

Peter Broadhurst Donation. *ASOPA Law Lecture Notes*. 1962 Long Course¹

Introduction.

The donor.

Peter Broadhurst is a former senior officeholder with the Department of Native Affairs and successor agencies of the Administration of Papua and New Guinea. In June 2021, Peter donated to the Papua New Guinea Association of Australia Collection his set of lecture notes, acquired as a participant in the 1962 Long Course at the Australian School of Pacific Administration, (ASOPA).

About his background and donation Peter stated:

At the time of my retirement from PNG in August 1975, I was an Assistant District Commissioner. I joined the service in February 1959 and attended ASOPA in 1962. The course was a specific program for Patrol Officers employed in the Department of District Administration. The law notes were provided to me at that time, as were the lecture notes on the Law of evidence.

The notes have served me well and I relied heavily on them, particularly in the over 2000 District Court and Local court cases I heard. In fact, PNG Crown Law appealed three major cases that I heard, and all three appeals were dismissed by the appeals court. The law notes were extensively relied on.

Back in Queensland I worked in Industrial Relations and as an Advocate appearing before the District Court and Industrial Commission.

Mattes law and evidence notes, and related precedent cases indirectly served me well. That is probably why I have been reluctant to destroy them after nearly 60 years.

The donation

The Lecture Notes comprise over 629 Roneoed pages, issued to participants by ASOPA. The donor supplied them along with his privately typed *Law Index* of content, using his handwritten pagination. That Index provides a useful guide to the detail. A modified version of it, in searchable form, is reproduced as a Table below. In that Table, the Lecture notes are arranged in order using Broadhurst's pagination which he extended to the 9 lectures on Evidence. The last of the

¹ This outline and some preparatory curation of Peter Broadhurst's donation was undertaken by PNGAA member, Paul Munro, a former member of the TPNG Public Solicitor's Office ; he lived and worked in TPNG between 1960 and 1968.

numbered Law Lectures, and a copy of a judgment about Head Tax liability are dealt with as the end pieces of the Table and the donation.

The 1962 Long Course took place at Middle Head Mosman NSW, over about 11 months. The ASOPA law course module was *designed to give officers a brief outline of law generally before focusing on the divisions of law likely to be of most benefit in their field service*. Introductory lectures covered the divisions of law; distinctions between crimes and civil wrongs; classifications of law between common law, statute law, case law; the doctrine of precedent; the hierarchy of Courts: the process for distinguishing which precedents are authoritatively binding in a particular case. That introductory material prefaced an outline of each of 54 numbered and titled lectures on legal topics. The well-preserved pages of the Lecture notes have been closely annotated and marked up by Broadhurst who used the notes in his subsequent career. His duties included those of Magistrate in the Districts in which he served.

Broadhurst's Index itself is the first set of pages in sheet protectors in the Binder files containing the lecture notes. An unpaginated Introduction Lecture appears next. The focus of the bulk of the lecture notes is upon criminal procedure and criminal offences. However, taken together, the first set of 12 lectures, at the outset of the Law Course, are intrinsically valuable. They present a snapshot, the prevailing perspective of administering of law and justice as of 1962. Those lecture notes range over the contemporary and historical PNG constitutional structure, sources of law; principles covering the administration of justice; legal interpretation and construction of statutes and instruments.

The next set, (Lectures 13 to 30) developed aspects of Criminal Procedure, broadly adjectival law, but across an array of jurisdictional and functional settings that involved substantive elements.

The following set, (Lectures 31 to 53) was directed to specific criminal offences. An important feature of both these sets of lectures is the regular reference to the so-called Native Courts. Those Courts represented distinctive jurisdictions established in each of the respective Territories. Some of this material may now be obscure or not readily available; its presence adds to the value of the lectures as part of an historical record. The scope of the law course covering criminal and other jurisdictional procedures has collateral value. It is objective corroboration of the range and exactitude of judicial administrative demanded of kiaps in District and Sub-District administration. As Peter Broadhurst's summary of his forensic work demonstrates, many kiaps undertook substantial caseloads away from the main centres to which fulltime magistrates were posted.

A separate set of notes cover the content of 9 detailed lectures on the Law of Evidence. The selective but detailed coverage of the rules and law of Evidence observed in Australia and PNG at that time is also of some historical value. As of 1962, no Australian edited or written reference work on Evidence was available; all textbooks and references used for students at ASOPA or Sydney University Law School, were UK publications.

The final lecture from the substantive law module of the ASOPA course, Lecture 55, not paginated by Broadhurst, is a valuable and comprehensive outline of the statutory and administrative governance of Native Local Government Councils. That lecture is supplemented by a judgment of Gore J about onus of proof and evidence relevant to a Native Court imposing a fine for failure to pay Head Tax.

The donated materials are likely to be a relatively unique source of information about several aspects of course content and training orientation. A preliminary search for alternative sources, made it appear that only the ANU Pacific Archive retains several ASOPA related collections. One collection is a seemingly comprehensive coverage of *printed material*. It is not clear whether that description would exclude Roneo or typescript material. Another collection concerns the lectures in anthropology of Professor Read and others: "*The collection consists of typed copies of Dr Read's anthropology lecture notes for the Australian School of Pacific Administration (ASOPA). Also, contains the lecture notes of other academics for ASOPA courses including Marie Reay, Camilla Wedgwood and June Watkins.*"

There seems nothing in that archival collection directly about the ASOPA law course content.

[The 1962 ASOPA Long Course Law Lecturers and their sources.](#)

In 1962, the Principal of ASOPA in office since 1950 was distinguished social scientist, historian and author Charles Rowley. Jack Mattes, who took over as Principal from Rowley in March 1964, had joined ASOPA in 1952 as lecturer in law, on a staff that included Hal Wooten; by 1962 he was the Principal Lecturer in Law and responsible for the law modules of the course. Mattes, a University Medallist graduate of Sydney University Law School was a respected legal scholar: he later co-authored the consolidation of the Laws of Papua New Guinea for reception on Independence; he was Principal of ASOPA until 1971.

