Paul Quinlivan's Snapshots

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Introduction

In late 1954, soon after Professor Elkin, the editor of Sydney University's anthropology journal Oceania told me he wanted to publish my article "AFEK of Telefomin" but was experiencing difficulty getting Canberra's permission (it finally came out in the joint Sept-Dec 1954 issue, p. 11), Chief Justice Sir Beaumont Phillips invited me to dinner at his home to meet another professor, Professor Ringrose from the University of Queensland. Ringrose told me that he had written to TPNG students doing Law externally with his university, seeking suggestions as to a likely person to be made "tutor", and they had named me. I said that I was very flattered but I was only a "C" Pass student and, in any case, I did not see how anyone could tutor people scattered throughout the Territory. He explained that it would only be a stopgap measure for two or three years and that "letting my name go forward" was the important part. And, since he also said that, if I agreed, students would obtain various benefits which they would not otherwise get, I said OK. He then said, "If you could produce 'local materials' for the students that would help". That was a horse of a different colour and, because of what was happening to my AFEK article and other unpleasantries, I was jack of laboriously typing things that got nowhere, so I prevaricated saying that the law in TPNG was, with few exceptions, the same as where I came from (WA). Sir Beaumont then intervened. For brevity I will refer to him as "Monte" from now on, but I would point out that, as is clear from my article on him at page 214 of vol 11. of Australian Dictionary of Biography, he was a great man and such usage does not betoken disrespect. Monte chipped in saying, "True, Quinlivan, but our administration of the law is much closer to the people, so you have a wide field there. For instance, how many times, in WA, would you have the Accused wandering out of the dock because he wanted to help the Court? And how often would a lawyer in WA have to face the problem you had at Samarai?" He also said that he would handle the typing and distribution himself – which he did; all I had to do was hand in the drafts to the court – and he arranged with all the judges for me to have access to their private notebooks. So, since I had quite a collection of items already available, the project began immediately.

To explain why I had a collection of items available I should mention that my arrival in TPNG was the result of Canberra panicking because, having failed to listen to repeated pleas from Port Moresby for more Crown Prosecutors, the backlog of cases was threatening to affect political stability in Australia. In most "colonial" countries members of the dominant race normally escaped being hauled before the criminal courts but in TPNG, in November 1951, while Warren Balfour was being tried by the Supreme Court at Finschhafen, Peter Jameson was awaiting trial before the Supreme Court at Kavieng, the Reverend Johannes de Roo was awaiting trial at Manus, Francis Terence Murphy was awaiting trial at Rabaul and Michael Gregory was awaiting trial at Lae – to mention only those on my own first circuit. It was scandalous by any standard and Canberra's reaction (and the fact that they flew me from Perth to Moresby without any attempt to tell me anything about the place) gave me a false idea of what the administration of justice in TPNG was like. It also meant that, being specially imported to be the saviour, I was treated royally when I arrived – met at the airport by the Deputy Crown Law Officer, welcomed by the Chief Justice at morning tea, had tea and scones next day at Government House, dinner with Judge Gore, was taken on a tour of Samarai and Rabaul – but this, unfortunately, could not be sustained because, having solved their immediate problem, everyone forgot to tell Rabaul that they had abandoned the plan to fly in a senior barrister from Sydney and were sending me instead. So, while I was seeing the sights, Jack Crockett, the Chief Clerk, was giving my room at the Cosmo Hotel to the senior barrister who had come anyway! I did not discover the mix-up until the District Commissioner had disappeared home, thinking I was someone Monte had met on the plane and was treating to a free view of Rabaul, and I had to beg a meal from the Admin. Mess (after it had closed), and a bed in the Travelling Officers Bungalow. I also fell, totally sober, into a stormwater drain and got covered with buai-impregnated mud when I tried to find my way back to the TOB in the dark. It was the worst, the loneliest night I have ever spent. I could not sleep because I was seething with resentment and the more, I told myself that I needed sleep if I was to survive my first day in Court in TPNG, the more sleep eluded me. Then I sat down and wrote the events of the day and found that 99-point 9 percent had been

interesting and good and, since the blackness lifted, I resolved that, each night, I would write down the events of the day.

In late 1954 it seemed providential that I kept to that resolve. Now that things have changed so much, it is even more so because what I wrote provides, in snapshot form, a startling picture of what the administration of justice was really like – and what it should still be had things been allowed to progress the way Monte and Judge Gore planned. These snapshots will, I hope, bring back proud memories to those who served in TPNG at the time and explain to their descendants just what it was that made TPNG so different from other dependent territories.

Sell-out in Manus, 1946-48

Paul Quinlivan was prompted to send us the following after reading Brian Jink's 'Help Wanted' notice regarding" an episode in Manus in 1948 when police under Commissioner Grimshaw were sent to arrest some Chinese labourers for assaulting a villager". In his covering letter Paul said that, with this and other articles, he wanted to let people know the marvellous work the Kiaps of old did.

The case Brian Jinks referred to in Una Voce No 2, 1998 (p23) was R. v. Chow Hung Ching and Si Pao Kung about which I published three reports when I was asked, in 1954, to produce 'local materials' for TPNG students studying Law with the University of Queensland. Brian asks only about Colonel Grimshaw, whose role was very minor, but the case has its proper place with two other events which are recalled by the recent pilgrimage to Kokoda.

The first was Blamey's sell-out (and public 'shaming') of those Australian troops who had broken the Japanese advance on the Kokoda Track because he thought MacArthur was displeased with them, whereas a phone call would have shown that MacArthur merely wanted to urge them on: see A Strange Encounter at Ower's Corner by Robert Darby and Elena Taylor in the April 1998 issue of the official magazine of the Australian War Memorial, Wartime (p.42).

Sell-out No. 2 is mentioned at pages 34-40 of that same journal. It was the policy, detailed by Gavin Long at page 40 of The Final Campaigns (1963), of playing down the part which Australians played in the defeat of the Japanese, in all areas, so that America could be given credit.

Chow Hung Ching refers to Sell-out No. 3 because it reminds us of the de facto surrender of sovereignty over Manus, in 1946-48, to Nationalist China, and the way that sell-out was broken. In the normal course of events, I would not have reported Chow Hung Ching because, for Law students, I was only interested in (a) notable defences or short-cuts, (b) exceptional difficulties or (c) "local prunings of the law". I had, at Uni., read the High Court case at 77 (1949) CLR 449 but it contained nothing of interest. Instead, it was a purely academic exercise where, to quote p. 451: "The appellants were members of a military force of a friendly foreign Power, which force was in the Territory with the consent of the Commonwealth Government and, by reason thereof, the appellants were not subject to the jurisdiction of the Supreme Court." It was only when the trial judge (Chief Justice Sir Beaumont Phillips – "Monte" to everyone) gave me his private notebooks that I saw that this misrepresented the facts and that, in truth, there were wonderful examples here of both (a) and (b).

