

At the following session a summation of the views expressed in the forms was presented to the participants. If so desired these views were to form a basis for discussion.

A summation of views was given to the two speakers concerned.

iii) Context

This evaluation form was used in both the workshops and High Court Training Sessions. In both instances they were completed during the nearest possible workshop or session to the lecture concerned. In each instance it immediately followed the part of the session which introduced the issue of 'subjectivity/objectivity'. I explained the relevance of the two.

(Question A.1 was originally included to attempt to test the theory that someone familiar with English generally spoke too fast for those having English as a second language.

Part B was primarily included to gain some insight into the level of written English.)

iv) Impressions

The forms were keenly completed. Most of the forms revealed valuable and reasonably consistent information.

One participant in the High Court sessions was unable to complete the form. Another two participants either did not grasp the meaning of the questions asked or were unable to express their responses clearly in English:

"What I thought was best about the lecture -

Response 1: "I think the speaker of this lecture is speak to fast"

Response 2: "It is to understand the improvement of the way
how to organise Court Procedure"

One member of the workshop appeared to be having some difficulties

SUMMARY OF EVALUATIONS

Section 1 : Terry Chapman : "The Nine Constitution - its main features".

A. 1. The Lecturer spoke:	<u>No. of people so responding</u>
Too fast	1
A little too fast	1
About the right speed	9
A little too slowly	1
Too slowly	0
2. I found the lecture:	
Stimulating and interesting	7
Interesting	3
Average	2
Boring	0
Unbearable	0
3. I found the lecture:	
Very easy to understand	2
Easy to understand	2
Understandable	7
A little difficult to understand	1
Very difficult to understand	0

B. Summary of comments:

1. What I thought was best about the lecture:

- Use of Niuean language.
- Well presented.
- Straightforward.
- Easy to understand.
- He pointed out things we (the people) did not realise before.
- When explaining the rights of the voter.
- The diagram explanation.
- So I can learn something about doing bad things.
- First time structure of the Nine Constitution has been put clearly. The lecture should not be missed by the public.
- Not his own views but its what is in the Constitution.
- His gestures.
- Thoughtful.
- His Niuean was fluent and well informed.
- Being frank with his statements.
- For the first time I understand the system.

2. What I thought was worst about the lecture:

- Lack of down to earth explanations.
- Doing all the talking and not giving the audience a chance to air their views as most people at the end has forgotten what he said.
- Sounds more like a preacher than a teacher.
- When talking about the blackboard diagram he did not fully explain its functions and duties.
- Not defining clearly some of the points as I believe some of the participants were not fully understanding. Most of them say 'yes' but do not understand at all.
- Not enough details.

- Too fast.
- Too loud which can easily scare some of the people away.

3. How could the lecture have been improved?

- Question and answer method but leading up to the main points of his lecture.
- Another talk for further discussion.
- By preparing a paper of what he will give his lecture on and distribute it to participants.
- By producing examples such as sections in the Constitution.
- Come to the point faster. Do not get lost in explanation.
- If the Government provides a long period to undertake this course.
- Use more visual aids.
- Slower pace of delivery.

Section 2 : Ikipa Tongatule : "The Making of Niue's Laws"

A. 1. The Lecturer spoke: No. of people so responding

Too fast	3
A little too fast	2
About the right speed	7
A little too slowly	0
Too slowly	0

2. I found the lecture:

Stimulating and interesting	1
Interesting	5
Average	4
Boring	1
Unbearable	0

3. I found the lecture:

Very easy to understand	0
Easy to understand	3
Understandable	3
A little difficult to understand	4
Very difficult to understand	3

B. Summary of comments:

1. What I thought was best about the lecture:

- Use of Niuean language.
- The details about the procedure by which laws was made.
- Lectures was to the point.
- Examples were easy to follow.
- Honey Company example.
- How laws originated.
- Presented well.
- Precise order.
- Right speed.

2. What I thought was worst about the lecture --

- Not enough Niuean.
- Lots of hard words being too hard to understand.

- Should break at intervals for questions.
- Using long words and new terms.
- Speaking too fast.

3. How could the lecture have been improved?

- Use diagrams on the blackboard.
- Use easier words.
- Question and answer method.
- Speak in Niuean sometime.
- If Ikipa attended our Training Course all the time so we could ask him questions.
- Summary of his session.

About the right speed

A little too

Too slowly

2. I found the lecturer

Stimulating and interesting

Interesting

Average

Boring

Unbearable

3. I found the lecturer

Very easy to understand

Easy to understand

Understandable

A little difficult to understand

Very difficult to understand

10 June 1977

SUMMATION OF EVALUATION

Session 3 - Tony Johns

No. of people so
responding

1. The Lecturer spoke:

Too fast	1
A little too fast	3
About the right speed	5
A little too slowly	0
Too slowly	0

2. I found the lecture:

Stimulating and interesting	2
Interesting	5
Average	2
Boring	0
Unbearable	0

3. I found the lecture:

Very easy to understand	1
Easy to understand	1
Understandable	5
A little difficult to understand	2
Very difficult to understand	0

with the form, but translation assistance from other members seemed to satisfy his needs.

I had stated that the forms could be answered in Niuean if so desired but no one had taken up the suggestion.

There appeared to be a tendency to avoid the issue of what was worst about the lecture (16/26 answered Question 2; 24/26 answered Question 1; and 23/26 answered Question 3).

This may well be insignificant as the pervading attitude that the lectures were stimulating perhaps caused difficulties in thinking of worst features. It did, though, add slight weight to the feeling I was forming of a hesitancy to be fault-finding.

There seemed little concern with the anonymity of the forms. Someone did say that "it didn't matter", but this same person expressed the contrary view during another session.

The presentation of a summation of the evaluations as soon as possible after the evaluations were completed was welcomed with interest. While not provoking much discussion it did, in my view, stimulate a sense of personal involvement in the course.

This exercise strikingly pointed up differing levels of understanding in the English language. Learning this so early in the piece I was able to readjust my style or at least reassess the situation. I decided, for a specific example, to in future use the blackboard as an additional aid in presenting evaluations. Besides the previous method of completely reading the form through I would also assist by having parts written on the board. I could use these as examples. I also had to face the situation that a couple of participants understanding of English was insufficient for them to follow much of the programme,

but others would get bored if I simplified things too much. I decided against having the sessions interpreted into Niuean as the time and monotony thereby involved would have been too cumbersome. I would do all I could to assist those with comprehension difficulties but realised that they would probably 'drop out'.

c) 'Instant' evaluation of Session 3

Having found the earlier evaluation useful and as I wanted feedback from the first High Court training session I had myself conducted - the previous sessions had been lectures presented by others - I used part of the following session to carry out a brief evaluation exercise.

Prior to the session the blackboard had been prepared with the following written on it:

" 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 |

Small blank pieces/^{of paper}were distributed to the group. They were asked to evaluate the session I had conducted the previous day. The instructions were to "write number 1 on your piece of paper and beside it the number for the appropriate response.....Then write number 2 and the appropriate response....." This was demonstrated on a second blackboard and the alternative responses read out several times. It seems the instructions were clearly understood. The group was encouraged through my stressing the value I had seen in the earlier evaluations.

This method was adopted to:

- take much less time.
- increase anonymity (The papers handed in bore six digits and no words)

When the responses had been handed in I scanned them and immediately interpreted the results to the group:

"Perhaps a little too fast - I should slow a little or at least watch this.

Reasonably interesting.

Perhaps a little too hard to understand."

The session was then asked to comment how I could make things easier to understand. One response was immediate:

"Oh you can't teach a person who hasn't anything in him educationwise."

This was followed by a suggestion to use examples much more. Someone else commented about the difficulty of English being their second language. I thanked the group for their comments and immediately showed good faith and respect by utilising the positive suggestion that more examples be used. Actually this suggestion was the stimulant for a marked change in my teaching of statute reading. (See: 'Study Guide'.)

This 'instant' evaluation method was deliberately not used during the Judicial Officers' Workshops as a more personal and 'equal' relationship was intended.

As we were working and learning together an evaluation of my style seemed inappropriate. It was hoped comment and feedback would flow naturally.

In my view this evaluation was useful for its limited purpose. It speedily produced information while providing greater involvement and interest in the whole programme. This particular instance did produce a suggestion that could be acted upon. The actual use of the contributions of participants is important - it shows respect and genuine regard for the participants and their ideas.

d) Discussion evaluation

The final Judicial Officers' Workshop was devoted to a discussion assessing the draft Handbook and Workshops. This discussion format was intended to be in keeping with the 'workshop' structure. I led the discussion through varying points of interest.

This discussion was tape recorded in the hope that it would provide my university supervisors with some insight into the programme.