Under both Rowley and Mattes, ASOPA had an enviable record for fostering high quality scholarship and academic freedom. The Law Lectures notes comprised in the donation were only one component of the curriculum for course attendees

Anyone familiar with the style of lectures at Sydney University in the early 1960s would be astonished that ASOPA made available to its attendees such detailed and comprehensive lecture notes. Generally, Sydney University Law School students made their own longhand notes of oral lectures, as best they could, often sharing with others who couldn't or wouldn't take their own. Of course, those students were also more or less obliged to have their own copies of prescribed texts, a resource available to ASOPA attendees who visited its Library.

The 1962 ASOPA Long Course lectures and the studious entries by Broadhurst testify to a high degree of scholarship, on the part of who delivered the lectures, and at least in this case, the recipient of them. It would seem likely that there may have been a degree of cross-fertilisation or academic backup available to ASOPA staff.

An instance of that cross fertilisation can be found in the text-book references for Lecture NG 4 introducing Legal Interpretation. It lists texts available in the School Library; the first item listed is “Monahan, *Rules of Legal Interpretation*, being the notes issued at the Law School University of Sydney.”

One student from Sydney University has a clear memory of “Monahan” but no memory of copious notes being issued by Monahan or anyone else. Christopher Monahan had lectured in Legal Interpretation at Syd U Law School from 1941 through 1959, becoming Challis Lecturer in Legal Interpretation in 1955. Legal Interpretation was a subject taught to first year undergraduates; it was widely held that no one had been known to fail the exams; Monahan, well-liked for that reason alone, was known as “*Two Hoots*”, derived from his reflex response of telling students ‘Don’t give two hoots about that’ in reference to some aspect of the course raised by them. Even so, Monahan was a respected scholar; he became Chairman of District Court Judges from 1959.

Pages 45 to 92 of the donation are lectures about Legal Interpretation, inscribed with written case note summaries, interpolations, and much underlining. Manifestly, Peter Broadhurst, at the time a Patrol Officer, came away from his ASOPA training with a better understanding of the labyrinthine principles of legal interpretation than most of the students who meandered their way through the Sydney law School lectures of Two Hoots in the late 1950s.

1962 Long Course Participants.

Fortunately, there is still extant a record of at least most of those who attended the 1962 course. There are various sources for the attached photo including some reproductions of original copies. The one used here is in better shape than other options and is taken from https://exkiap.net/photographs/group_photographs/1962asopa/19620000wspel_asopa_01.jpg



Back row: L to R: Bob Lyons, R Hallahan, Peter Whitehead, Denis Fisher, John Coad, Chris Warrilow, Wilhelm Speldewinde, Mark Lynch,
 Middle row: Terry O'Donnell, Rob Deveral, Barry Downes, Bill Benham, Peter Broadhurst, George Cutts, Martin Cornhill.
 Front row: Bob Beck, John Irwin, R L "Basha" O'Connor, David Speakman, Frank Howard, Brian Robins, Richard Craig, Arthur Marks, Peter Power.

Index and Table of contents: ASOPA Law Course Lectures: 1962 Long Course, annotated by Peter Broadhurst.

Following the Introductory note about this donation to the PNGAA Collection and this Table, the first 19 sleeves of the Binders containing the donation are the typed **Law Index**

compiled by Peter Broadhurst. The Law Index details the main headings of each lecture. It uses the pagination developed by Broadhurst. That pagination is retained and extended for purposes of this text and Table.

After that Index, the Lecture Notes are set out in much the same order they appeared in three spring back folders held by the donor since 1962. In the hope that they may be better preserved, each lecture has been enclosed in a lightweight archiving sleeve, numbered to correspond with the ASOPA numbering followed in the Law Index, and marked with the commencing page number. The ASOPA ordering of the Law NG lectures has been departed from to add the 9 Lectures on Evidence after Lecture NG 54. Lecture NG 55 and Roneoed Court Report of a decision by Gore J are the final two sleeves at pages 640-683.

An exception to the ASOPA numbering, but adopting the donor's pagination system, is an **Introductory Lecture** outlining contents of lecture notes and scope of course: Divisions of Law; Case Law; Hierarchy of Courts; Distinguishing between authorities by reference to reasons for decision. The substance of that Introduction is summarised in the Table below, reproduced from Broadhurst's Law Index.

Topic	Page	Observation or "typed comment"
Introductory Lecture	1	
Scope of course	1	
Divisions of Law	1	Invites reference to texts including Glanville Williams, <i>Learning the law</i> ;
Crimes and Civil Wrongs	1	
Classification of Crimes	2	
Common Law & Statute Law	3	
Case Law	3	
<i>Ratio decidendi</i>	3	
<i>Obiter dictum</i>	4	
Law Reports	4	
Hierarchy of Courts: England and Australia	5	"Privy Council binding on Australia save for certain Constitutional cases"
Distinguishing of precedent	5	
Contents of Law Notes: additional unpaginated 13 page handout		Summarises content of each of 54 lectures numbered NG1-NG54 plus Evidence1 to Evidence9

After that Introduction, follow the individual lectures with titles, and the contents summarised below:

Australian Constitution NG1

7-26

5 pages of Roneoed lecture notes with longhand case notes and comments on Australian and PNG constitutional settings. The lecture gives a relatively compendious account of history and main functions of the Australian Constitution. That introduction is followed by 14 pages of notes covering the effective constitution and structure of government provisions for each Territory, in and pursuant to the *Papua New Guinea Act 1949-1960*; as at 1962, (pages 13 to 21). The lecture identifies among other matters the source in that statute

of the Administrator in Council, the Public Service, the Legislative Council, ASOPA. The last 5 pages of the lecture detail aspects of the *Legislative Council Ordinance 1951-1960*. At the time that Ordinance provided for 6 electorates. Each electorate was represented by two members. One was elected by every enrolled resident, of 12 months standing, above age 21 *who is not a native or an alien*. From 1960, the Ordinance added a second representative: a native member, elected by *unenrolled electors through a college made up of the natives appointed by each Local Government Council on the basis of one for each Council in the electorate in which the Council area is situated*

Nationality and Citizenship NG2

27-35

Eight-page Roneoed lecture note with limited interpolations. The lecture outlines law as to nationality, British subject status, the *Nationality and Citizenship Act 1948-1958*.