I had always been intrigued by the fact that, in planning hi circuits, Monte always ended at Wabag where he and Dick White would sit around a blazing fire, silently comfortable in each other's company. Not that Monte was not comfortable in everyone's company, but the fact was that he and all the judges were, in those days, treated like Royalty wherever they went so we never really saw him "without his mask". With Dick White it was different and I think that part of the reason was that Chow Hung Ching epitomised the thing most dear to his heart, his hope (expressed in his speech of 12 February 1952, for instance) that he would someday see Papua New Guineans trained to be Kiaps.

The point of the case was: Who would defend the indigenous inhabitants of Manus now that sovereignty had been given to a regime which played Cowboys and Indians with them, as if they had no rights? It was a

variant on a theme which Monte harped on – for instance in his Reichstag Fire speech where, by rigging the evidence, the Nazis destroyed the German Courts, thus making their victory a foregone conclusion because ordinary people no longer had access to someone to whom they could take their grievances. Chow Hung Ching showed that, although Canberra seemed to believe that hiding its head in the sand was the best way to deal with the problem of hundreds of Chinese exercising sovereignty in Manus, the training of ordinary Kiaps preserved, for the ordinary person who felt aggrieved, a fruitful avenue for complaint. The "defence" in this case was the defence of the Rule of Law against Monumental Sell-out No. 3 which resulted when nobody had the fortitude to tell the Americans that Manus was a Mandated Territory for which Australia was responsible.

It is obvious when you look at the case. By written agreement which starts: 'WHEREAS the cessation of active military operations in the war with Japan has rendered surplus to the needs of the United States quantities of its property now situated in the Western Pacific Area …", the United States Government sold that surplus property to the Republic of China. The places listed are all, with the exception of Manus, Los Negros and Finschhafen (all of which were in TP&NG), territories in which America could lawfully do what she liked because, in the case of Wake Island, it had been hers since 1899, and because, in the case of all the others, they were "captured enemy territory" as they had all been Japanese territory before Japan bombed Pearl Harbour. Moreover, Manus was not in the Western Pacific Area, a technical term, but in the South West Pacific Area, a totally different zone, with HQ in Brisbane! The date of the agreement, 30 August 1946, is also significant because, around about that time, I was made Secretary of the Student Body of "University Hostel, within the University of Western Australia" which consisted of just over 100 fully-furnished rooms with comfortable dining rooms, lounges, kitchens etc, which had been built by the United States of America for their personnel and I have special knowledge of the fact that, months earlier, the Americans wanted to dismantle it and Vice Chancellor Currie called on the American Consul-General and said, "You can't do that because the University owns the land and all that is on it". And, when the American said that his government would take the 'movables' Currie said, "We will buy them at valuation" and that was the end of the matter. I know all this personally because Currie brought me into it by getting the Senate to give me a 'special bursary" so that we could pay for the movables!

In my first report I recorded that informants in private enterprise on Manus had told me that they sent objections to Canberra as soon as the Chinese arrived, but they got no reply. Cyril McCubbery, the prosecutor in the case, also told me that the Administration had done the same. It was the great Heads in the Sand case! Then the Chinese Army began using dynamite to destroy non-movable things such as refrigerated rooms which they could not move. Complaints to Canberra increased but to no avail so, when Pondranei came to him on 26 January 1948, all battered and bruised, and told him why, ADO Dick White (who joined the Field Staff on 12 May 1939) decided to break the impasse. Pondranei could not say how he had been taken to the Chinese compound because he had fainted after the first two blows: his maltreatment had, according to the High Court (p.468) "continued over a considerable period", but he was able to say that a group of four Chinese had, the previous day, come to Lugos (three miles outside the Chinese compound) hit him with a length of timber and kidnapped him, taking him to a Quonset hut in their own compound where they strung him up with electric wire, so that he was hanging with only his toes touching the floor, and flogged him. White took him to Dr Ken Smythe who gave evidence that he had two black eyes, a bruise on the chest from which blood had flowed, another bruise on the left buttock from which blood had escaped, and abrasions on both wrists. It was later explained that one of the Chinese was missing two cartons of cigarettes so he and his compatriots went searching for a Melanesian culprit. Pondranei, unfortunately, had gone to Lugos, where there was a public market, and sold two pineapples for a carton each, so he was the one they seized upon.

Because all ordinary overtures had failed in the past, Dick White decided on a show or force so, taking John Grimshaw, Charlie Carr and two other Australian Police, and as many PNG police as they could muster, and Pondranei, he presented himself before General Wu, the OiC Chinese Forces, and said that they were there to investigate a criminal complaint. General Wu said he would cooperate but, when the Chinese were

paraded in three lines some days later, the 300 labourers and an unknown number of soldiers kept "breaking ranks" and taking up new positions and Pondranei and his witnesses were not able to identify anyone. White persisted and, a month later, General Wu relented and investigations began anew. As a result, the appellants were arrested and, on 5 April 1948 they were committed for trial by Bill Bloxham who applied to the Supreme Court for the case to be "certified for defence by Counsel". The Chief Justice so ordered and the trial took place before him at Imrin on 26, 28 and 29 June 1948 and at Rabaul on 28 and 29 July 1948. On 5 August the Chief Justice delivered a lengthy judgment in which he FOUND each of the Accused guilty as charged and imposed, on each, sentences of three months imprisonment with hard labour on the assault charge and six months on the deprivation of liberty charge.

This is the end of Paul's description of Kiap Dick White's efforts on behalf of the Manus man; however, for those interested in the legal outcome, Paul has provided an account of subsequent events:

> My second report dealt with the difficulties experienced by Counsel who was Adrian Jones of the Melbourne Bar who was working as a clerk in the Crown Law Office, Port Moresby. He wrote to Canberra for information to assist his clients but, since it was a private brief, I do not know to whom he wrote or how often. From the court records it is clear that he received no reply because the trial started as an ordinary "trial of facts". On 28 June 1948, however, Jones informed the Court that "During the weekend facts came to my knowledge that … lead me to (believe that) Accused …. are members of an armed force of a friendly foreign power admitted to the Territory with the consent of the territorial Government …. unfortunately, owing to my late instructions … an adjournment is asked for …" and Cyril McCubbery informed me that he consented to this application because Jones informed him that he had received a document, from Canberra, permitting Chinese agencies to take materials from Finschhafen, from which Jones inferred that a similar document must exist in regard to Manus. On 28 July 1948 (page 35 of the transcript) Jones informed the Court, "it was hoped by the Defence to get evidence from Guam in support of the plea to the jurisdiction. Despite repeated efforts, this has not been obtained; nor has any evidence of an agreement between China and Australia about the presence and status of Chinese personnel at Manus been obtained: permission from the Australian Government for the presence of Chinese to remove war materials from Finschhafen was obtained, but it does not appear that similar permission was obtained for the entry of similar personnel into Manus".