For me to comment on the effectiveness of this discussion method is difficult as I was so personally concerned with this particular instance. New and interesting views were expressed and I wrote in my diary:

"The feeling of togetherness in the group was most rewarding".

The presence of the tape recorder rather inhibited discussion.

e) Final evaluation:

The final session of the High Court Training Course was principally devoted to an evaluation exercise.

i) Specific purpose

- : to provide feedback for myself
- : to assist my supervisors in assessing the project
- : to suggest improvements

ii) Format

The form which follows was distributed

[INSERTED.]

EVALUATION

HIGH COURT TRAINING SESSIONS

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

8. 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?

C. 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 |

4.

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 |

PERT NEXT
→ PAGE →

D. 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. 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

5.

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

I read the questions out to the group and then asked them to complete the forms and hand them in.

When the forms were handed in there was considerable interest in the results. I therefore agreed to discuss Part A. The resultant discussion revealed additional insights and the limited value of such questions in isolation:

I asked:

"Why did people tend towards wanting more participants on the course? I thought you would have said there were plenty"

Response:

"The course should be shared...It could be beneficial to more people"

I stated:

"I was surprised that so many found the course contained a great deal of new information."

Response:

"It was not really new information but the real understanding was new."

iii) Impressions:

Within limits the evaluation was valuable. It provided positive reinforcement for me and some idea as to how the course members viewed the course. Little in the way of suggested improvements were provided.

The limits of such questions have already been mentioned.

As my teaching involves my own deep personal involvement such an evaluation is prone to be a personal response to me rather than the questions.

The responses reveal a 'loathing to expose faults'. Few people contributed much through the question 'what was worst' and a surprising lack of difficulties were raised in Question B.1. It seemed clear to me - for example ; from the number of incorrect answers to the Study Guide - that most participants had had some difficulties in understanding parts of the course.

One participant had difficulty in recording his response. In answering the question as to how the course can be improved he wrote:

"It could improved to carry on reading and study to each lessons distributed during the course. If these should stack as they were the lessons were worthles, for future used of the Government."

The individual interview revealed he understood the questions, but could not write a response clearly. The digital alternative answer questions seemed to suit him better.

The discussion that followed the completion of the forms revealed further information and disclosed the ways some questions had been interpreted.

This evaluation exercise probably had limited value for course members. It did provide a participation opportunity. The exercise did take up a considerable amount of time. But in any rethinking about such an evaluation the importance of providing feedback to the 'teacher' must not be underrated.

If possible it might be better that such an evaluation be conducted by an 'outside' person. Such a person might gain some 'feeling' and insight from a written evaluation and then conduct a discussion based on that.

iv) Context:

This 'final evaluation' was followed by individual tutorial sessions which included further assessments of the course.

f) Individual interviews:

Following the completion of the High Court Training Course sessions I individually saw each course member for approximately an hour. The time was spent in:

1. Asking questions about the course.
2. Clarifying and checking the practical exercises that had been set.
3. Discussing assignments.

The former is my only concern here

i) Intention and form

With the intention of gaining further insight into the course the following questions were asked of each course member:

- "(1) How did you find the visiting speakers - The Secretary to the Government, Mr Ikipa; Mr John Funaki - were they worthwhile?
- (2) Was the course well balanced - was there enough variety (visiting lecturers/exercises/sessions by me)?
- (3) How many of the handouts have you read?
 - The Study Guide
 - Court staff and Court decisions
 - What do we achieve by punishing people?
 - Being a Justice or Commissioner in Niue.
 - The Public Defender
- (4) Shark Infested Sea Story:

Did you enjoy it?

Remember the first time I used the story? - What was the object of that session?

- (5) Study Guide - Reading a Statute: How did you find it?
- (6) Mock Court: How did you find it?
- (7) Assignments:
What do you think about them?
- (8) I often spoke about "subjectivity/objectivity" :
What did I mean?
What was the point I was making about subjectivity/objectivity?
- (9) Was the course useful?
- (10) What do you think you learnt from the course?
- (11) Would you attend a more advanced course?
- (12) What didn't you like about the course?
- (13) How could the course be improved? "

Each question was asked in the same form. A response was not prompted. I asked the question and then wrote down what the person stated.

ii) Impressions:

Course members ^{were} generally relaxed in replying to the questions. As can be seen ^{there were} peppered amongst the questions specific questions such as: How many of the handouts have you read? What was the object of the 'Shark Infested Sea Story' session? ; and what was the point I was making about subjectivity/objectivity? I found the answers to these questions of particular interest in relation to the learning on the course. (Future written evaluation forms might include some such questions.)

Some difficulties were experienced by course members in expressing themselves in the English language. Great care certainly needs to be taken in wording the questions (for example: one participant did not know the meaning of the word 'object' - as used in Question (4)).

TEACHING METHOD

Study Guide

A Study Guide was used to assist with the teaching concerning the reading statutes. Over the period of the project the ways of utilising this Study Guide fluctuated and therefore escape easy analysis.

a) Origins

During my period as Legal Adviser on the island I had learnt that only one or two persons were familiar with reading statutes. Reasoning that if those associated with the Courts were to have any real understanding of Niue's law and Courts they would need such skills I decided to include this topic in the course.

In discussing training methods with the Police the concept of a self-contained Study Guide arose. I wanted to try it. I decided that the topic of 'Reading a Statute' was appropriate for such a technique:

- the topic contained lots of important details that could not be digested in a lecture or discussion.
- It would be a topic about which participants would be at different levels of understanding. Differing learning speeds would also be significant for such a relatively complex subject. A Study Guide would provide an opportunity to work at one's - own - pace and hopefully from one's - own - level.

b) Development

This of all the techniques was the one which I varied most while on Niue. In the end I probably had learnt more about the development and planning of an experiment than the technique itself.

The variations:

- i) It was originally intended to purely hand the Study Guides out for the participants to work through. I felt uneasy about this as I was unsure of the levels of reading ability of the group and the clarity of the prepared material. I therefore decided to explain the Study Guide to both the Workshop and High Court Training Sessions.
- ii) I first presented the Study Guide at a Workshop. Having handed

out the Study Guides and begun an explanation I soon felt that a mere explanation of the use of the Study Guide was insufficient. I decided to go through the material with the workshop. I carefully read out the material and showed examples. At workshops end I summarised through a dissection of a recent Amendment Act. That evening I wrote in my diary:

"...This took much longer than I had anticipated.

Unease (and perhaps boredom) affected two or three participants by the end of the two hour workshop

...At the end of the workshop I wondered if reading a statute was just too difficult. (One J.P. had particular difficulty). I feared it could make him feel: I do not understand and I am therefore inadequate to sit on the Bench"...

...The Commissioner seemed really interested and was most encouraging about the workshop."

- iii) In introducing the topic of 'Reading a Statute' to the High Court sessions I handed out the Study Guides, briefly explained, and then asked participants to read the first few pages before the next session. Immediately prior to that I had - with the aid of a blackboard - explained the distinctions between

LAWS

ACTS

ORDNANCES

REGULATIONS

RULES

BYLAWS

- iv) At the workshop following the first presentation of the 'Reading a Statute' I merely repeated the main points covered at the

previous workshop and proceeded on to other topics. I needed time to rethink the approach. This thought was aided by a brief discussion of the problems people were having with the 'Study Guide'. The impression was gained that the Guide was "a bit too complicated - but useful."

- v) I entered the second High Court session that was to involve this subject still unhappy with the teaching method. Early in the session participants discussed how their understanding could be improved (as part of the 'Instant Evaluation'). The suggestion of a greater use of example arose. After various other subjects we proceeded to 'Reading a Statute'. The diary takes up the story:

"Somehow - thanks partly to the suggestion to use examples - a better method to teach this topic just emerged at that moment. I had been concerned about how I had presented the Study Guide to the Judicial Officers Workshop.

I took the Study Guide 'as read' or at least I didn't bother to read it through as I had previously. I decided to start with the 'Descriptions of Divisions in a Statute' (Actually on page 5 of the Study Guide). I then proceeded to use the blackboard and many examples from the Transport Ordinance. I wrote and explained step by step

```
"ACT
  ↓
PART
  ↓
SECTION (S.1 )
  ↓
SUBSECTION (S1 (i) )
  ↓
PARAGRAPH (S1 (i) (a) ) "
```

At each step I checked that the audience was up with me. I asked them for example, to find "section 22". I then looked around and checked all had found it..... Once I felt everyone handled 'sections' I asked them, for example

to find "section 42 subsection 2" and so on...

At the end of the session I again asked the participants to find various sections to reinforce the earlier learning.