That outline is followed by three pages dealing with “protected persons”, a term used in the Nationality and Citizenship Act covering both indigenous Papuans, who were British subjects, and New Guineans who were “aliens”. The notes discuss the incidents of those differences in status; the application of principles of allegiance to the British Crown including the susceptibility of native protected persons to charges of treason.

Sources of Law in Papua New Guinea NG3

36-44

8 pages of Roneoed lecture notes, well annotated. The sources of colonial law are outlined as are the origins of TPNG law in Queensland, NSW and Commonwealth laws and statutes. For Papua the adoption of English law was regulated by the *Courts and Laws Adopting Ordinance 1888* (later 1889-1951); the main heads of reception of law and statutes under those provisions are spelt out.

For New Guinea, the *New Guinea Act 1920*, empowered the Governor General to legislate for that mandated Territory. The notes detail the hybrid sets of statutes and provisions adopted following that initial empowerment. Some provisions, notably the *Queensland Criminal Code*, corresponded with provisions applying to Papua but, until 1949, there were substantial differences between the two territories and their respective judicial administrations. The lectures provide a still useful conspectus of the rather complex reception of different sources of law applicable to one or other Territory prior to Independence

Legal Interpretation: NG4 to NG9

45-92

NG5 at pages 45-51, is a 6-page **Introduction and Rules of Evidence** lecture outlining the nature of legal interpretation as a process of ascertaining the meaning of any document affecting private or public rights. This lecture is heavily annotated with case note summaries. The reference books covered and said to be available in the ASOPA library include the lecture notes issued by Monahan QC, the long-term Challis Lecturer in Legal Interpretation at Sydney University Law School. The first lecture and case notes focus substantially upon principles of construction of statutes and legislative instruments.

NG5 at pages 52-56, **Language and the Law**, is a relatively abstract exposition of the difficulties posed by semantics especially in forensic settings. The analysis draws heavily upon articles by Glanville Williams, in effect discussing the meaning of meaning.

NG6 at pages 57-63, **Rules of Construction**, covers formal legal principles applicable where meaning is ambiguous or indefinite, starting with the Golden Rule: grammatical and ordinary meaning. The lecture is designed to familiarise students with and illustrate

application of Latin maxims such as the *eiusdem generis* rule, give words in context a like meaning with the context unless there is strong reason not to.

NG7, at pages 64-73, **the Anatomy of an Ordinance**, is a 9-page, very practical, primer for understanding local legislation with heavy emphasis on the principle of reading the Ordinance as a whole.

NG8, at pages 74-82, **The Interpretation of Statutes I**, introduces the Imperial and *Commonwealth Acts Interpretation Acts* and the Territories' *Ordinances Interpretation Ordinance 1949-1960*

NG9, at pages 83-92, **The Interpretation of Statutes II**, covers the principles and rules developed specific to the construction of statutes. Matters covered include the mischief rule; divining the intention of Parliament; Penal statutes; amending and repealing legislation; retrospective operation; directory and mandatory provisions.

General Principles of the Administration of Justice 93-123

NG10, at pages 93-100, **Publicity of Proceedings**, 7 pages of notes covering obligations to hold open court, numerous exceptions and special cases, contempt, publication of decisions and reasons. The notes are well annotated in longhand.

NG11, at pages 101-118, **Oaths, Affirmations and Declarations**:

17 pages of well researched and detailed practical guidance on the history, definitions and processes of administering oaths, affirmations and other related topics.

NG12, at pages 119-123, **Points of Law before Magistrates**, 4 page lecture which addresses a likely concern for lay magistrates faced with difficult points of law arising incidental to a matter, or raised by legal practitioners. The lecture addresses problems posed for field magistrates placed at disadvantage when a point of law raises a difficulty for them. General advisory briefing contains authorization to seek confidential advice from Crown Law. The lecture also sets out terms of direct advice from *Department of Native Affairs Circular No.287 of 1959*. The advice generally shows no anticipation of developments in legal principles concerning observation of natural justice requirements about disclosure of advice or information acted upon. The Circular quoted also refers to the desirability of observing the Judges Rules as to interviewing suspects; at the time, some field staff were placed in positions of being investigating police officer, prosecutor, and magistrate; perhaps unsurprisingly, the Circular makes no direct mention of preliminary cautions, (but see also Evidence 5 Lecture at 591-598). The extensive quotation in the lecture from a DNA Circular extant at the time gives the lecture additional historical interest.

Criminal Procedure NG13-30 124-324

NG13, at pages 124-127, **Criminal Procedure, Indictment and Summary Convictions**, is the first of 17 detailed lectures outlining the general course of events connected with the trial of

simple and indictable offences in the Courts of Petty sessions, District Court and Supreme Court and other jurisdictions arising in the respective Territories.

This first lecture introduces the basic classifications of offences, the tribunals by which they are determinable. The lecture gives a brief history of the classifications in the UK, Australia and PNG.

NG14, at pages 128-133, **Criminal Procedure, General Outline of Procedure**, is an outline of the process from information or indictment, through presentation, hearing, judgment and sentence for the respective court levels in Papua and New Guinea respectively. The respective legislative provisions for each Territory are identified.

NG15, at pages 134-142, **Criminal Procedure, Justices, District Courts and Courts of Petty Sessions**, examines the establishment, constitution and jurisdiction of the two inferior courts in each Territory exercising summary jurisdiction. This lecture spells out the provisions which vest appointed District Officers and Assistant District Officers with status and powers as Justices for the respective courts, explaining the hierarchy and roles, noting differences between the two Territories.

The lecture states it does not deal with *the special class of native offences dealt with by Courts for Native Matters and Courts for Native Affairs*. (Apart from provisions about tribunals sitting on Sundays or like days (at 291), The Law Course lectures do not give isolated or comprehensive coverage to the “Native Courts” for Papua and TNG. Those Courts were respectively conducted under the *Native Regulations 1939 and Native Administration Ordinance 1921-1951* and the *Native Administration Regulations 1924*.