This raises serious questions about the information Counsel gave the High Court. It also explains why, having nothing on which to ground his "plea to the jurisdiction". Jones had to resort to the rather wild statement, at page 42 of the transcript that, "it may be that America was still in possession of that part of Manus where the Accused and die body to which they belonged were, and that the Accused were in America rather than our Territory." This possibility is echoed by Justice Starke at page 474 of the appeal case (77 CLR 449), where, speaking of the 300 plus Chinese, not just the two appellants, he says, "It is possible that the Executive Government of the Commonwealth had no knowledge of their presence on the island at any time material to this case, for it was an allied base of operations against Japan, established in the main by the United States and at the time being dismantled by it …" Unfortunately, for this hypothesis, however, the trial judge specifically HELD, at page 79 of the transcript, that the Chinese compound was "at Lorengau which is but a few miles from, and almost within view of, our Administration's District Office at Imrim, (so) it is inconceivable that our government was unaware of the presence of that personnel in this Territory."

My third report, which was after the Smith Appeal (Una Voce, September and December, 1997) and long after the Law Students Project had ended, dealt with the strange disparity – discord, actually – between what the High Court was told and what the transcript of the actual trial disclosed, but it need not concern us here.

Slipshod and you're in trouble

Before I went to TPNG I had been Secretary of the Marist College Old Boys Association of WA and, since everyone knew I intended going to PNG for only the one term, they expected me to give a talk on my experiences on my return.

I wrote this piece for inclusion in that talk because the thing which most impressed me was the meticulousness with which Police and Kiaps abided by the Rule of Law in even the smallest details, and this episode illustrated this. I gave it to the Law students because although my lecturers had told us that, in ancient times, judges were given something called "Commissions of Oyer, Terminer and Gaol Delivery" (Gaol Delivery being like the powers of a Visiting Justice under the Prisons Ordinance where the V.J. has to check the documentation covering each person held in the gaol) they did not tell us that modern judges get the same commissions. They also failed to tell us that, for a person arrested, the main documentation was the "Station Occurrence Book" in which everything had to be recorded as it happened. Knowledge of such a book could be useful to a defence lawyer.

I also included this piece in a draft article on the High Court when, as mentioned in John Herbert's excellent article in Una Voce No 4 of 1997, that Court was led to believe that the Rabaul Police Station was a large building with solid walls and windows. The report reads: "It was just after 7 am, Tuesday 12 February 1952 and I was looking for the Rabaul Police Station. I had arrived in Rabaul late the previous afternoon and, due to someone wrongly advising the Rabaul authorities that a "senior Law lecturer from Sydney" would be the Crown Prosecutor, I had no idea what kind of building I was looking for. All I knew was that it was where the road I was on joined a main road. The air was very still and there was absolutely no traffic, so sound carried and as I approached the corner I heard voices from the sole building there, a small raised up bungalow which had no walls or windows, just push-out shutters fully raised.

They were Australian voices and I was glad because I hoped to end my sudden run of bad luck. I was not deliberately listening as I walked past the side of the building, around the corner and up the steps but, since the voices kept repeating the one theme, I could not help hearing what was said: they were badgering someone called Vic because he had "forgotten to make a record and Monte would have his guts for garters when he did his V.J.". And, when I identified myself, the Police told me – by way of overcoming the hesitancy which naturally arises when the "senior Sydney barrister" they expected turns out to be very junior, and from Perth, and needs their help – that "Vic here arrested a Native and then got called out on a case without entering the arrest in the Station Occurrence Book so, when he got back, there were later entries already entered and the Chief Justice will see that he had failed in (and these words were almost chanted in unison) An Aspect Affecting the Liberty of the Subject".

It was all new to me but I soon found that the phrase "An Aspect Affecting the Liberty of the Subject" – meaning the rights of Papua New Guineans – was a cardinal tenet with all the then judges and, although his colleagues were treating it in a joking manner, it was clear that the future of Victor Clayton Rowles was in great danger because of his oversight. To cut a long story short, the Australians left the building so that the Chief Justice could do his inspection, but the Native Sergeant stayed since he was an old friend and when Monte was turning the pages of the Station Occurrence Book a big brown finger suddenly thrust itself onto the page and the Sergeant said, "They're worried about that." Monte said, "True here?" and the Sergeant said, "True here. But it's something-nothing. Masta Vic is a good, honest man."

And that was the end of it all! I don't think any higher praise has been given any white person in TPNG, or any problem solved so simply. As Chesterton says, far too many people fail to notice the silent witnesses, such as the Sergeant who was always present, and wise lawyers should always seek them out, just as they should always seek to find those pieces of "mute testimony" which cannot be tampered with."

If I may add a modern postscript, I would like to record that my sudden run of bad luck did change because, that very afternoon, Max Orken returned and discovered my plight. He rescued me by taking me into his own home, a typical act of kindness for which I will forever be profoundly grateful.

Rehabilitation, Reichstag Fire Trial and "TDSM" – Traditional Disputes-Settling Machinery

This was also written for the Old Boys' talk and, in March 1955, halfway through the Law Students Project, the jury trial of The Queen v. Harry Vincent Pierce made it particularly relevant so I issued it to them. It was also produced to the next Chief Justice, Sir Alan Mann, as explained below. To fully understand it, I should mention that many of the Raluana people understood English perfectly and they were carefully checking that (Interpreter) Hastings' Pidgin was a correct translation of what was said in English and whether Tilong's Kuanua was also a correct translation. When Hastings "turned" the part about the Reichstag Fire and the courts "losing their power", Tilong turned to Monte and asked him what he meant and Monte gave a lengthy explanation which, shortly stated, was that the Nazis themselves set fire to the Parliament Building in Berlin and fabricated evidence against the four Accused. They then "leaked", secretly and only to the Supreme Court, the fact that the evidence was fabricated, putting the court in the difficult position of having to decide, in a case where public emotions had been deliberately inflamed, whether to go with the popular wish or act according to their oaths. To their eternal credit the court acquitted three of the four Accused but the Nazis, using public outrage as their ally, ordered that, from that point on, five party officials would sit with every judge in every case. Years later, I discovered that Monte was quoting from the Closing Address by Justice Robert H Jackson, the US Prosecutor at the Nuremburg War Crimes Tribunal, who was his friend from the war days when both served in London. The speech is in Louis Blom-Cooper, The Law as Literature (1961) pages 34-74, especially at p. 39. My report reads: "The King against TOWATIA of Raluana was the first case I prosecuted in TPNG and took place at Rabaul on 12 February 1952 immediately after the Chief Justice's lengthy speech welcoming back the graduates of the ASOPA Long Course and detailing his hopes for the future now that the first group of Native students had been sent to Australia for secondary schooling.