...The Interpretation Section proved interesting. I took the example of speeding in a public place. We read and discussed the (Transport Ordinance) definition of a 'public place'. Is a village green a public place? What about driving behind the pastor's house? and so on with the use of diagrams. I then mentioned 'being drunk in a public place' was in the Niue Act. We looked up the definition of 'public place' in that Act and saw it was different.....
.....which prevailed?..... and so on.

I had emphasised the main points, greatly used the blackboard and examples, used questions to check the progress of the participants, and not lingered reading out the Study Guide. The Study Guide had been used as a 'companion' to the teaching rather than a basis. The changes seemed apt.

- vi) The above approach was used for the remaining workshops and High Court sessions about reading a statute.

The practical exercises contained in the Guide were completed by participants in their own time. The answers were handed in for checking by me and returned individually. If any difficulties were exposed I discussed them with the individual.

At the individual tutorial the practical exercises discussed and each participant was given a copy of the answers of questions 1 to 5.

The concluding part of the Study Guide 'The Apparent Complexity of Statutes' was not pursued in class at all. This exclusion was based upon pressure of time and an inclination that the part was too difficult for many participants. About half the participants were individually asked to "try it out". No background details were given to them.

c) Evaluation

- i) In answering the final evaluation question as to "what parts of the course did you find particularly hard to do or understand" 5 participants referred to parts of the Study Guide (5 out of 13 responses). The Guide was specifically referred to by 4 participants in answering, "What parts of the course did you find most enjoyable?" (4 out of 23 responses). During the questioning at individual interviews the participants responded that they understood the Study Guide without much difficulty. Some mentioned they had had to spend some time going through it with the aid of a dictionary to gain understanding.

My own assessment was that most of the participants found this the most difficult part of the course to understand. Some participants had real problems in understanding and considerable time was spent in giving each participant some understanding. Extreme difficulty would have been experienced if the subject had not been so carefully explained. I am not sure that it was eventually well understood but to have purely handed out the Study Guide for self tuition would have been useless. This impression is somewhat tempered by the fact that those who attempted the 'Apparent Complexity of Statutes' part of the Study Guide - with no explanation having been given - appeared to understand the text fairly well. It is to be remembered though that by that stage the earlier parts of the Guide had been explained.

ii) Rethinking the Study Guide

The language should be further simplified.

Specific improvements:

1. Start with a section on the distinctions between Acts, Ordinances, Regulations, Rules and Bylaws. This should be followed by the section 'Descriptions of Divisions in a Statute'. (The present page 5).
2. Question 3 and 4 should be redrafted as they were not self-explanatory for some people.
3. An answer for Question 6 should be prepared for distribution.

Before use on any scale an improved Guide should be tested on a few people.

iii) Concluding Remarks

In practice the concept of a self-contained/self-administered Study Guide was strayed from for several reasons, but basically because of:

- a lack of confidence in the Study Guide produced; and
- insufficient knowledge of the participants ability to utilise the Guide

The Guide was used mainly as a companion to more traditional blackboard teaching.

An apparently successful presentation method for the subject was developed but I was disappointed that the Study Guide could not have been used by participants in their own time. This would have had the side-effect of 'saving' considerable teaching time. Before the Study Guide can possibly be so used it will need further simplification and clarification.

It would have been valuable for this project to have had the Study Guide materials examined by others and pre tested before being used on Niue.

If a self-tuition Study Guide is to be used some method of 'encouraging' its completion would need to be developed.

(Remember: Some difficulty was experienced in getting homework answers completed on Niue and the articles that were handed out for 'home consumption' were generally left unread.)

[INSERTED]

STUDY GUIDE:

ALOFI, NIUE, 1977

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 of the Act does not specifically provide for commencement the Act comes into force upon the signing and sealing 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.

The Schedule of an Act or Ordinance is divided into -

- 1. Numbered Schedules;
- 2. Numbered Forms;
- 3. or Articles, as in the case of the Constitution.

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.

(2) Subject to this Constitution, ...

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

Describe for written purposes the following part of the Ordinance:

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:

Para. A [a]

(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.7]

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 (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.

Answer: 'It is?..... of the Transport Ordinance 1965'.

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

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

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."

TEACHING METHOD

Assignments

The presentation of an assignment was a requirement of the High Court Training Sessions

a) Purpose

- to provide basically self-motivated learning
- to allow for individual initiative
- to produce material of practical value
- to add to the limited stock of material written about Niue's legal system
- to provide an opportunity for individual contact
- to 'filter' the number of course members and certificates
- to assist me with parts of the Court Handbook

b) Format

- i) Course members were free to select their topic, but all chose from a list I had devised:

Paki -	2 radio broadcasts: (i) 'What is Law? ' (ii) 'How the Court works'
Umusi -	An article : 'The Speaker of the Niue Assembly'
Ahohiva -	An article : 'The Role of Court Staff'
Natule -	A pamphlet : 'An Accused's Guide to the High Court'
Tahafa -	An article: 'The role of the interpreter'
Tongiavalu -	A pamphlet: 'A Guide to Court Witnesses'
Enoka -	A pamphlet : 'The Niue Assembly'
Folomu -	A pamphlet: 'A Guide to Village Councils'
Pope -	An article: 'Customary Laws'
Masiniua -	An article : 'The role of the Prosecutor'
Meni -	An article : 'The History of the High Court'

Participants were encouraged to select topics of which they had particular knowledge - for example: Paki had broadcasting experience; Ahohiva was a Court Clerk; Tahafa a Court interpreter; Folomu was a Secretary to a Village Council, and

Pope had particular interest in customary law.

The Course sessions touched on issues involved in many of the assignments.

- ii) After the topic had been selected I spoke to each person individually about their subject. I put forward my ideas, gave them materials, and suggested sources of material - for example: Umusi was given a copy of a speech the Speaker of the Niue Assembly had prepared on his role; I suggested that he refer to the Niue Constitution and Standing Orders; and that he discuss the history of the role and form of the Speaker with the Secretary to the Government.

Participants were given a little over a week to present a draft outline of their assignment. During that week most participants approached me to further discuss their topic.

- iii) When the draft outlines were handed in I asked several course members to address the session on their particular concern.

The drafts were read through by me and returned to the authors. In returning the drafts I further discussed each person's assignments.

Participants were given a deadline for the completion of their assignments. Further discussions were held about the varying topics.

- iv) As the 'final' assignments came in I quickly scanned them and returned them immediately to the owner if I felt they had glaring faults. Others I kept and checked through.

At the individual tutorials I went carefully through each assignment with the author. It was usual to require faults to be corrected or further additions to be made before I would finally accept the assignment.

v) At present the assignments remain suspended between the pages of this project. It is intended that they will be further corrected by me and returned to Niue to be printed for use in schools and for the general public. Some will be translated into Niuean (for example: A Guide to Court Witnesses). Some may also be used as an appendage to the Court Handbook.

c) Assessment

In my view the assignment requirement was keenly received by the group. Their interest seemed to remain reasonably high throughout. I was surprised at the end of the sessions to find that 2 participants who knew they would not get certificates had handed in their assignments.

The evaluation exercises revealed that all participants thought the assignments were worthwhile. Some individual comments expand this view:

(Court Clerk) : "It was the first time I have had to write down what I do. Before this I only had it in my head and I learnt by observing."

"There is some advantage in having my thoughts down ... but it depends on what use will be made of the assignments."

"It was a good idea to do something for the public."

"At first I thought (an assignment) would be a waste of time, but once half-way through the course it was interesting. If I hadn't been interested in doing the assignment I would have dropped out of the course."

d) Experience

A few points are worthy of record.

- The standard to be demanded was hard to arrive at amongst such a diverse group. I used as a yardstick the phrase: Is this near this individual's potential?

not
- I was/loathe to return assignments to participants to be improved

(2 participants had their assignment returned 4 times)

- The participants who had topics outside their knowledge had greatest difficulty (Umusi and Enoka)

- When I was pleasantly surprised by the standard of the draft outlines I enthusiastically praised the group. I would not do this again as I found it hard going from then on to get some participants to improve their drafts.

- The assignments provided a measure of insight into language difficulties and individuals understanding of the course.

- More time should have been allowed to check and correct assignments ready for printing. It is unsatisfactory that it will be some time before they are returned to Niue and printed. More time would also have enabled participants to be more involved in such corrections.

TEACHING METHOD

Handouts

During the period of the workshops and sessions several articles were distributed as 'handouts'. They were intended to be of general interest.

The articles - 'Court staff and Court decisions'; 'What do we achieve by punishing people'; 'Being a Justice or Commissioner in Niue' - were handed out in class as something to read. In distributing the article 'The Public Defender' I asked course members to have read it for the session concerning the Public Defender. The individual interviews at the end of the course revealed that:

- 2 of the 12 interviewed had read all 4 articles.
- 5 people had read 2 or more articles
- 7 people had read no articles
- 4 persons had read 'The Public Defender'
- 4 persons had read 'Court staff and Court decisions'
- 3 persons had read 'Being a Justice or Commissioner'
- 3 persons had read 'What do we achieve by punishing people'

On the other hand all participants had read the Study Guide: Reading a Statute. Also participants had usually read the materials I had specifically referred them to for their individual assignments.