However, aspects of the “native matters’ jurisdictions are touched upon *seriatim* in the course lecture curriculum. Without claiming to be exhaustive, references in NG and Evidence Lectures to aspects of Native Court jurisdiction include: tribunals sitting on Sundays or like days, at 291; laying of Informations, at 151; powers of Luluais and Village Constables to arrest natives at 160-161; issuance of summons and duties of members of Native Courts, at 174-175; warrants to apprehend and summons to witnesses at 181-182; jurisdiction and procedures for hearings, at 191-194, 203-207 and 219-221; statements from the dock, at 202; power of adjournment, remanding in custody, at 229-230; discouragement of judicial acts on Sundays, Good Friday or Christmas day, at 291; jurisdiction generally, penalties in Native Courts, fines, imprisonment and whipping as prescribed for natives assessed to be under 16 years of age, at 355-358; arson and setting fire to part of a plantation or a native’s own land without DNA officers permission, at 518-519; in Papua, pretence of holding Government office, or wrongful use of authority to gain personal benefit, at 547; use of opinion as to age or ‘native’ status, at 601: imposition of fines or imprisonment for non-payment of Head Tax, at 661 and 679.

NG16, at pages 143-152, **Criminal Procedure, The Information**: this 9-page lecture explores in detail the terminology, form, standing and technique of drawing up Informations and/or complaints in the respective Territories. This lecture cites almost exclusively the Papuan and the New Guinea Ordinances in force at the time, but the cases cited are drawn entirely from Australian federal, State or UK sources. Although no formal law reports for the PNG Supreme Court seem to have been introduced before about 1967/3/4, remarkably little use seems to have been made of decisions and judgments by members of the Supreme Court of PNG and its predecessor in each of the Territories. One reason for the relatively scarce use was probably the absence of formally published copies of judgments. No court reporting

system existed for most of the 60s. Judges took longhand notes of evidence, submissions, and their oral reasons for decision in their notebooks. Judgments in most criminal matters were delivered orally, *ex tempore*. A judgment might be typed up weeks later, but even then, usually, only if application was made for consideration of appeal, unless the judge himself thought the matter deserved wider notice as a precedent. A significant addition to that system was the case reporting pioneered by Crown Law Officer, Paul Quinlivan; he took responsibility, as “barrister-at-law”, for issuing semi-official case reports, cleared with the presiding judge and advocates. An example of one such report is to be found at page 679. The *Pacific Islands Legal Information Institute*, paclii.org, now sources online reports of various cases dating back to 1930, but generally post 1945. Some cases noted in this outline may now be available through that online service.

NG17, at pages 153-165, **Criminal Procedure, Arrest without Warrant**: This lecture explores in depth the methods of compelling people to appear before courts to answer criminal charges. Kiaps, members of the Department of Native Affairs and its successors, were commissioned as members of the Royal Papua New Guinea Constabulary, and hence members of the overseas or European officer class of the Police Force for purposes of powers of arrest. The conditions and constraints on using powers of arrest are spelt out carefully, with reference to the relevant Ordinances, and distinguishing between the powers of different levels of constabulary, Justices, and citizens

NG18, at pages 166-175, **Criminal Procedure, The Summons**: the content of this 10-page lecture is concisely summarised in a green-biro longhand note on the reverse of page 174. The student’s summary mentions the requirement in relation to Native Courts, the circumstances generally governing the issuance of summons, their form and contents, provisions for amendment, reissue of successive summons, service requirements, the availability of verbal summons in Native Courts.

NG19, at pages 176-182, **Criminal Procedure, Warrant in the First instance**: 6-page relatively lighted annotated note about powers affecting issuance of bench warrants and the like by Justices in relation to different categories of offences, and in Native Courts.

NG20, at pages 183-194, **Criminal Procedure, The Hearing of Simple Offences I: Appearance and Plea**: this 9-page set covers the appearance and representation of various parties including by counsel in the respective courts. A longhand case note on the reverse of page 183 sets out the facts and findings in *Blyth v Carter* an appeal decision of Mann CJ. This appears to be the first instance of citation of a decision by a Judge of the Supreme Court of TPNG. The decision dismissed an appeal against a conviction for a traffic offence where the defendant appeared only by counsel. He contested that the person summonsed was the person who committed the offence. The lecture is a primer on matters such as taking pleas, *ex parte* hearings, available pleas, and counterpart jurisdiction and procedures in Native Courts.

NG21, at pages 195-207, **Criminal Procedure, The Hearing of Simple Offences II**: this 12-page note, heavily annotated, covers the course of a hearing from assurance as to jurisdiction, legal representation, right of audience, order of address and calling of witnesses joint hearings, withdrawal of complaint, participation by bench in conduct of cases and like points arising. The last 5 pages of the lecture are concerned with the jurisdiction of Native Courts in each territory, the course of proceedings, and the role of the member constituting the court. Again, this lecture is notable for the longhand case note at reverse of page 202. In the 1956 decision, *Mago v Kori*, (NG21 p9), Gore J, a senior member of the Supreme Court of TPNG, held that the Member presiding over a Court of Native Matters had erred in

allowing cross-examination by himself and the complainant of a defendant who made a statement at the conclusion of the complainant's case. Gore J held the statement was made from the dock; defendant is not sworn and cannot be examined. That case, applicable to the Papuan CNM would appear not to have bound the TNG Court of Native Affairs, (See lecture NG22 at p220). Mr Broadhurst's notation shows that Crown Law Officer, PJ Quinlivan, had circulated the decision with a comment to the effect that the decision did not affect the duty of the magistrate to make clear any ambiguity in what the defendant says from the dock.

NG22, at pages 208--221, **Criminal Procedure, The Hearing of Simple Offences III:**

Witnesses, Depositions and Effect of Irregularities: this 13-page lecture covers the power to subpoena or summons witnesses, including bench witnesses, attendance money, non-responsiveness, examination on oath, competency, depositions and treatment of defects in substance or form. The last 3 pages cover hearings in Native Courts, affirmation of witnesses, obligations to call parties, weighing of evidence.

NG23, at pages 222-230, **Criminal Procedure, The Hearing of Simple Offences IV:**

Adjournments: this 8-page note goes in detail to the power and discretions applicable to adjournment of court hearings. The lecture revisits aspects of adjourning to seek advice on points of law from Crown Law and the necessity of the Magistrate adopting any advice as his own, "*not quoting the Crown Law Officer as his authority*".