The courtroom was about half the size of a tennis court and had open sides. When the European dignitaries departed, the elders and people of Raluana Village, about 30 of them, quietly took their places and Towatia settled in the open dock. James Leslie Hastings, a Kiap, and Tilong of Raluana were sworn in as interpreters and then I outlined the full facts, in accordance with the TPNG "procedure for taking a plea" which the Chief Justice had outlined in his speech. And, while waiting for the interpreters to finish each segment, first into Pidgin and then into Kuanua, I noted how judicial the Raluanans were in following what I was saying and I suddenly realised that it was I, not the Accused, who was on trial and if I had not properly prepared myself for the case, this jury of 30-odd very knowledgeable people would unhesitatingly condemn the whole system. It was a very salutary lesson and in stark contrast to the normal one I was used to where an obviously bored functionary rattles out, from a piece of paper he has never seen before, a lot of words like 'bailiwick', 'aforesaid', 'heretofore' and 'malice aforethought' which make no sense. Luckily, Monte had spent some years in the villages, with not a single white person in sight, adjudicating land claims in the 1920s and '30s and the Defending Officer, Barry Copley (who had just been welcomed back from the Long Course) handled the situation magnificently. When the case finished the Raluanans filed out decorously, but nodding approval at what had happened, and I breathed a sigh of relief. Then a second group of Natives filed in for the next case, The Queen against BILLI, which was identical although this one came from a village near Kulon Plantation. Copley's handling of this case was the same as in Towatia's and Monte's speech was the same so I was able to compare my notes of the two and prepare a corrected draft that night.

I should mention that the two cases were committed for sentence so, unless there was something exceptional (such as a "bona fide claim of right" as in R. v. Johannes de Roo) the choices for the Defending Officer were limited. But Barry Copley did not deal with the case at all. He devoted himself to the "village" side of the case, the problems of what will happen after Towatia (and Billi) served their sentence, and this caused Monte to call one of the village elders to the witness box to answer some questions and, when he had satisfied himself, he addressed the people saying: "You were right to bring this case to the authorities. And it was right that I check to make sure that this young man really did what he has been accused of doing

because bad people in other countries try to giaman (deceive) the courts and, if the courts are not careful, they can lose "power". Adolf Hitler, who started the war, did that by feeding false evidence to the courts about the burning of a building called the Reichstag and the courts lost their "power". That was a very bad thing for two reasons. Number One, there should always be courts because, if there are none, or none that people respect, the people will take the law into their own hands and everything collapses. Number Two, because when the courts in Germany were destroyed, the people had nobody to whom they could go with their complaints. And as soon as people have nobody to whom they can go with their complaints, they lose their rights. They become slaves like the people of Israel in their Time of Bondage. There is another thing I must talk about. What Towatia did was wrong – terribly wrong – and he is to be punished for doing it. But will he be a bad man when he comes out of gaol? And why did he do it? I do not know the answers to either of these questions but I can say some things about pilandi other young men who have done things like this and it may help you to know what I know.

I know that many young men do this bad thing, usually to European girls, and when they have been punished, they usually return to their village and live ordinary lives, marrying and settling down well. There is no reason why this young man should not do the same and I ask you to give him a chance to live a good life when he returns.

From the time of your ancestors you have been keeping Law and Order in your village and you say that this is the first time you have had to deal with a situation like this. It will, I am sorry to say, probably not be the last. Does this mean that the days of your ancestors are over? By no means! Your duty, and that of the leaders of every village and "line", remains; the duty to maintain Law and Order in your own area. It simply means that, as you showed in this case, there are two systems: the Government Courts which can punish and must be respected by all, and the tribunals of your ancestors which will always be respected by the Government if they do their job properly." Then, turning to me, he said: "Mr Crown. If this had been a European girl there would probably have been no confession and the charge would have been laid under the Curtilage Cases provision which is badly worded. Since this is the first case in which the victim has been a Native it might add weight to the requests which the Court has, from time to time, made to have the definition amended and I would ask that you draw it to the attention of the Proper Authorities".

Naturally, I sent off a letter to Crown Law Office containing the above report and, when I checked on my return to Port Moresby, I discovered that there was a substantial file of letters to the Proper Authorities (that is, to Canberra) conveying similar requests from judges, and requests for an alteration to the District Courts Ordinance in regard to Magistrates' rights to make a report when an appeal is lodged, which we will look at when we get to: Appeal of Ronald Schmidt in a future Newsletter.

In 1959, Sir Alan Mann CJ became involved in a public dispute with David Fenbury about "White-men's Courts" and what Fenbury called "People's Courts" and he questioned the status of the Traditional Disputes-Settling Machinery saying that it could be argued that the TDSM were usurping the function of the Legislature. At one point I felt that the dispute might turn nasty so I produced this Note, and several others, to both participants. Sir Alan expressed his gratitude and suggested that I include the various Notes in the Territory Law Journal when I got it going again. Some months later he also produced a photocopy of a letter which Monte wrote to Dr Fry, Director of the New Guinea Research Unit, (and signed "Monte") which he had come across in the Supreme Court files and which spoke of his (Monte's) outrage at being traduced, in secret letters to Canberra, as being "anti-Native Courts".

The report is also instructive for those tempted to generalise from first impressions or from statistical samples. By the end of my first day in Rabaul 100 percent of all the criminal cases I had dealt with consisted of PNG men sexually abusing PNG children. I am happy to say that, out of the countless thousands of other criminal cases I dealt with in 30 years as Crown Prosecutor or as Counsel for the Defence, as Director of Public Prosecutions or as Founder of the Public Solicitor's Office, as Magistrate or as Judge, I never saw another case of this nature.

Revolutionary rule to protect the right to silence

The Queen against KABO, heard at Sohano on 29 February 1952, was my first nolle – that is, the first trial I aborted saying "this trial ceases here". The Defending Officer, Bob Macilwain (who joined the Field Staff on 4 April 1939), objected to the admission of a confessional statement, taken from his client, on the grounds that, being taken by a Coroner, it infringed his client's right to remain silent. Monte ordered an immediate voire dire (a "trial within a trial" by which a judge, in the absence of the jury, can hear evidence as to how a confession was obtained, so that he/she can make a "decision at law" as to whether it should be admitted or rejected). I am sure that judges in Australia would have held that the Coroner was right in taking the statement because, after all, that is what Coroners are there to do! Monte, however, said "No! This is a trust Territory and we are proud of our local traditions". And, to my surprise (since people who served in New Guinea before the war usually ignored – or knew nothing about – what happened in Papua) he then cited a Territory of Papua paper by Judge Gore, published at pages 20-22 of the 1928/1929 Papua Annual Report, as authority for what he was describing as "local traditions". Monte then said that, accepting that the primary function of a Coroner is to discover what went wrong in a special case so that society can protect itself against a repetition of what happened, the Investigator must decide whether the death or fire is of this special category or whether it is simply an ordinary case of homicide or arson. If it is an "ordinary criminal case" the procedures laid down for committal cases should be followed. He threw out the confession. Although the remaining evidence was substantial, it was doubtful whether I could obtain a conviction so I immediately entered a nolle prosequi, taking the case out of the judge's hands, so that it would be re-investigated and begun again.