I do not think there were any particular reading difficulties with these handouts.

While articles specifically related to a Course are very useful I remain inclined to the view that the encouragement of broader interest through more general articles is also valuable. The experience on Niue reveals that greater attention needs to be taken if articles are not to become merely pages of a folder which might some day be read. I am not sure as to what form such attention should take - but awareness of the need is a start. One course member stated: "I didn't read the articles as there were no exams" but when asked if he thought exams would have been appropriate on this course he said he did not think they would have been.

TEACHING METHOD

Overall blend

Before completing the examination of various teaching techniques it is necessary to emphasise that the lectures, exercises, study guide, etc. were used in a flexible interconnected manner. The recording method adopted tends to individualize the techniques. This method also tends to submerge some factors which are to me important. A copy of a diary I wrote daily while on Niue is attached to give an impression of my immediate learnings, feelings and perceptions. Hopefully it better points up some important factors such as

- continuity and flexibility in the programme;
- personal relationships and trust;
- my personal involvement and feelings.

2000000

High Court Handbook

The object of producing a Handbook was to provide a reference for adjudicators and court staff on matters concerning the High Court. This was stimulated by an awareness that these people lacked knowledge in this area. Also lacking was the time or necessary skills for them to acquire such knowledge. Even if the necessary skill or time were available they would have been confronted with a completely inadequate supply of resource materials (including copies of His Majesty's laws!).

A I M originally (rather vaguely) envisaged the Handbook as a short guide for adjudicators. As I went further I realised

- The preparation of a High Court Handbook.

His Majesty's laws (which are based on and in parts just as complex as New Zealand law) was to be attained.

Sources

- i) Judicial Department (Solomon Islands), Local Courts Handbook (1975).
- ii) D.R. Sarwick, Island Courts in the Gilbert and Ellice Islands Colony (1965).
- iii) Department of Justice (New Zealand), Manual for Justices of the Peace (1977).

HANDBOOK

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I originally (rather wistfully) envisaged the Handbook as a short guide for adjudicators. As I went further I realised this was impossible if adequate coverage of Niue's laws (which are based on and in parts just as complex as New Zealand law) was to be attained.

- Sources:

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- iii) Department of Justice (New Zealand), Manual for Justices of the Peace (1977).

- Development:

The drafted portions of the Handbook I took to Niue with me to be examined. Checking, examining and discussing the drafts formed an important part of the Judicial Officer's Workshops. It was a means for the adjudicators to be involved on an 'equal' footing and at the same time to learn a great deal. The drafts were also discussed with the Secretary for Justice and Chief of Police. A draft copy of the first part of the Handbook has been sent (25 May) to the Chief Justice of Niue for comment but as yet no response has been received.

- Format:

It is eventually intended that the Handbook will be in a loose (ring-binder) form. This will allow considerable flexibility, (for example, so the 'summary' sections can be taken out and used independently) and make amending relatively simple.

The text aims at being straightforward. There are summary sections at regular intervals. These sections are important as they will probably get most everyday use. To clearly identify the summary sections it is hoped to print them on either larger or different coloured paper from the remainder of the Handbook.

- Content:

Proposed Scope

- A. * i) Introduction
- ii) The High Court of Niue (Jurisdiction)
- * iii) Procedure of the High Court
- The Hearing on a plea of 'guilty'.
- The Hearing on a plea of 'not guilty'.
- * iv) Pre-trial documents.
- Information
- Summons
- Warrant
- * v) Procedures between arrest and a High Court hearing
(excluding bail).
- * vi) Bail
- * vii) Sentencing
- viii) Evidence
- ix) Defences and Burden of Proof
- x) Rehearings and Appeals
- * xi) A description of Common Kinds of Criminal Offences.
- xii) Glossary
- xiii) Appendix - containing copies of the relevant laws and
documents.

* Draft chapters on these topics were discussed in Niue.

SAMPLE PORTION OF HANDBOOK (IN DRAFT FORM)

- Introduction
- The High Court of Niue
(Jurisdiction) and related
Appendix.

N I U E

HIGH COURT

HANDBOOK

TONY JOHNS

ALOPI/WELLINGTON

1977

There are three courts established under the New Constitution.

(1) The High Court of New Zealand -

This Court has full power to hear and decide all original and civil cases.

Judges, Commissioners and Justices of the Peace sit in the High Court.

NOTE:

The word 'adjudicator' is used frequently in this Handbook. It is used to mean 'those hearing or able to hear a case'.

The word is used to include: a Judge or a Commissioner and two Justices of the Peace or a Commissioner or two Justices of the Peace.

(2) The District Court -

This Court has power to hear disputes over the ownership, control and use of land.

Judges, Commissioners and Justices of the Peace sit in the District Court.

This Court handles all civil cases of District, but the Commissioner handles for other Judges and Commissioners of the District Court.

The word 'adjudicator' is used frequently in this Handbook. It is used to mean 'those hearing or able to hear a case'.

INTRODUCTION

1. The Courts of Niue

There are three Courts established under the Niue Constitution.

(i) The High Court of Niue -

This Court has full power to hear and decide all criminal and civil cases.

Judges, Commissioners and Justices of the Peace hear cases in the High Court.

Judges can hear all cases. A Commissioner sitting with two Justices of the Peace can

hear most of the serious cases. A Commissioner on his own or two Justices of the Peace sitting together have power to hear the small cases.

The Limits of jurisdiction of Judges, Commissioners and Justices are outlined later in the Handbook.

There is a right of appeal to the Court of Appeal of New Zealand in certain cases.

(ii) The Land Court of Niue -

This Court has power to hear disputes over the ownership, control and use of Niuean land and make adoption orders.

The Chief Judge of the Land Court handles all land cases at present, but the Constitution does allow for other Judges and Commissioners of the Land Court.

[A VERY GOOD 'LAND COURT MANUAL' IS AVAILABLE
AND SHOULD BE USED FOR ANY LAND MATTER]

(iii) The Land Appellate Court of Niue -

This Court has power to hear and decide any appeal from the Land Court.

Two or more Judges make up the Land Appellate Court. The Judges come from Judges of the Niue Land Court who did not hear the dispute in the Land Court or Judges of the Maori Land Court of New Zealand.

In addition to the Courts of Niue other Courts outside Niue may sometimes deal with Niuean cases. The Supreme Court of New Zealand still has some powers extending to Niue. Far more important is the Court of Appeal of New Zealand to which appeals from the High Court of Niue go. The Privy Council in England can hear appeals from the Court of Appeal of New Zealand.

2. The Laws of Niue

The laws of any country may be thought of as the collection of rules enforced by the State which regulate the relations between the people and relations between individuals and the State. They coordinate their efforts for everyone's good.

The present laws of Niue are primarily made up of Acts, Ordinances, and Regulations and Rules:

- (i) An Act is a law passed by the legislative body. Acts of Niue include:
 - (a) Laws that have been passed by the Niue Assembly since Constitution Day (for example, the Liquor Act 1975, the Niue Flag Act 1975 and the Transport Amendment Act 1976)

- (b) Laws that have been passed by the New Zealand Parliament which have been declared to be in force in Niue (for example, the Atomic Energy Act 1945, the Customs Act 1966 and the Sale of Goods Act 1908) Since Constitution Day the Niue Assembly must itself ask for and agree to an Act of the New Zealand Parliament becoming the law of Niue ~~before it can do so~~ (for example, the Misuse of Drugs Act 1975)
- (ii) An Ordinance is also a law passed by the legislative body, but is one passed prior to self government. Ordinances include:
- (a) Laws made by the Niue Island Assembly (1959-1974) (for example, the Income Tax Ordinance 1961, the Transport Ordinance 1965 and the Wildlife Ordinance 1972)
- (b) Laws made by the Island Council of Niue (1916-1959) (for example, the Cinematograph Ordinance 1949)
- (iii) Regulations and Rules are the detailed rules putting into practice the principles of Acts or Ordinances. The power to make Regulations and rules comes from the relevant Act or Ordinance which also specifies who can make the regulations and rules and outlines their scope. The power to make regulations is usually given to the Cabinet of Ministers of Niue.

Examples of Regulations include the Maintenance Enforcement Regulations (New Zealand) 1948, the Treasury Rules 1961, and the Village Council Regulations 1971.

Another source of law that may develop in the future are bylaws. The Village Councils have powers conferred on them by Act and Ordinance to make bylaws which as yet have not been exercised.