NG24, at pages 231-249, **Criminal Procedure, Preliminary Examination in Indictable**

Offences---- Procedure at Hearing: this 18-page lecture is noted by Broadhurst as having marked the end of 'first term'. It deals extensively with the function of preliminary hearing of committal proceedings for indictable offences. It is relatively unmarked by Broadhurst, apart from several case notes. The probable reason is that Lecture **NG25 Procedure in Criminal Jurisdiction** (page 250-254), was a 5-page coverage of the topic taken from a booklet prepared in 1930 by Justice Gore for officers of the Territory of Papua. It is closely marked and highlighted, certainly a boon for both students and officers in the field.

NG25 Procedure in Criminal Jurisdiction (page 250-254): This lecture is a relatively valuable and perhaps rare instance of the published work of Justice Gore, intended as a form of instruction for field staff dealing with subordinate jurisdiction criminal matters.

On the first page of the lecture the following note acknowledges: "*This was originally prepared by His Honour, Mr Justice Gore in 1930 for distribution in the form of a booklet to officers of the Territory of Papua. We are indebted to Mr Justice Gore for his kind permission to reprint this material for distribution to students of ASOPA.*"

As might be expected, the booklet is a straightforward outline, in relatively simple language, of the procedural steps and practices to be observed by Magistrates dealing with indictable and summary offences.

NG26, at pages 255-265 **Criminal Procedure, Summary Trial of Indictable Offences:** 10-page lecture dealing with magisterial jurisdiction in relation to thefts and property offences, juveniles and similar matters able to be dealt with in summary trials under the Criminal Code; the lecture is well annotated and has several longhand case notes, none of them from TPNG sources.

NG27, at pages 266-282 **Criminal Procedure, Bail, Recognizance and Committal:** well-annotated and casenoted 16-page note about the process and forms associated with committals and release from custody broadly. Provisions and forms from the *Justices Ordinance* 1912-1959 and the *District Courts Ordinance* 1924-1959 for Papua and New Guinea respectively are documented for ease of reference. The lecture covers what would

be a significant component of the field magistrate's working routine. Notably, none of the cases digested are from the local judiciary.

NG28, at pages 283-288 **Criminal Procedure, Indictment without preliminary examination:** this short lecture covers the relatively rare use of ex officio and like indictments and the associated requirements for Justices to process ancillary steps and measures.

NG29, at pages 289-291 **Criminal Procedure, Proceedings on Sunday:** the history of prohibition of judicial acts on Sundays from the common law to contemporary allowance under local legislation is traced in this 3-page lecture. The restriction was virtually removed but Sunday sittings are discouraged. There seemed no direct provision in relation to Native Courts, but the same practice was encouraged.

NG30, at pages 292-324 **Criminal Procedure, Coroners:** The specialised jurisdiction of Coroners was covered for both Territories by the *Coroners Ordinance 1953-1957*. This 32-page lecture is the last of the series on Criminal Procedure, (perhaps the reason that the last page of it carries Peter Broadhurst's signature). The lecture is especially notable. Its existence is a reminder of what was a significant intermittent burden of inquiry on some field staff obliged to perform as Coroner or to provide investigatory support across 4 jurisdictional fields: sudden and unexplained deaths, origins of fires, cause of disappearance of missing persons, and lost or concealed treasure. District Officers, Acting DOs and Justices of the Peace were ex-officio Coroners. The legislation was interpreted as encouraging inquests into certain deaths, notably deaths in custody and death of any Administration Employee, (at 302).

The lecture spells out the functions and powers of Coroners; the precedent and forms stipulated in the legislation are reproduced. It seems likely to have been a useful primer for kiaps required to undertake the task.

Criminal Law NG31-54

325-556

NG31, at pages 325-326 **Criminal Law, References:** Brief note explains legal reference abbreviations and text sources by reference to author and edition.

NG32, at pages 327-331 **Criminal Law, History of the Criminal Code:** This 5-page lecture is a scholarly traverse of the history and antecedents of the Criminal Code adopted for TPNG from the Queensland model originally enacted for that State from 1901. It explains the work done by Sir Samuel Griffith in drafting the Queensland code. Although not mentioned in the lecture, Justice Gore was proud of having been one of Griffith J's Associates. The lecture explores the relative singularity of using a statutory code. It contrasts several common law countries and States of Australia which had not adopted codified laws.

NG33, at pages 332-338 **Criminal Law, The Interpretation of a Code:** This introductory material explores a relatively abstract but empirically important question. To what degree can the language of the code be departed from by reference to decided cases about it or to the state of the common law prior to or notionally corresponding to provisions of the code? Probably a collateral purpose of the lecture was to acquaint students with the concepts and terminology of doctrines associated with criminal law generally but embodied in the Code to be applied. The conclusion arrived at has cryptic ambivalence: *It seems clear that the difficulties in the relationship of the Code to the previous law have not been finally resolved, and it will be convenient for us to leave our judgment on the question until discussions of*

particular sections of the Code have illustrated the ways in which the common law in fact supplements and influences the interpretation of the Code.

NG34, at 339-344 **Criminal Law, Scope of the Criminal Code**: This short lecture spells out the exceptions to the apparent general coverage of the Criminal Code. It starts with an extract of a letter from Sir Samuel Griffith to his AG. He explains the matters he saw as excluded. The letter was at one time reproduced in the Introduction to the textbook about the Criminal Code of Queensland, (Carter). This lecture conveniently lists 8 categories of exclusions or exceptions of criminal matters from the operation of the Code, at 340. At the time, because of the reception of British common law and statutes into Papua, the exceptions could prove to be significant; however, for practical purposes of field staff most were more hypothetical than substantial in what was demanded of them in normal work.

NG35, at 345-358 **Criminal Law, Parties to Offences and the application of the Criminal Law and punishment. Parties to Offences**: the classification of possible perpetrators. This 13-page lecture goes in detail to who may be charged with commission of an offence, viz. the person who does the act, those who aid in the act directly or by omission, those who procure or counsel commission of the offence, and accessories after the fact of the offence. The classification of potential offenders was an important focus for field staff faced with many situations where it was difficult to isolate active participants from collaborators in a killing or raid. Broadhurst's longhand case notes include an High Court appeal from a TPNG Supreme Court decision of Justice Bignold. The HCA ordered a retrial after Bignold J, applying s8 of the Criminal Code, convicted two men. The Judge held that a common purpose could be inferred from the fact that first one of the accused had lodged 4 spears in the deceased, followed by the other who then lodged his 4 spears in the deceased. The HCA held evidence and lack of findings on what was in evidence, did not justify the bare application of S 8. The matter was sent back for retrial; (*Sirinju-Biagwei v R [1962] 36 ALJR 9*).