I circulated a report of the case and, from that day on (until local procedures were abandoned) there was never any suggestion that Coroners Powers were used to deny an Accused his right to remain silent. Even in the Telefomin Inquiries and Trials (which were forced to proceed by way of Coroner's Inquest because, for reasons which have never been explained, the Public Hearings were called on months before anyone could expect the prosecution to be ready) there was never any attempt to put in, as evidence, anything the Accused had said to the investigators. In an early re-issue of the report I added, "It is interesting to note that at page 595 of 1955 Criminal Law Review there was a move, in England, to outlaw the use of Coroner's Court for committal purposes." I am nowadays unable to check this reference but, if it had succeeded, it would have brought English Law into line with TPNG!

Stiffly starched white coats, and other differences

The coats on all the men in the photo on the middle pages of the last Una Voce remind me of an essential difference between the early 50s and, say, the 60s. As did the sight, on TV recently, of an English judge asking for a red bonnet to wear because, he said, judicial robes were inappropriate for the trial he was conducting into Nazi War Crimes but he wanted people to know who he was. For my first six months in TPNG I did not realise just how entrenched the 'white coats' mentality was because, apart from the first week (when people kindly lent me a coat to wear to Government House, etc.), I was constantly on circuit with Monte Phillips who always travelled in shorts and long sox because of his gammy knee. Since we always stayed in people's homes, there was no 'dressing up' and, if luggage went astray, Monte would borrow a piece of red material and drape it over his shoulders to show that, whereas Kiaps were 'judge' when on the Bench, he was 'the judge who wore the red cloth'.

It was not until June 1952 when Monte gave a luncheon party at his home for all the lawyers of the Territory, to discuss the formation of a Local Law Society, that I realised that slavery to white coats was total. By then, of course, I had had one made by a Rabaul tailor but Joe Lynch, who arrived the same day as I did, had to borrow one for the luncheon and he, together with lawyers who had flown in from Rabaul and Lae, were seated at a drop-side table. It was the finest meal I ever had in the Territory but it failed to overcome local jealousies because, during the very first course, Joe knocked the leg of the table and his side collapsed, covering him and Harold James (their white coats, to be precise) in vichyssoise soup. Since neither Joe nor Harold (from Rabaul) could get a replacement coat, Monte gave the order 'Remove Coats'

and the ironclad rule was broken. So was the spell which Monte had woven, at great personal expense, because although everyone paid due attention to his speech about 'dangers ahead', they went away with something else to talk about.

The rule about coats was, of course, not a great burden to carry but, some months later, I was asked to do the first Price Control prosecutions and I discovered that each Magistrates' court had a rack of discarded coats which Europeans who were suddenly called to give evidence had to put on to be 'properly dressed'. Filthy and stiff with mildew, they added nothing to The Law and it was one of my earliest victories to have the compulsory straight-jacketing of witnesses abolished. On the credit side there were many attractions. The Territory was the safest place on earth for a white person (we shall see several illustrations of this), largely because we had protected land rights, interfered only where existing systems prevented people moving freely, and we never imposed corvée, the compulsory (semi-slave) labour traditional in other 'colonial' countries. This non-interference meant that the cost, to Australia, of running the country had been minimal but it imposed special burdens on those working in the field, burdens which quickly sorted out the competent from the loud-mouth who owed his job to 'friends back home'. It was not uncommon to find that the quiet unassuming man standing next to you was a hero who had done great deeds behind Japanese lines if you could only get him to talk. To illustrate this, I would mention Ivan Champion who, on 9 April 1942, sailed Laurabada to Palmalmal, New Britain, and rescued 150 Australian troops from under the noses of the Japanese, bringing them safely back to Moresby. He told me, "Everyone with the right spirit can find this a very satisfying place."

To turn to the less attractive side: Monte's abortive luncheon was excellent, as I have said, but that was because he had flown in all the ingredients. The meat, fruit and vegetables normally available in the shops were very sub-standard. The soup which splattered over Joe's and Harold's coats is made from potatoes, a basic staple. But supplies came only from Australia and were so often rotten when they arrived that most people kept tinned potatoes in stock as a standby. This nearly led to a riot when – or so the story goes – an enterprising entrepreneur called "B the BB" bought up all the tins he could with the idea of making a killing when the next consignment of potatoes turned out to be rotten. Unfortunately, he was an Admin. Officer and, since commercial firms were in the habit of putting pressure on the Admin. (until the Anton Rucker Case put an end to it), he had to disgorge. Coming from a State where the policy was to send only the very best produce to Singapore, so that WA could capture the market, this palming off of rubbish was very hard to forgive.

The situation regarding beer was worse. We could never get Australian beer so we had to rely on imports from Germany, the Philippines and God-knows where. You could never get used to one taste unless you drank Becks, and the New Guinea Club had a showcase displaying varieties we had to contend with: Revolver, Pistol, Power, Big Gun, Big Girl, Blue Girl, St Pauli Girl, Three Girls, Three Elephants, Three Castles, Three Clouds and so on. And on. They stopped at 57 in homage to Mr Heinz but there were hundreds. Why? This was not an academic question because, apart from a hole, called The Bombhole, in the dead reef which covered all of Ela Beach, where one could swim, and tennis courts at Ela Beach and 4 Mile, there was nowhere one could go, in Port Moresby, for leisure time activities except the Snake Pit at the Bottom Pub or a club, and the same applied everywhere else. Before the war there had been a swimming baths inside the harbour and a golf course at Konedobu (Judge Gore was now rebuilding one on Scratchley Road) but, since everybody kept telling me how important it was to get an 'outside activity', this was a worrying situation. Luckily, Joe Lynch, Andy O'Driscoll and I at the Legal Officers' Quarters (a tarred-paper donga in Hunter Street where ANG House now is) had to cater for ourselves so, when I asked our major domo, Aitau, why he always served freezer steak when fresh fish should be available, he took me 100 yards, through the Fire Station, and out onto a little jetty opposite. He then pulled on the rope there and the barge which took water to the Gemo Island Leper Hospital loomed out of the darkness. When we were on the barge he shoved against the jetty and we gently floated out into the harbour and he said, "You want fish? You catch fish! This is best place." So, for years, I often spent the evening there, opposite the Fire Station, and my catches were very welcome both at LOQ and when I was invited out.

Bill Burford and weekends at Brown River

Everyone agreed that you had to get an outside interest but nobody told you how. Monte Phillips had started the Port Moresby Music Society which put on musical comedies, and Ruth Carter, the librarian at Ela Beach, ran "Thursday Evening Discussion Groups" which became the Port Moresby Historical Society (we will see some of these discussions in later issues) but, apart from these and Bill Burford's effort, there was nothing.

It was Bill's contribution to my sanity which I featured in my speech to the Old Boys Association when I went on leave in 1953. Ours was a Marist Brothers College at New Norcia Aboriginal Mission, and when I was demobbed in 1945 the brothers invited me, and my mate Norm Monk, back to the college for a week to recuperate. They gave us each a .22 with plenty of ammo and left us to ourselves. It was precisely what was needed.