There are many important rules in a community that are not written down (for example, the rules concerning tapu areas). Unwritten rules are not the direct concern of the Courts and therefore not the concern of this Handbook.

See: The distinction between criminal and civil cases in the next part.

- : Appendix : The Niue Constitution.
 - : 'Index to the Laws of Niue in force on 31 March 1972'
- for the most complete list of laws in force in Niue.

THE HIGH COURT OF NIUE

The High Court of Niue was established:

"... for the administration of justice in Niue"

"...[It] shall have all such jurisdiction (both civil and criminal) as may be necessary to administer the law in force in Niue"

1. Kinds of Cases

The High Court hears two sorts of cases - criminal and civil. There are in practice few civil cases heard but it is worthwhile understanding the differences.

Criminal cases deal largely with offences for which people can be punished (for example rape - under the Niue Act; careless driving - under the Transport Ordinance; or a restaurant owner failing to keep his premises clean - under the Public Health Ordinance). In criminal cases it is a matter between society's representatives (the police) and its individual members (you, your father, your relations, etc).

Civil cases deal with dispute between two or more people which are generally not deserving of punishment (for example claims for debts between a trader and purchaser; or a claim for the cost of repairing a motor vehicle following a motor accident). As civil cases usually have nothing to do with the question of punishment they are not the concern of the police.

/quite

Quite often the two sorts of cases overlap. For example, two cars collide and the driver of one car was driving carelessly and the other is so badly injured that he loses a leg. If the driver of the car which was driving carelessly is charged in court with the object of punishing him for breaking the law, then the proceedings are criminal ones. Later the man who lost his leg may bring an action for compensation for the man's injury and for the cost of damage done to his car against the man who drove carelessly. This is a civil claim.

Problems concerning what is civil or criminal are not likely to often arise in the High Court as the usual types of cases are clearly distinguished in the law.

As 98 percent of the cases heard by the High Court in recent years have been criminal cases THIS HANDBOOK WILL CONCENTRATE ON CRIMINAL CASES IN THE HIGH COURT OF NIUE.

2. The people who hear Cases

Each judicial officer, be he the Chief Justice or a Justice of the Peace, plays an important part in upholding Justice. Expressed in simple terms Justice means that every citizen, regardless of his rank, wealth, or position, is equal before the law and subject to the law of the land. The Judicial Oath, which every adjudicator takes upon appointment clearly expresses this.

"I swear by Almighty God that I will well and truly serve Her Majesty Queen Elizabeth the Second Her heirs and successors, in accordance with the Constitution and the law, in the office Of; and I will do right to all manner of people, without fear or favour, affection or ill will. So help me God."

There are three types of people hearing cases in the High Court:

- (1) The Chief Justice and other Judges
- (2) Commissioners
- (3) Justices of the Peace

(1) Appointment -

The Chief Justice and any other Judges are appointed by the Governor-General. In making an appointment the Governor-General is to take the advice of the Cabinet. Commissioners and Justices of the Peace are appointed by Cabinet.

(ii) Age limit -

As a general rule no one hears cases once he has reached 68 years old.

(iii) Removal -

A Judge or Commissioner may resign by writing to the Premier.

Judges or Commissioners can only be removed if they can not do their jobs properly because of weakness of body or mind or other reasons, or if they misbehave.

The removal of Judges can only be done by the Governor-General. In removing a Judge the Governor-General is to act on the advice of Cabinet. Cabinet itself is to base such advice on a resolution from the Niue Assembly recommending the removal of the Judge. Removing Commissioners is up to the Cabinet following a recommendation of the Chief Justice.

Like the Commissioners, Justices of the Peace can only be removed by the Cabinet following a recommendation of the Chief Justice.

3. Differing Powers of the People hearing cases:

The Niue Constitution and Rules of the High Court set out who can hear what cases. A Judge can hear all cases. Commissioners and Justices of the Peace can not deal with all cases.

A Commissioner can hear certain cases on his own. A lone Justice of the Peace has, like a Commissioner, many varying powers outside the Court (for example - signing summons) but when hearing cases in the High Court a Justice can not sit on his own. Generally the position is that if two Justices of the Peace sit together they have the same powers as a Commissioner. (An Assemblyman cannot be one of those two Justices of the Peace).

NOTE: TWO JPs = ONE COMMISSIONER

For some cases the Rules require that a Commissioner and two Justices of the Peace sit together.

Although it is for the Registrar and his staff to see that the cases to be heard before Justices of the Peace, Commissioners or Judges come within their power (or jurisdiction), it is important for the judiciary to realise the extent and limits of their jurisdiction. The next pages give a summary of 'who can hear what' or the jurisdiction of the adjudicators.

(See: Appendix: Part III of the Niue Constitution
Note - Articles 37, 38, 39, 45, 46,
49, 53.

Rules of the High Court: Rule 86

JURISDICTION

1. ONE COMMISSIONER

OR

TWO JUSTICES SITTING TOGETHER.

WHAT CAN THEY HEAR?

- (i) Any offence for which the maximum penalty does not exceed three years imprisonment:
plus the offences of:
- Receiving stolen goods;
 - Accusation of criminal offences;
 - Threats to kill or do bodily harm;
 - Causing death or bodily injury through reckless or negligent driving or through driving while intoxicated.
- (ii) Any offence which has only a fine as punishment.
- (iii) Actions for the recovery of any debt not exceeding \$100 in amount.
- (iv) Actions for the recovery of chattels not exceeding \$100 in value.
- (v) Civil proceedings relating to maintenance and affiliation.
- (vi) Acting as Coroner.

WHAT CAN THEY DO?

Hear and decide the case; or

At any stage before reaching a decision

- Can decline to deal with the offence and hand it onto a Judge who will rehear the case; or
- If the defendant has been convicted or pleaded guilty
- Can remand the defendant to be sentenced by a Judge.

Maximum penalty is: a \$200.00 fine
or
one year prison.

Generally anyone who might be put in prison can be fined up to \$200 instead of or as well as going to prison.

Can decide on a sentence.

Remember that the sentence imposed is subject to review by the Chief Justice.

While waiting the review of sentence they need to decide if the defendant shall be kept in prison or released on bail.

Facts on this page come from:

The Niue Constitution 1974 (see Article 39(1) and 53(2))

The Rules of the High Court

(see Appendix: Rule 83, 84 and Rules Amendment No. 4 and No. 5)

The Niue Act 1966

(see Section 240)

Inquest Ordinance 1964.

Facts on this page come from:

The Rules of the High Court

(see Appendix: Rules 84, 85, 86)

JURISDICTION (Cont'd)

2. ONE COMMISSIONER AND TWO JUSTICES OF THE PEACE SITTING TOGETHER.

WHAT CAN THEY HEAR?

Any offence for which the maximum penalty does not exceed ten years prison IF THE DEFENDANT PLEADS GUILTY

WHAT CAN THEY DO?

Can decide on a sentence.

Remember that the sentence imposed is subject to review by the Chief Justice.

While waiting the review of sentence they need to decide if the defendant shall be

- kept in prison
- released on bail
- released at liberty

Maximum penalty is ten years prison but the sentence has no effect until the Chief Justice agrees to or changes it.

Facts of this page come from:

The Rules of the High Court

(see Appendix: Rules 84A, 84B, 84C)

4. The Court Staff

(i) Duties

The Registrar of the High Court is responsible for maintaining the records of the Court. He is also to carry out other administrative duties for the Court the Chief Justice may tell him. The Registrar has Deputy Registrars who, while being under the Registrar's control, have similar duties. Clerks, interpreters and other administrative officers also work for the Court.

* (To be added to from information supplied in the assignment - a book has been prepared for the course)

(ii) Court Staff and Court decisions

Although the Registrar and his staff do all the administrative work for Court proceedings, and their advice and assistance are needed for the proper running of the Court, they should have no voice in a decision. They may - and should, if necessary - advise the Judge, Commissioner or Justices on points of law and procedure. The Registrar and staff may even point out that the intended sentence is wrong in law if an obvious error is likely to occur if they did not speak up, but they should not give their views on the facts or evidence in the case to those hearing the case. The responsibility for a decision is solely on those hearing the case.

If a case is a difficult one and the adjudicators wish to discuss it together and think about it before making their decision, they may adjourn the Court and retire to consider their judgment. It is probably better for them 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 on their own and to decide without delay, if they can. The Secretary for Justice's office is ideal if he is not using it. If possible neither the Registrar nor any of his staff should retire with the Judge, Commissioner or Justices, if they leave the Court to consider their judgment. Otherwise someone in Court may think that the adjudicators have not reached their decision solely on their own. Nothing should be done which would give anyone the idea that everything was not being done properly and fairly.