The lecture recites the various punishments allowed under the Criminal Code; at the time the death sentence was prescribed for several offences, as was whipping; deportation of a native offender was also permitted.

The last 4 pages of the lecture spell out in detail aspects of the jurisdictions of the Native Courts. The jurisdiction of each of those Courts expressly applied only *as between natives and over natives*. The penalties able to be determined were not to exceed a fine of 15 pounds, in default 6 months hard labour; imprisonment for a period of 6 months; or both the fine and 6 months hard labour. For natives whose age did not, in the opinion of the Court, exceed 16 years, it was open to the court to impose a whipping, not to exceed 8 strokes in the case of those older than 14 and 5 for those less than 14. So far as one former member of the public Solicitor's Office is aware, no instance of an order for whipping came to his notice between July 1961 and late 1968.

NG36, at 359-363 **Criminal Law, Criminal Responsibility I-Common Law**: This is the first of three lectures addressing the dependence of criminal guilt for conduct upon the presence of guilty mind or intention, wilfulness of conduct or lack of mental capacity to form a guilty intention. This first lecture visits the notion of *mens rea*, the common law reasoning around determining the presence of guilty intention from the facts of a case.

NG37 at 364-374 **Criminal Law, Criminal Responsibility II- Under the Criminal Code**: The notes for this lecture are much more heavily scored with annotations and case notes; Kiaps in field situations were regularly required to assess, make determinations about intent and the qualifications of criminal responsibility. Broadhurst also marked "onus of proof of

intention” as a possible exam question. At 366 and following, the lecture discusses S23 of the Criminal Code. That section excuses an act or omission that is an accidental act, or an event that occurred by accident. The excuse was commonly invoked in TPNG cases where death followed a rupture of the spleen brought about by a blow to the deceased’s abdomen, a common occurrence in areas where endemic malaria generated a high incidence of enlarged spleens. The notes cite at some length a passage from a judgment of Mann CJ in *R v Diru-Kumunga*. The citation spells out that any act or omission that causes death is culpable unless the act occurs independently of the exercise of will by the accused, or unless the event of death is accidental.

NG38 at 375-380 Criminal Law, Criminal Responsibility III – Insanity and Intoxication: This lecture is a continuation of the analysis of qualifications upon criminal responsibility that stem from insanity or intoxication, related questions about onus of proof and effects upon trial or verdict. The lecture makes no reference to any local cases of pleas of insanity. In matters before the TPNG Supreme Court, defence counsel were disposed to accept that raising the plea was unduly problematic. There was virtually readily available forensic mental health evidence. Moreover, there seemed no plausibly available mental health treatment should a plea result in the accused being ordered into safe custody in a place of confinement at Her Majesty’s pleasure. Most accused about whose sanity counsel may have had some doubt, seemed sane enough to prefer pleading guilty to an offence for which there would be a finite sentence of imprisonment.

NG39 at 381-385 Criminal Law, Criminal Responsibility IV: This lecture covers the several exceptions to or exclusions of criminal responsibility, immature age, judicial privilege, execution of law, self-defence coercion, and the like.

NG40 at 386-397 Criminal Law, Provocation, Self-Defence, and defence of property: In this obviously well studied lecture, the circumstances which make a use of force lawful are examined in detail, with several references to TPNG judgments and reasoning. Provocation was a very commonly raised defence against the indictable offence of wilful murder, aimed at securing a verdict on the lesser charge and penalty for manslaughter. A careful review of principles, judicial analyses and academic articles was capped by enjoinders: *Students should carefully study the Territory cases listed*. The cases mentioned, in some instances reported in digest form in the lecture, are: *R v Rukoruapu of Lupila*; *R v Ruawabe, son of Pala*; *R v Hamo of Mikima*; and *R v Kauba of Baroma*, a decision of Mann CJ. That last offers a fair indicator of the style and character of Mann CJ’s analysis of the application of the Criminal Code to the different social settings of the society from which it evolved. He set out his reasons for denying the lesser verdict in a payback killing motivated by reaction to a third-party provocation:

If the Court were free to evolve a Common Law basis for the operation of the defence of provocation suitable for the primitive state in which many of the natives of the Territory are at present living, and indeed required by circumstances to live, it might appear that the established practice of striking back against the nearest clan relative ought to be recognised as carrying a different degree of criminal responsibility from Wilful Murder, and it might be thought that the penalty prescribed for Manslaughter carried sufficient sanction to lead the people to a more advanced standard; but in applying the provisions of the Criminal Code as they stand,

there seems to me to be no justification for going outside the terms of section 268 for a definition of provocation'

NG41 at 398-404 **Criminal Law, Attempts:** the lecture offers a careful dissertation on what constitutes an attempt to commit an offence, exposing the guilty party to the same penalty as if the attempt had succeeded.

NG42 at 405-413 **Criminal Law, Offences against the Person- Duty to Preserve Human Life and Health:** Under this well marked-up topic, the lecture addresses circumstances in which the law imposes on one person a positive duty to act in a particular manner towards another, attaching criminal responsibility for causing consequences which result to the life or health of the other person. The topics covered include neglect of a helpless person, abortion, criminal negligence, and the defence of accident under S23 of the Criminal Code. Again, the lecture commends a close study of an unreported case *R v Diru-Kumunga*: Chief Justice Mann held guilty only of assault, a teenager who had struck his father with a punch that caused a ruptured spleen resulting in death; effectively by that decision Mann CJ distinguished and departed from what he said had been *a widely held view that section 23 about accident does not apply to cases of manslaughter*.

NG43 at 414-425 **Criminal Law, HOMICIDE, the Unlawful Killing:** this is the first of a sequence of lectures about various aspects of homicide; the object of the first being to consider in what circumstances one person may be said to kill another and in what circumstances such killing is unlawful. After dealing with the need for **a death** of a person to be established, and **identified with an act causing it**, the notes then detail several circumstances in which a killing may be lawful. Viewed in isolation, the listing of such matters as using force in suppression of riot, for preventing a breach of peace, in making arrest, in domestic or school discipline, are chilling reminders of the scope of lawful authority constrained mainly by necessity that the forceful conduct be "reasonable".