And so was Bill Burford's invitation to join his shooting party for the weekend when he found that my first circuit was delayed. He was the clerk at the Crown Law Office (CLO) and he insisted on one rule: I had to guarantee that I would not bring any grog. I went pillion on a motorbike because there was no road (the Brown River Bridge did not exist) and when we got to the camp, I discovered the reason for the 'no grog' rule. The two Papuan clerks from CLO – one later became a bishop and the other vice-president of the Public Service Association – were part of the party of eight, not as servants, 'beaters' or guides, but as full and equal participants. And, since it was illegal for them to drink, none of us drank either.

I remember, with great affection, many other picnic-type excursions – picnics at Watta Plantation, Col and Margaret O'Loghlen's famous Esky of beer and sandwiches in the Botanical Gardens at Lae or at Voco Point – but it was the fact that the Papuan clerks were part of those shooting weekends (in which none of us shot much, but we enjoyed the freedom of the jungle) which I remember most because it showed that, because of the experiences of the war, a feeling of equality existed which was sadly missing in later years. Thanks, Bill!

Wonderful detective work – by various people

The Queen against Lapae was a wilful murder trial at Rabaul on 4 and 5 March 1952. It was so important that I immediately wrote a full report to Crown Law and it was circulated to all Kiaps and Police. It was later circulated to Law Students. The Defending Officer was Tom Leabeater (joined 10 June 1947) but before dealing with the case I should mention a peculiar background which is relevant. Admin. Departments had found that there was often no guarantee that monies allocated to them would arrive – for example, in one simple instance which I found particularly horrifying, somebody in Canberra had got rid of an importuning English doctor by giving her the Crown Law Library vote to print her lavishly illustrated paper on eye diseases in the Northern Territory.

The result was that an unofficial agreement had come into existence whereby, in return for an understanding that they would get funds in five or six years' time, the Judges went without Associates, official cars and other expensive trappings of office and the money saved helped Dr Gunther's project of bringing in DP doctors (Displaced Persons – highly qualified medicos who were refugees from the Nazi Occupation of their own countries) and setting them up in places like Saidor which, normally, would never get a doctor. One result was that Monte drove his own car, Betsy – a Model A Ford which had gone through the Rabaul Eruption and which Des Sullivan, the Official Secretary (Government House), loved to race when Monte was on circuit. In return, Des (Distinguished Flying Cross and Bar) got pilots to carry judges' mail by hand. Thus, Monte received the 25 January 1952 issue of Australian Law Journal (ALJ) by 'express post' and gave it to me before the circuit opened on 12 February because it contained the result of the appeal lodged by a famous radio announcer, named Kerr, against his conviction, on confession evidence, for killing a girl on a beach in Victoria. The case made headlines Australia-wide and, because of the publicity, Kerr refused to read what the police had recorded when they took his confession, saying they 'already had more than enough'. The Appeal Court had now overturned the conviction because Kerr had

not actually read the record made of his confession. Because the murder which I was charging LAPAE with had caused widespread outrage, it was vitally important that he be convicted but, as Monte pointed out in his speech of 12 February, I also had a duty to assist Defending Officers in any way I could so I gave the ALJ report to each Defending Officer. None of them used it in the 11 cases between 12 February and 4 March simply because I had never relied on a confession. I had always been able to produce plenty of other evidence.

In those days, Kiaps investigated all alleged offences 'outside' a town and the Police investigated 'town' offences, and Lapae's case started in town despite the fact the body had been washed ashore at Mailiwan Village. This was because the Tultul recognised the body as that of Iapilomon, 16-year-old daughter of Tovua, a highly respected Tultul and Catholic Catechist and, believing that she would not have drowned, he bailed up the first vehicle to come by and asked the driver if he would take him, and the stinking body, to the Native Hospital in Rabaul. The driver, a European, agreed – I regret that I did not record his name but he managed a local plantation – and, when they got to the hospital the Tultul told Dr Saave that he wanted an autopsy done, which Saave did and then he (Saave) called in Sub Inspector Brian Holloway who started the investigation. I have also forgotten the Tultul's name but he was most impressive. Perhaps Brian or Jan can remember his name, and that of the planter?

At the trial, Tom Leabeater objected to the written confession which Holloway, in accordance with existing practice, wanted to give as evidence so a legal argument ensued and Monte upheld Leabeater's argument. This radically changed the way the law was to be administered because, until then, everyone had produced a record in English, a practice justified by The Judges' Rules. The point of Leabeater's strategy was obvious but I got over it by getting Holloway to give oral testimony of what had been said. Leabeater, however, had a second purpose. He had spoken to his client (as all Kiaps had been trained to do) so he asked Holloway questions about his conversation with a man called Turan, who was to be later defended by a senior lawyer flown in from Sydney. This showed that Turan masterminded the whole crime – which had originally been rape but Iapilomon died so he ordered Lapae to tow the body out to sea so that people would think she had drowned. Thus, Lapae was only a tool and warranted a lesser sentence.

Leabeater was complimented by the Chief Justice both in the case itself and, inferentially, in the Turan case where he said that 'had I not given a sentence of only seven years in Lapae's case I would now be imposing a far greater sentence on Turan'. Possibly this was because he was 'having a go at' the Sydney lawyer for letting people know that, being from Sydney, he was somehow superior, despite the fact he knew nothing about Kerr's case, but one cannot be sure. It could also be that he felt that Counsel from Sydney had not taken the time to adequately discuss the case with his client and this, in Monte's book was 'letting The Law down'. I should also mention that Monte went out of his way to praise the work of Dr Saave saying, "One could say that Accused was 'unfortunate' that his attempt to pass off a dead body as 'drowned' was wrecked by the care and thought given at the autopsy by a DP doctor, Dr Jan Jerszy Saave, who proved conclusively that Deceased had been asphyxiated before immersion in the water and that she had been a virgin who had been raped immediately prior to that immersion."

Speech of Chief Justice Phillips on Tuesday 12 February 1952 at Rabaul

Snapshot No 3 describes my first day in court in TPNG but, rather than give Monte's speech then, I preferred to give his performance in two truly remarkable cases. He commenced proceedings by speaking for five minutes in pidgin and then he delivered the following speech in English.

It is good to see all of you here and, in particular, Mr Keith McCarthy, the District Commissioner, Mr Warner Shand, the District Officer (Magisterial), and Mr Commissioner Reid of the Native Land Titles Commission because they represent three of the five quite different careers which Kiaps can look forward to making their own. But before I discuss Kiaps, I would like to welcome Mr Quinlivan, our new Crown Prosecutor (and he then continued). We are celebrating two other events which, to my mind, must be connected. We welcome back, in the person of Mr Barry Copley, the 25 graduates of the Second Long

Course of the Australian School of Pacific Administration (ASOPA) in Sydney and we celebrate the fact that, last week, the Administration sent our first group of young Natives to study in Australian secondary schools.