It is probably best also that when questions are asked of Court staff - for example about the law or the proper way to proceed in a particular case - that they are asked in open Court. This means everyone can hear what is going on and can see the Court staff are only assisting the Court and not influencing decisions of adjudicators.

It is realised that in practice there will be misunderstandings of role in this Court even if questions are varied in open court. The staff will even then be subject to the suspicion of having influenced the adjudicators. As a greater awareness and openness of the Court develops it is hoped this attitude will change.

(iii) The Prosecutor

The Prosecutor in the High Court of Niue is a member of the Police. In the future the Legal Officer may prosecute in very serious cases before a Judge.

The Prosecutor's job is to present to the Court the case against the accused person and to be of assistance to the Court as needed.

*(To be added to from idea gained
in assignments)*

(iv) The Public Defender or Agent

The Public Defender or anyone allowed by the Court to assist an accused has a very important job in the High Court. He is there to help voice the accused case to the Court. He is also to assist the Court as best he can.

(To be added to)

- (a) In actions for the recovery of any debt or damages not exceeding £100 in amount;
- (b) In actions for the recovery of contracts not exceeding £100 in value;
- (c) In criminal proceedings for any offence punishable by fine only;
- (d) In criminal proceedings for any offence [specified in the Schedule hereto].

APPENDIX

JURISDICTION OF COMMISSIONERS AND
JUSTICES OF THE PEACE

Rules of the High Court of the Cook Islands 1916

JURISDICTION
OF
COMMISSIONERS

Rule 83^m A Commissioner of the High Court shall have jurisdiction -

- (a) In actions for the recovery of any debt or damages not exceeding [£100] in amount:
- (b) In actions for the recovery of chattels not exceeding [£100] in value:
- (c) In criminal proceedings for any offence punishable by fine only:
- (d) In criminal proceedings for any offence [specified in the Schedule hereto].

Schedule

Rule 83 (a)

Commissioners of the High Court shall have jurisdiction in all or any of the following criminal offences specified in the following sections of the Niue Act 1966:

	(Offence *)	Maximum * penalty indicated
Section 130	(Punishment of seditious offences	2 years)
150	(Concealment of birth	2 years)
152	(Actual bodily harm	2 years)
153	(Omissions resulting in bodily harm	2 years)
155	(Want only endangering persons on or near aerodromes, etc.	2 years)
157	(Assault	1 year)
160	(Abduction of children	2 years)
166	(Procuring miscarriage of woman or girl	2 years)
167	(Act of woman or girl procuring her own miscarriage	1 year)
168	(Supplying means of miscarriage	2 years)
173	(Indecent acts	6 months)
174	(Indecent documents	6 months)
175	(Brothels	6 months)
176	(Gaming houses	6 months)
177	(Riot	2 years)
178	(Forcible entry	6 months)
179	(Affrays	1 year)
182	(Fabricating evidence	3 years)
183	(Conspiracy to pervert justice	3 years)
185	(Escape	2 years)
186	(Rescue	2 years)

[

]

	(Offence	Maximum penalty indicated)
Section [188	(Theft -)
	s.192 (a): Value of property maximum \$4.00	3 months)
	S.192 (b): Value of property maximum \$100.00	1 year)]
[193(1)	(Stealing documents	3 years)]
194	(Receiving stolen goods	5 years)
198	(Menaces	2 years)
199	(Witchcraft	6 months)
200	(Obtaining credit by fraud	6 months)
201	(Accusation of criminal offences	5 years)
202	(Conspiracy to defraud	3 years)
203	(Obtaining execution of valuable securities by fraud	3 years)
206	(Threats to kill or do bodily harm	5 years)
210	(Lightening coin	2 years)
211	(Uttering counterfeit coin	6 months)
213	(Wilful mischief to property	3 years)
214	(Provoking breach of the peace	\$10.00)
215	(Profane, indecent, or obscene language	3 months or \$40.00)
216	(Disorderly conduct in public places	\$10.00)
217	(Obstructing public place	\$10.00)
218	(Drunkenness	1 month or \$20.00)
219	(Animal trespass	\$10.00)
220	(Prostitution	1 month or \$10.00)
221	(Laying poison	\$10.00)

	(Offence	Maximum penalty indicated)
Section 222	(Polluting water	6 months or \$100)
223	(Sale of unwholesome provisions	1 month or \$40.00)
224	(Insanitary premises	\$20.00)
225	(Wilful trespass	\$10.00)
226	(Cruelty to animals	1 month or \$20.00)
227	(Falsely trading as an incorporated company	\$200.00)

[e) In civil proceedings under Part XXIII
of the Niue Act 1966 relating to
maintenance and affiliation]

[f)] Section 39 of the Transport
Ordinance 1965, No. 30
(*Penalties for causing death or
bodily injury through reckless
or negligent driving or through
driving while intoxicated -
Maximum penalties indicated:
5 years or \$600.00)]

[g)] Any other offences contained in any
enactment, Ordinance, regulation or
bylaw for which the maximum term of
imprisonment provided does not
exceed 3 years]

PENALTY
MAXIMUM

84. A Commissioner of the High Court shall not have power to impose any fine exceeding £200 or to impose any terms of imprisonment exceeding one year, whatever may be the maximum fine or term of imprisonment provided by law for the offence.

DECLINING TO
DEAL WITH

(Contained in Rules of the High Court 1916
Amendment No. 5:)

(1) In any proceeding commenced by a Commissioner
of the High Court exercising jurisdiction in...

*(1) Section 188 of the Niue Act 1966 (in
cases to which Section 192 (a) and (b)
apply) and Section 193 (1).

- S 192 (a) : Theft; value of stolen
property not exceeding
\$4.00

- S 192 (b): Theft; value of stolen
property not exceeding \$100

- S 193 (1): Stealing documents.

*(2) Section 39 of the Transport Ordinance 1965,
No. 30.

- S 39: Causing death or bodily
injury through reckless
or negligent driving or
through driving while
intoxicated.

*(3) Any other offences contained in any
enactment, Ordinance, regulation or
bylaw for which the maximum term of
imprisonment provided does not exceed
three years.

... the Commissioner may, at any time before
the defendant has been sentenced or otherwise
dealt with, decline to deal further with the
offence and require that it shall be dealt with
by a Judge and may endorse on the information
a certificate to that effect.

(2) If the defendant has been convicted or has pleaded guilty the Commissioner shall remand him for sentence by a Judge and for that purpose, if it is expedient and in the interests of justice so to do, may make an order accordingly under the provisions of these rules.

(3) In any other case, the Judge shall deal with the case in all respects as a rehearing.

DICTION /84A A Commissioner and two Justices of the Peace sitting
OF together shall have jurisdiction for the purpose of
COMMISSIONER entering a conviction and imposing sentence only in
2 JPs. criminal proceedings in charges, other than those
specified in clauses (c) and (d) of Rule 83 hereof,
punishable by imprisonment for terms not exceeding ten
years and in respect of which a plea of guilty has been
entered by any defendant:

Provided that no such sentence imposed shall have
any effect unless and until the same is either confirmed
or varied by the Chief Justice in accordance with Rule
84B hereof.

REGULATION 84B (1) The Chief Justice shall within one month of the
PROCEDURE receipt by him of a copy of the sentence imposed pursuant
to Rule 84A hereof duly verified by the Registrar under
seal of the Court together with such information as he
may require -

- (a) Confirm the sentences as imposed; or
- (b) Vary the sentence either by reducing or
increasing the same in which case the
sentence as varied shall become the
sentence of the Court; or
- (c) Order a rehearing of the proceedings in
respect of which the sentence has been
imposed.

(2) The Chief Justice shall record in writing his
decision on the certified copy of the sentence and
transmit the same to the Court of origin which shall
either cause the sentence as so confirmed or varied
to be executed or grant a rehearing if so ordered.

(3) Any sentence fixed under this Rule shall be deemed to be a final judgement of the High Court for the purposes of Article 51 of the Niue Constitution.

84C Pending sentence by the Court under Rule 84A hereof, the Court may remand the defendant at liberty or release him on bail subject to such conditions as it deems fit to appear for sentence when called upon by notice given not earlier than 48 hours of the date fixed for such purpose or remand him in custody pending sentence:

Provided that any period of remand in custody shall not be greater than two months.]

85. Save as aforesaid [a Commissioner or a Commissioner and two Justices of the Peace sitting together] shall not exercise any of the powers or functions, whether judicial or administrative, of a Judge of the High Court.

86. In these rules the term "Judge" includes a Commissioner of the High Court in respect of all matters within the jurisdiction of a Commissioner.

EVALUATION

COMMENTS FROM DISCUSSION WITH JUDICIAL OFFICERS

From Rapid Discussion - 21st June 1977

Abbreviations:

- Q - Question
- Com. - Commissioner of the High Court of Justice
- J.J. - Justice Douglas, J.P.
- J.S. - Justice Stott, J.P.
- J.F. - Justice Fagan, J.P.