NG44 at 426- 436 **Criminal Law, HOMICIDE, Wilful Murder, Murder, Manslaughter and Related Offences:** this well-marked-up lecture deals with the peculiar characteristics of each of the main forms of unlawful killing. It works through the hierarchy of unlawful homicide, from Wilful Murder to Infanticide, spells out the elements of each class of offence, carefully distinguishes each offence and the application of concepts such as attempted homicide and the alternative verdicts that may be available.

NG45 at 437-442 **Criminal Law, Proof of HOMICIDE:** this lecture, noted as being about an "exam" topic, addresses what would be a demanding and important area of activity for district administration field staff. In many districts it fell to patrol staff to gather evidence sufficient to sustain a charge and verdict of homicide. The matters covered in the lecture commence with proof of death, the identity of the deceased, confession or admission of facts by the accused, proof of killing, the use of dying declarations, proof of intention and requirement for there to be corroboration of some classes of evidence. The lecture is not quite a primer, but it would have been a useful aide memoir.

NG46 at 443-451 **Criminal Law, Offences relating to Childbirth:** although this lecture sets out to deal with 7 types of offences relating to childbirth, starting from the history of 17th century law in Britain, five of the 9 pages and all save one of the longhand case notes are concerned with aspects of attempting to procure abortion, procuring miscarriage and similar offences using 'noxious things. If decided cases or routine listings of indictable offences before the TPNG Supreme Court is any guide, charges of infanticide involving indigenes were almost unique, matters involving abortion even rarer. That is not to say that

within community cultures there were not relatively advanced techniques for bringing about the death or non-delivery of an unwanted or culturally damaging child.

NG47 at 452- 456 **Criminal Law, Misconduct with regard to Corpses:** this four-page lecture note, about the criminal misdemeanour of interfering with a corpse, appears to have attracted little attention from the student. The note may have some interest insofar as it reproduces extracts of *Native Administration Regulations* prohibiting the burial of bodies under houses; and a requirement for Doss to require the marking out of suitable sites for a burial ground for each village.

NG48 at 457-491 **Criminal Law, Sexual Offences, Aggravated Assaults:** to this point in the course; It examines two classes of offences of a sexual character: those prohibited even though the parties participate voluntarily; and those which are criminal only when done to a person without consent. The first 7 pages of the analysis deal with the crime of rape, identifying 6 elements of the offence that must be shown. There seem to have been no TPNG decided case citations. The account of the elements and requirements is in marked contrast with changes in Australian law since 1960. The remainder of the notes work through indecent assaults on females, carnal knowledge, including carnal knowledge of any person against the order of nature, Incest, defilement, procurement. The comprehensive coverage of the offences of a sexual nature does not appear to have been a heavy focus for the student after the section on rape, a relatively frequent offence appearing on Supreme Court lists.

NG49 at 492-502 **Criminal Law, Unlawful Assemblies, Breaches of the Peace, and Riot:** a longhand note at the top of this lecture, reinforced on the last page of it, indicates the topic is *not to be examined upon*. That may account for the fact that, apart from the definition of unlawful assembly and riot, the notes are almost entirely unmarked by student hand.

NG50 at 503-513 **Criminal Law, Assaults and Violence to the Person:** this topic was noted as being a possible exam question, particularly linked in with earlier sections concerning criminal procedure and sexual assaults. It deals extensively with the identification of assault, the requirement for application of force, the role of consent and the gradations of assault from minor common assaults to serious assaults occasioning previous bodily harm.

NG51 at 514-519 **Criminal Law, Arson:** also apparently untouched by student hand, this note draws attention to circumstances in which acts that injure property are unlawful. The last two pages of the notes are directed to Native Court offences: thus, setting fire to a native owned cultivated garden, building or tree; or setting fire to part of a plantation. Curiously, it seems that under the Native Regulations and Native Administration Regulations *a native desiring to set fire to any portion of his own land could not do so without first obtaining the permission of a DC, an ADO, or a Patrol Officer.*

NG52 at 520-534 **Criminal Law, Stealing and Receiving Stolen Property:** this 14-page lecture about one of the oldest offences relating to property provides a comprehensive definition of the offence and the main elements of it. The bulk of student notation is confined to the definition of stealing. The note also details provisions applicable to Native Courts prohibiting stealing or receiving stolen property. Any native finding property was obliged to inform the Luluai of his village who, in turn, was obliged to inform the District Officer or Patrol Officer, in default of which an offence.

NG53 at 535-547 **Criminal Law, Robbery, Extortion and Burglary:** This 12-page lecture deals with the main set of offences concerned with stealing with violence or use of threats. The notes were marked as not examined upon and are lightly annotated. At 547 a brief section on Native Courts, refers to offences under the Papuan *Native Regulations* of a native who

pretends to be in the service of the Government; and, of a Village Constable or any other native upon whom the Government has conferred authority, using it wrongfully to get any property or benefit for himself.

NG54 at 548-556 **Hints for Advocacy:** This 8-page lecture, also not examined upon, and (pagination apart), seemingly untouched by human hand since 1962, declares itself to be a brief summary of points that may be helpful to students. It then runs through such matters as, examination of witnesses at the trial, examination in chief, cross examination, matters affecting testimony such as the demeanour of witnesses, refreshing the memory of a witness, necessity for corroboration, and discouragement of indecent questions.

Law of Evidence

557-639

Evidence 1 at 557-565 **Introduction to the Law of Evidence:** this 9-page lecture commences the 82 pages covering 9 lectures of evidence many of which are more heavily annotated and case-noted than any other section of the course. The case-notes vary between handwritten and typed interpolations pasted in the notes. Those extra pages were not included in the pagination adopted by Peter Broadhurst; they are stored in the plastic sleeves in the lecture to which they were attached or inserted. This first lecture indicates that the intention is not to cover the whole of the law of evidence *but only those parts necessary*. The headings cover: Judicial Notice, doctrine of *res gestae*, the hearsay rule, opinion and character evidence, documentary evidence, presumptions and burden of proof, competency and compellability of witnesses. The introduction, at 557, lists the statutory sources of the Law of Evidence in the Territory. The texts to which students are referred are: *Phipson on Evidence 10th Edn.*; *Best on Evidence 12th Edn.*; *Cockles Cases and Statutes on Evidence*; and *Halsbury, Laws of England, Vol. XIII, p527*.