Until now, the solemn commitments which Australia made when she signed the Trusteeship Agreement have been little more than pious words because it has simply not been possible for anyone to do anything about creating a national feeling amongst the more than 700 different language groups and dialects here. With the two events I have just mentioned, however, we have a clear way in which such a feeling can be achieved. This is especially so in view of the fact that, since the resumption of Civil Administration, there have been constant calls for our court system to intervene in situations where, in former days, more drastic action would have been taken. 'Bai mi kotim yu' (I'll take you to Court) is a common cry and something we should be proud of, especially since it is noticeably absent in other 'dependent territories' and, in its place, there is MauMau and similar movements.

Another feature which is quite unique is the protection given to the Coastwatchers during the Japanese occupation. This was maintained, month in, month out, until Japan was conquered, despite the fact that the KEMPI-TAI were frighteningly powerful and they made it plain that unspeakable things would be done to any Native who harboured an Australian. We Australians should be forever grateful and remember that the men and women of the Territory helped us in our time of need when we are considering how best to fulfil our duty under the Trusteeship Agreement.

In addition to being eternally grateful, we should also ask ourselves: Why, when other territories have MauMau, did our people save us at such constant peril to themselves? There were two factors which make TPNG different and, to epitomise the first I quote from Sir William Fitzgerald's article "Dangerous Rigidity of Colonial Judiciary" in the current volume (vol.5 p.28) of ASOPA's magazine South Pacific. At page 29 he says: "It is in many ways a matter for regret that the dumping down of the English legal system with all its rigidity has become so firmly rooted in African soil. …. A great task remains for the Colonial Judiciary – the task of a Coke in England or a Holmes of America, not only to adhere to the principles of the common law of England, but to adapt them to the conditions in which they find themselves; to apply, as America did, the fundamental unchanging principle to the changing conditions and needs of the people, rather than to follow slavishly decisions based on the application of those same principles to totally different conditions."

On both sides of the cordillera, we were fortunate in having 'a Colonial Judiciary' which did precisely what Sir William now says should be the 'great task' everywhere. Dr Albert Hahl, in German times, Sir Hubert Murray on the Papuan side and my own Chief, Wanliss, on the New Guinea side, laid firm foundations for our law and, although they agreed that it would be wrong to keep the Territory as an anthropological museum, they grafted onto the basic principle that everyone be left in peaceful possession of their ancestral lands – itself a revolutionary innovation – a system which means that Native Society is still rather much as they found it, apart from requiring a cessation of warfare and other practices declared to be unacceptable in a modern world. The second factor is that, in other places, the colonising power conquered the local people, or they either established a policy of 'divide and rule' or they employed large armies to deter opposition. We did none of these. We sent in small representative bodies of one or two Kiaps and a handful of Native police whose rifles were quite inadequate for defence purposes. From the Natives' side there were also two factors which we should never forget. Every group has its methods of assessing 'outsiders'. I first experienced this when I was in the Solomons and I well remember my horror at seeing how mercilessly they mimicked me. After that first natural reaction, however, I came to realise how important it was that people do make such tests so when I faced it again, here, I was glad that I was allowed to witness it (provided, of course, that I remained so unobtrusive that everyone could pretend I was not there!). For those who have not had that privilege I advise that, even though there may be nobody in the Public Gallery (which, if ever it happens, is itself a terrible indictment on the calibre of the person presiding in that court), the events of the day will be discussed that evening, in the minutest detail and with startling mimicry, and judgments will be made. It is by this constant review that Natives judge our conduct and the important point is that they judge us by our own standards. They compare each performance with

all the others. And, provided we are honest according to our own lights, they accept. This does not prevent them making, in each case, decisions as to whether our system has produced a very inferior result – as, of course, would be obvious if we allow ourselves to convict 'Z' when they know, since they go into these matters with a background of knowledge we can never have, that 'A' is the person we were seeking. The second factor is that they were quick to see the value of complaining to one section of the white tribe (and we are, to them, a 'tribe' which consists of three opposable parts, the Administration, the Mission and 'Companies') if they find something in the others hurtful. They are quick to invoke the aid of one against the other. It is the ability to complain, and the fact that Courts have always been available, which explains the new phenomenon – the cry 'Bai mi kotim yu'.

Because of these two factors our courts were tested, with untold benefit to Australia, when the need for comparison with the Japanese arose. But what courts were found to have passed the test? It is true that, since the war, the Supreme Court has adopted the Papuan practice of sitting in the 'town' closest to the scene, no matter how small that 'town' may be. But we are talking about before the war and in those days the Supreme Court of New Guinea followed the Australian model of seldom travelling outside of the capital. And since I am talking about the New Guinea side it is clear that, with a few notable failures, it is Kiaps who have been found to have passed the continuous testing process. Which brings me to my major point about Australia's duty under the Trusteeship Agreement.

I know of no better way of doing our duty than to introduce Natives, as soon as possible, into the system as Kiaps so that village people can see that the white skin of the 'tribe' which is 'Big Government' is only incidental and that their own people, even those from the remotest areas, can become 'The Big Government'. In fact, this is the only way we can bring about a true feeling of nationhood. An additional benefit would be that, in performing that task we will also be controlling the natural tendency for people to usurp power by force, cronyism (wantok), bribery or other unlawful means, as well as providing the future nation with a backbone of educated people, from every language group and area, who have learned, in the same way that Australian Kiaps learnt it, how to make sure that people have an unimpeded right to complain, how to deal with people so that their rights and dignity are safeguarded, and how public money is properly distributed and accounted for. With the 25 diplomates of the Second Long Course, and the 14 who graduated in 1949, we now have 39 graduates from the intensive two-year course of which Mr John Kerr assures me law is a major component. With the further 25 who are about to start their two-year sojourn south this means that, by the beginning of 1956, when we have our first Natives matriculating from secondary schools and available for training as Kiaps, we can confidently count on 50 or more experienced officers, with Diplomas, available to superintend their training as Magistrates. It is the beginning of a bright new era, and one greatly desired!

It may be asked: why am I saying this when our first recruits are only now beginning their secondary schooling? And what about the claims of Medicine, Education, Agriculture and other fields? The answer is that when our students are approaching matriculation they will, I hope, have total freedom of choice. I would be the last to limit anyone's right to elect to go on to study medicine or teaching or agriculture. But it should be a valid election and, since our students will be surrounded by those who will pressure them to choose the more lucrative fields, I feel that it is appropriate for me, at this earliest stage, to put forward the example of the three gentlemen whose presence here I have singled out.

There is also the fact that our very presence here, as an administering power, presents a danger to the stability of Native society. Unless we are constantly on our guard, we could undermine the function which the traditional disputes-settling machinery has performed, for countless generations, of controlling the power-grabbing tendency I have already mentioned. Until now we have, using our unique Kiap system, been able to protect the traditional disputes-settlers and allow them to perform their task. With the introduction of Natives into that system as fully trained Kiaps – Kiaps trained in the traditional way – we can allow a truly national feeling to grow."