Q. How do you view comments about the draft handbook?

Com. I personally feel that the handbook is very essential for the Commission and J.P.'s who are not legally trained. They do not understand the legal terminology and how to interpret the laws of the land.

EVALUATION

Content:

- Comments from evaluation discussion with the Judicial Officers.
- High Court Training Session evaluations.

J.J. I agree.

J.S. I agree. We have never had any opportunities to have a special session like this for the last week to sit together and discuss with a legal officer and he can direct us with points which will be the confusion with our operation in the Courts. However, by the fact of the workshop and general discussion we have on the handbook we have achieved a lot of things we haven't learnt before. That's all I have to comment on the handbook, because Harry has already touched the main points and I have nothing else to comment on except to mention everything he has said.

Com. I think it has overcome a fear because we all have in us this fear whether we have done the right thing or not, whether we are dealing with a case as we should be. This is the main thing that gives us fear. It applies to a case and the handbook is helpful to overcome this fear.

Q. How could the handbook be improved?

Com. I think we should go forward. I think time will tell. Yes, it is difficult to say at the moment. Time will tell when it is drafted and put into practice. As far as we can see now it is very well laid out.

EVALUATION

COMMENTS FROM DISCUSSION WITH JUDICIAL OFFICERS

From Taped Discussion - 21st June 1977

Abbreviations:

Q - Question.

Comm - Commissioner of the High Court of Niue.

L.D. - Lagaluga Douglas, J.P.

L.H. - Lagavalu Haioti, J.P.

H.P.F.- Hekau Poaga Faneva, J.P.

Q. Have you any comments about the draft handbook?

Comm. I personally feel that the handbook is very essential for the Commissioner and J.P.'s who are not legally trained. They do not understand the legal terminology and how to interpret the laws of the country. I feel this handbook is a tremendous thing to help us how to understand and deal and what to do with various cases that will come before us. The book is quite clear and it is in very very simple language to be understood and it is not too long. That is my personal view, I don't know what my colleagues think. I feel it is in very simple language and cannot be simplified more than it is.

L.D. I agree

L.H. I endorse what the Commissioner has said as since I have been appointed we have never had any opportunities to have a special session like this for the last week to sit together and discuss with a legal officer and he can direct us with points with which we have confusion with our operation in the Courts. However, by the look of the workshop and general discussion we have on the handbook we have achieved a lot of things we haven't learnt before. That's all I have to comment on the handbook, because Harry has already touched the main points and I have nothing else to comment on except to endorse everything he has said.

Comm. I think it has overcome a fear because we all have in us this fear whether we have done the right thing or not, whether we are dealing with a case as we should be. This is the main thing that gives us fear in attending to a case and the handbook is helpful to overcome this fear.

Q. How could the Handbook be improved?

Comm. I think its straight forward. I think time will tell. Yes, it is difficult to say at the moment. Time will tell when it is drafted and put into practice. As far as we can see now it is very well laid out.

L.H. The only comment I have is are there any possibilities to translate the handbook for the sake of those who do not understand the second language ...

Comm. (half joking) Let's hope we get education on the Island and that English becomes well known and we can all speak English in the future.

Q. What do you feel about the way the workshops have operated?

L.D. It was much better that the judges were separated from those in the morning course.

Comm. Yes, I think I agree. It makes clearer our understanding that we are in our own group to have our discussions in our own group.

Q. What about the style in which they have been run - we have been sitting around a table instead of me using chalk on a blackboard?

Comm. I think it makes us work. It's the best part of it instead of having things shoved down our throats ...

L.D. I agree ...

Comm. It makes us work and participate and makes us feel as if we understand more.

L.H. And another thing you already plan out the work and give it to us for general discussion and if we come to any problems you are close to direct or point out or give us the answers to some of the problems. But the only thing I would like to comment is that the afternoon is a very bad time to sit and discuss on such issues because we have been working in our own jobs. We come here in the afternoon bored, tired and sometimes we haven't our attention to what is going on. But it was good anyway, thank-you ...

Comm. I have nothing to say about the timing. I'm familiar with taking lectures any time, even at night, but for the others ...? It's a bit hot here.

Q. Do you think I was well prepared each day that I came here?

L.D. Yes, yes.

Comm. I think you are quite open and you really take pains to make us understand certain things. You do not rush and you really go out of your way to explain areas that are not easy to understand.

L.H. Well my point to you Tony is that you are far better than an ordinary teacher ...

Comm. (interjecting) From a teacher ...

L.H. Because you understand when a class starts to get bored you then get the activities - put us to work instead of you preaching to us all the message. You sit and observe, the 'students' works, then you follow-up with questioning and find out what we've learnt from what you say and teach.

Q. Is there anything more you would like to say about the workshops?

Comm. Yes, the afternoon sessions have been very good - the way the workshop has been handled - mainly because we are made to take part in these training sessions instead of having lectures showed down our throats. This is a new way ... the best way because it makes us understand what is discussed better than what is handed down to us.

.....

Q. What do you think about the public lectures?

L.D. It was one of the most important parts of our workshop because the average Niueans don't even know about the Constitution and how the Justice Department works and all that.

Comm. I think it was a good idea. Its best to know something about one's government.

L.H. The contributions these people made in the lectures is relevant to what we have studied so far in our workshop. The other two have pointed out the importance of these people in the programme and also we may learn about some of the things that the public may doubt and which they haven't heard about before. This is the only opportunity that they can come and listen and learn about areas which they have problems.

Q. Do you think we should have covered other things in the public lectures - were the topics relevant?

H.P.F. The topics were relevant.

L.H. What I learnt also from 'the people' was that they appreciated listening to the contribution made in Niuean - which they can understand more - of the things the public lecturers were talking about, because I understand they have problems with the language. Not all of our people are well educated to know the facts that our public lecturers try to explain to them unless they use their own language. I'm not criticising anybody.

Q. The lecturers weren't too high in the sky were they? People understood did they?

Comm. There were one or two comments from people that some didn't understand. It's a bit too complicated but I think it's a new area for them to listen to, but that's why. They weren't used to some of the terminology used in the lectures.

L.H. I wouldn't say they were high in the sky ... I didn't hear any complaints that those people were showing off what they have already learnt - because they were doing their best to show others what they've learnt and they want to share with the public.

.....

Q. Were the materials quite clear?

Comm. The Handouts are quite clear. At first we experienced difficulty in 'Reading a Statute' and after going slowly, bit by bit, and your explanations we finally ended up by understanding the Handout better than at the beginning.

Q. How about the Study Guide?

L.H. You put it to us clear. At first we didn't understand but after we'd been sitting down with you, you read it out and we had to follow it. If any problem pops up you are there to explain it ... I've found out it's very important to have a guide - particularly when I'm in Court. I might seek legal advice or the Secretary for Justice for assistance if I have problems with the interpretation of clauses in the Act. In my opinion you did the best to compile this for our assistance.

Q. But it's a bit difficult for you?

Comm. & L.D. Yes.

Comm. But the breakdown from section to subsection is straightforward - we understand.

.....

Q. Do I take it that the Study Guide's language was a little bit too complex.

L.D. I think yes.

Comm. As I said, it's legal language, it's in the law books.

L.H. I agree that it is essential for us to read the Statutes because I remember in last week's Court a capable man came with a law book (laughter) ... and unless the Adjudicator who presides at the Court also understands the content of the book and can argue with the person who tried to read it out and interpret it in his own terms. So that's why I recommend it. It's essential that we can read the Statutes.

Q. How did you find the Study Guide?

H.P.F. Oh yes, I can easily read all this english but it's taken me a time to understand in my language and it comes to my mind that this is very important.

Q. How did you feel about the Shark Infested Sea Story?

L.D. & Comm. It was enjoyed (laughter).

L.H. ... We started it off as an exercise in our group. The story was given from the tape-recording and after that a follow-up with written questions. We then worked in groups to discuss and point out our views. You know how we felt about the situations in the story and after that we follow-up with general discussion in the group. But the most important part of it all was when the group demonstrated the Mock Court based on the story we heard from the taperecorder. This is a very good education for the Adjudicators and also for the Public.

Comm. The story has a very good sense of humour - to keep us awake in the afternoon - but apart from the good sense of humour the story has many useful aspects in it for when we come to the real case because there are so many things involved there - something related to our own way of customs ... But with the story we see we have to see as Adjudicators - we have to look to the Law ... The story was very well drawn up.

.....

Q. What about the Sentencing Exercise?

L.H. ... It is amazing to hear from individual people in the group that we are not the same in our opinion ...