Evidence 2 at 566-574 **Res Gestae and Evidence of Similar Facts:** the 8 pages of this heavily annotated lecture on a difficult and complex topic are supplemented by about 9 pages of handwritten and typed case extracts and digests, none of them from TPNG courts. The emphasis of the lecture is on the necessity that evidence tendered must be of facts **relevant** to the issue being tried; the doctrine of *res gestae* is summarised as requiring that for evidence to be admissible it must be about acts, omissions, declarations, and incidents which constitute, or accompany and explain the fact or transaction in issue.

Evidence 3 at 574-576 **Hearsay:** the introduction to the complex rule and set of exceptions called the hearsay rule is contained in three pages broadly introducing the next two lecture headings.

Evidence 4 at 577-590 **Exceptions to the Hearsay Rule:** the 14 pages of this lecture about exceptions to the hearsay rule are heavily annotated and interleaved with case notes. Although, none of the cases are drawn directly from TPNG Court decisions, in relation to depositions of witnesses, prior statements in transcript and the like, the notes at page 588 ff. reproduce provisions from the *Justices Ordinance* and the *District Courts Ordinance*. The students' close attention to the detail of rules determining admissibility or not of certain evidential materials is well justified having regard requirements that kiaps would face in working up cases across many aspects of field administration.

Evidence 5 at 591-598 **Admissions and Confession:** this 7-page lecture about admissions and confessions, as another exception to the hearsay rule, is also carefully annotated and interleaved with typewritten extracts of decided cases and some handwritten notes of

Australian cases. There is no reference to any local decision. Quite importantly at page 597 the note sets out *the rules formulated by the English Judges as to the questioning of accused persons*. A long hand note at the end of that citation observes that the rules have no force in law but are accepted by the judges at their discretion.

Evidence 6 at 599-604 **Opinion and Character:** this lecture generally develops the rule that opinions are generally inadmissible in proof of material facts but goes on to address some exceptions. Again, the lecture note is interspersed with longhand and typewritten case notes. Significantly, although no local case law is cited, there are several instances drawing upon Territory legislation restating common law principles or departing from the general rule. Thus, at page 601, in relation to age and status as a native, part-native, or European, reference is made to the *Evidence and Discovery Ordinance* (Papua) and the *Evidence Ordinance* TNG, allowing the tribunal, *having seen the person, to determine the question*.

Evidence 7 at 605-620 **Documentary Evidence:** this is a 15-page outline of what is said to be *a great deal of law on documentary evidence, only the main parts of which will be covered*. Peter Broadhurst notes at the outset that the most important points concern sections on *stamping, alteration of documents and signatures*. The lecture attracted nowhere near the same amount of marking up or case notes.

Evidence 8 at 621-625 **Presumption and Burden of Proof:** this 5-page lecture covers a useful range of presumptions of law, some of which are rebuttable. It is notable also in the section addressing burden of proof for the handwritten reference to the July 1960 decision of Justice Gore in *Tokavar and Others v Vunadadir Local Government Council*. That decision was an appeal against a fine for failure to pay tax to a local government council. Gore J addressed questions of proof, held that the Village Book in which the census is recorded is not a public document and ruled that the onus of proving liability for the tax rested upon the Council. The appellant was represented by Dudley Jones, a well-known Rabaul private practitioner, the respondent Council by NH Pratt from Crown Law. The report of the decision was published by P J Quinlivan, *from material supplied by the appeal judge and the Supreme Court registry*. The text the copy of the decision is appended to folder setting out **NG55**, concerning Native Local Government Councils, at page 679.

Evidence 9 at 626-639 **Competency and Compellability of Witnesses:** this is the last of the lectures identified with the ASOPA Law course. Understandably, this topic seems to have been less touched upon by the student than most of the earlier lectures. In essence it distinguishes between competency given to give evidence and the compellability of individuals to do so. It expresses the general rule that all persons are both competent and compellable but then deals with exceptions such as the privilege against self-crimination and non-compellability of evidence from spouses. There are several case notes interleaved, a couple of which handwritten.

Native Local Government Councils. 640-683

NG55, at 640-679, **Native Local Government Councils:** this 39-page lecture is one of the longest of those included in the donation. However, there is no marking up of the lecture by the student: his pagination stopped at the last of the Evidence lectures. For purposes of this Table and Index, pagination has been added to the lecture and to each of 5 double-sided pages of the 9-page report of a TPNG Supreme Court decision relevant both to local government Head Tax and the burden of proof in evidence.

Lecture NG55 about native local government councils was intended to be detailed discussion and interpretation of the recently enacted Ordinance under which Councils were established from 1960 onwards. That updated legislation, the *Native Local Government Councils Ordinance 1949-1960*, would have been relatively fresh fodder for students. Many native councils were established only after passage of that legislation although the Appendix at page 664 shows that a substantial number of councils, including Rabaul Council, were established in the 1950s under the same Ordinance prior to its 1960 amendments

The lecture is a comprehensive outline of the legislation, its establishment pursuant to the *Papua New Guinea Act 1949 1960*; the material covers the jurisdictional scope of Councils, the order of their establishment, and provisions as to Council management, bookkeeping and taxation expressly a form of Head Tax. The history of Native Local Government Councils, including the hostilities that arose in the Gazelle Peninsula over the reconstruction proposed for the Rabaul Council area, and the subsequent emergence of Provincial Governments has attracted much interest. That background suggests that this document, taking a snapshot of the legislation and functions in about 1962, will have continuing historical value.

The same may be said of the case report that is added and set it out at 679 683 of the donation. It is a Roneoed copy of a decision of Mr Justice Gore, sitting in the Appellate jurisdiction of the TPNG Supreme Court in Rabaul in July 1960. It is a 9-page analysis and determination upon arguments presented on appeal against a successful prosecution for failure to pay Head Tax to the Vunadadir and area Local Government Council.

Tokavar and Ors v Vunadadir Local Government Council: per Gore J; 1 July 1960 at 679-683.

P.R.M.

8 November 2021