... we base our sentence on our own situation here not referring to what is stated in the law and that's the point I found out in this sentencing exercise. It pointed out a new thing to us and helped us to know that when we sentence a person we have to base our thinking on the crime he committed against the law and not our own personal feeling about the person in the community.

Comm. And another thing with dealing with cases certain factors are important in deciding whether two people should be treated the same. Sometimes the same punishment is fair but then it will effect one more severly than the other ... So these factors pointed up in these exercises are a very helpful guidance in dealing out suitable sentences for the differences.

Q. Could going through the draft of the Handbook be done more interestingly?

Comm. I think the way with not only you reading it out but with us all going through it together bit by bit was fine.

Q. How could the workshops be improved?

Comm. I think of more exercises like the story with Moka and also the sentencing exercises. More would be useful as they really help us to think ... and to make decisions.

L.H. I also recommend ... we try to get a videotape ... for the Mock Court. Another thing to improve is to give us more time to activities instead of doing all the talking ... or sometimes we get bored and feel like going to sleep.

Q. I leave the floor open to comment. Was the course useful?

L.D. The course was very useful for us because I think this was the first time for this sort of thing was put up here. I've been in government 36 years here now and I don't remember anything like that before. It was very helpful for Judges. We didn't know before how the Courts were run and all that.

Comm. Previously we were trained in various jobs with different ways of thinking and now we are given a job very foreign to us to handle and unless one knows something about Court procedures and understands how to handle them As I said earlier I myself entertain these fears that what I'm doing is correctly dealing with the case ... whether the final decision is the correct one or not ... and to me personally this course is very very helpful.

Before I was appointed to the Court I was given brief lectures by the previous Resident Commissioner and the Chief Clerk about how to run a Court, but still it wasn't easy to understand when it was something very new. This workshop has brought to light certain things one must know and understand in dealing with the process of Court.

... One other important point - Niueans have a fear that we Judges are people who are like Gods who punish people and I think this workshop and public lectures make people understand and realise that we are not such things and just ordinary people like them: which makes our feeling or fear something easy to forget.

... also our relationship with the defender and also our relationship with the prosecutor in cases ... What we should do to make the accused understand why a certain decision has been made and why it might be different from another decision. I personally appreciate this training as very helpful ... Others should be trained for the future.

.....

L.H. ... I recall the time when I was first appointed as a Justice of the Peace. I was surprised I was just given about 3 weeks to observe in the Courts and they then wanted me to be up on the Bench. ... I remember asking the Secretary of Justice if training was possible but apparently he was very busy ... but this workshop gives us an opportunity to sit together and have someone qualified to assist.

.....

Q. It seems better to have the training in the Niuean language?

Comm. It is best in both languages as there are so many words in the Courts area that are only in English.

L.H. You sat there Tony when many things were in Niuean. I wondered how you felt with all in Niuean and the questioning. You came to the situation of many people here - isolated and just hearing people laughing and talking - it's strange.

Q. Any final comments anyone would like to make to assist further workshops?

Comm. I would like to say I felt a little annoyed when you suggested we were good Niueans and therefore praising you - what we mentioned in our discussion was our true understanding and interpretation of what we get off this past training course.

L.H. And another thing Tony after you've finished compiling the whole thing and sent a copy to us we'd appreciate if you come back someday and have another go (laughter).

Comm. & L.D. I endorse that.

[INSERTED]

FINAL EVALUATION:

NEW COURT TRAINING SESSIONS

Number of participants
so responding.

A. The training course -

1. Length of the course:

The course was too long.	0
The course was just about the right length	1
	6
	2
The course was too short	3

2. Length of the sessions:

The sessions were too long.	0
	0
The sessions were just about the right length.	7
	4
The sessions were too short	1

3. Amount of work:

There was too much to do on the course.	0
	1
There was just about the right amount of work to do on the course.	7
	3
There was not enough work to do on the course.	1

4. Number of participants:

There were too many participants on the course.	0
	0
The number of participants was about right.	4
	5
There were too few participants on the course.	3

5.	I found the course -	
	Stimulating and interesting	9
		1
	Average	2
		0
	Unbearable	0
6.	The course contained for me -	
	A great deal of new information.	9
		1
	Some new information	2
		0
	No new information	0
7.	Was this course well administered and organised?	
	Very well	8
		1
	Average	2
		0
	Poorly	0
B.	<u>Tony Johns' teaching:</u>	
1.	How well prepared is Tony Johns for his sessions?	
	Very well	9
		2
	Average	1
		0
	Poorly	0
2.	Tony Johns spoke:	
	Too fast	0
		2
	About the right speed	10
		0
	Too slowly	0
3.	Tony Johns spoke:	
	Too loud	0
		1
	About right volume	11
		0
	Too soft	0

4. Tony Johns spoke:	
Very clearly	9
Average	2
Not clearly	1
	0
	0

5. How well does Tony Johns get difficult points across to the participants?	
Very well	5
Average	6
Poorly	1
	0
	0

6. How well does Tony Johns gain and handle participants questions and comments?	
Very well	7
Average	3
Poorly	2
	0
	0

7. Is Tony Johns easy to approach and question outside sessions?	
Very easy	7
Average	3
Difficult	2
	0
	0

8. What overall evaluation would you make of him as a teacher?	
Excellent	7
Average	5
Poor	0
	0
	0

FINAL EVALUATION:

HIGH COURT TRAINING SESSIONS

- Summary of comments.

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

- Ikipa's Lecture.
- No comment as the course is understandable.
- Nil (x 2).
- Not hard.
- Understanding statutory interpretation (x 2).
- Repeals and amendments (x 3).
- The assignment.
- Putting Court procedure into practice in the Mock Court.
- Objectivity/subjectivity.

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

- i) How Laws are Made; the Moka Story; the Mock Court.
- ii) How to read Niue Laws.
- iii) How to read a statute; The role of the prosecutor and defender; Court procedure.
- iv) All visiting speakers; Reading statutes; Mock Court for the public.
- v) 1) Mock Court; 2) Evaluation of each speaker; 3) Evaluation of the 'Shark Infested Sea Story'.
- vi) 1) Reading and understanding of statutes; 2) Court procedures, and 3) The Niue Constitution.
- vii) Mock Court.
- viii) Mock Court.
- ix) Participants taking part in questioning and answering; The Mock Court; The assignment.
- x) Practical work - especially the Mock Court.
- xi) Mock Court ("all participated and well attended by the General Public").
- xii) Enjoyable throughout.

3. How can the course be improved?

- Regular sessions (Once every 4 months).
- More participants.
- Notices to people in the Tohi Tala Niue.
- Lecturers preparing papers on their subjects.
- By holding another course to cover areas not covered.
- Have the course translated into Niuean so people who have difficulty with English could attend.

- Have the Mock Court well rehearsed before it is performed.
- Having everything in English ("as English seems very important in Court proceedings").
- More exercises like the Mock Court (x 2).
- Improving the 'Reading of Statutes'.
- Being more advanced.
- Making it longer (4 or 6 weeks).
- Should do a lot of exercises and practical work.

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

- Very well organised.
- The setting out of each lesson and an understandable introduction.
- "A real reliable teacher".
- Using the blackboard with examples.
- The action.
- Punctuality.
- Well prepared.
- "The way he spoke and paused to explain to the participants the areas where difficulty and confusions arises was well done and clearly".
- "He explains everything which is doubtful to the particular person and ensure that he understands it well. He doesn't hide anything which he knows he should teach the participants in the course".
- The examples used "are much more clear than an ordinary lecture".
- Very interesting.
- The use of people concerned with the particular topic.
- "Being realistic and practical and a bit of humour once in a while, and he knows what he is talking about".
- "... the straight forward manner he performed during the Course - teaching us and explaining as we go along ...".
- Spoke very clearly.

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

- When using long English words Tony is hard to understand.
- Keeps to time, thus not allowing extra time to make certain points clear.
- "Sometimes being too slow while waiting and giving chances to those who don't or haven't caught up with the course. At times one too many examples were expressed in referring to the N.Z. court I feel that we are copying the N.Z. style of court procedures or are we supposed to engineer one for our own conditions, situations or circumstances in Niue".

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

- More examples.
- More sessions.
- By holding a course every year.
- By giving more homework.
- Have an interpreter.
- "Keep the Police out".
- More exercises like the Mock Court.
- Extend the length of the course.

FINAL EVALUATION:

Suggestions as to improvements arising from the individual interviews

- More written work;
 - More homework;
 - More practical exercises like the Mock Court;
 - A longer course.
- [These suggestions seemed to be generally agreed upon]
- Longer sessions.
 - Regular sessions.
 - More on reading a statute.
 - School teachers should be involved.
 - Produce a booklet setting out the day-to-day subjects.
 - Do not exclude 'witnesses' from the Mock Court.

.....

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