"It Is Not For Anyone to Invent"

The next two snapshots are for the benefit of younger readers who may sometimes fear that, perhaps, their father or uncle who was in the Admin. may not always have been as upright as family pride demands. When I arrived in TPNG in January 1952 Canberra's policy was that rehabilitation and reconstruction of TPNG had to be completed by 1957/58 and that, from that date on, the Territory would have to operate within its own resources. It was therefore necessary for solid foundations to be laid which meant that any possible misconceptions had to be eliminated. As far as I could see, the method used was to circulate two of Monte's judgements, the Hamilton Case (2-5 March 1948) which effectively weeded out any 'Sanders of the River' types, and the Pringle Case (6-12 April 1951) which we will see next.

Harry Edward Hamilton was a Kiap who became obsessed with the problem of how to maintain order in his sub-district (Kaiapit). In a later issue we will see how Kiaps were expected to deal with the problem of 'control' but he decided to invent his own solution. Colonial governors, of every nationality, have devoted much thought to this; Julius Caesar, for instance (if you look at page 329 of Colleen McCullough's Caesar), chopped both hands off more than 4,000 valiant patriots so that, by spreading the handless beggars throughout France, he could make sure others toed his line.

Hamilton decided to bring Tuwara into line by 'putting shame on him' by having his (Tuwara's) female relative masturbate him in public. Hamilton was charged with 'procuring an indecent assault' and, at trial, he claimed that some of the local people told him they approved of what he had done. In his written judgment Monte zeroed in on this claim and said, "Many Natives consider it unwise and lacking in tact to disagree with a Government officer. One Native Constable (however) had the moral fibre to consider your conduct unseemly …(T)he punishment prescribed by law is sufficiently drastic. It is not for anyone to invent or inflict punishments outside the law and everyone who does so, whether his motive be lofty or base, does so at his peril…"

Two sets of words are vitally important: "It is not for anyone to invent" and "whether (your) motive be lofty or base". Monte accepted that Hamilton had been overworked and under great strain, that he had done good service both before and during the war, and that he would probably be dismissed from the Service and deported, but he said that, to discourage others from inventing their own forms of 'control', the minimum punishment he could inflict was three years imprisonment. It had a strong dissuading effect. And, coupled with the fact that Monte was always repeating his Reichstag Fire Speech about 'people having access to someone they can complain to' and with Gunner Gore constantly repeating Sir Hubert Murray's threat that if anyone prevented a complaint getting to the highest authority he would be instantly sacked, readers may rest assured that if someone in the Admin had cooked up a new type of control (such as handcuffing someone to the flagpole, or locking them in the cells without entering the fact in the Station Occurrence Book, or whatever) he would have been found out. And, if it was something more than a simple, honest mistake, he would have been tried with maximum publicity. So, if your revered relative was not convicted and severely punished you can be pretty sure that he was a decent man of whom you can be proud.

Persons in authority must be particularly careful

Readers who watched the recent BBC TV series Ruling Passions on SBS, and whose father or grandfather served in the Admin., must have been affected by the fact that it depicted 'free sex' as a perquisite of empire – free, that is, for officers of the administering power and their troops. The main speakers in the programme were the women involved, who had no say in the matter.

In answer to this I can only point out, as Monte did in his 1952 speech, that we did not have troops in TPNG – except to fight the Japanese. In addition, there is the fact that five great judges controlled the legal system for incredibly long periods and they all regarded The Rule of Law as sacred. As a result, anyone

coming to TPNG with 'free sex' in mind was quickly disabused of it, not because of prudery or unreasonable beliefs in celibacy but because 'consent' was a requirement as was made frighteningly clear by the case of R v George Evan John Pringle who was sentenced, at Kundiawa, to five years imprisonment for rape on 6 April 1951. Pringle was a Medical Assistant, a trained paramedic, and he was both conscientious and good in his work.

Unfortunately for him, his wife left him and he turned his attentions to a young female attendant at Kundiawa hospital. He claimed that she consented but Monte disagreed, HOLDING that: "She was a young Native girl of 15 or 16, he was a 'white man' and her superior officer. He was also, to her, 'the Government'. She did not physically beat or scratch him because, she said, he was a 'white man' and that explanation, I consider, rings true. She was not on equal terms with him …. She put up all the resistance that a young Native girl, in these circumstances, could be expected to make …" The warning which Monte's words convey was widely circulated and it was, indirectly, the cause of my writing the article "Afek of Telefomin" published in Oceania for Sept-Dec 1954, pp 17-22. I had been sent, in April 1954, to investigate the Telefomin killings and the reasons for the killings were a prime consideration. Imagine my horror when, during the trials, I was told that the assumption had been voiced, at ASOPA and in Canberra, that the killings were in retribution for someone breaching the Rule in Pringle's Case! This was not only pure speculation; it was totally untrue! But it shows how all- pervasive the Warning from Pringle's Case was!

Planters, traders (and Monte) and their former employees

The King against Peter James Jameson (Kavieng, 14-22 February 1952) was my very first trial in TPNG and the only one in which I faced two lawyers defending the one man. I issued two reports on it, the first in my speech to the Old Boys Association (this follows as No 12) and this one to the Law Students because of the basic rule that you never ask, in cross-examination, a question to which you don't know the answer. Nowadays, this one's value lies in the insight it gives into the type of relationship which grew up in those days but which was not liable to develop when people are appointed from Australia to high positions in the Territory.

Jameson had been Officer-in-Charge of the Production Control Board (PCB) weighbridge at Kavieng and he was charged with stealing £221/5/7, in small amounts, from PNG nationals who sold copra to PCB. The amount may seem small but he used his position to victimise Papua New Guineans and, in those days, Australia's Good Name'and 'trusteeship' were terms often spoken about). It was the most complex trial in TPNG history, with 39 Prosecution Witnesses, so Jameson employed a team of lawyers (Mr Foy, the Kavieng solicitor, and Harold James, a barrister from Rabaul) and their efforts were aimed at proving that an elderly Luluai, Mamawau of Nonopai, was a liar and part of a conspiracy to frame Jameson. During the cross-examination of Mamawus Mr Foy tugged at Harold James' gown and said, in a stage whisper, "Ask him about his Luluai's hat". Normally, a lawyer never asks, in cross-examination, any question he/she does not know the answer to beforehand but, since Foy had presumably investigated what he was now instructing Harold James to ask, he complied, with disastrous consequences. Patrol Officer William Arthur Stokes was the Interpreter. My notes of the cross-examination read:

> Q. by James: I put it to you that you are lying.
>
> A. by Mamawus: No. What I have said is the truth.
>
> Q. You say you have been Luluai since long before the war.
>
> A. That is true.
>
> Q. But you were stripped of your Luluai's hat, at one time, weren't you?
>
> A. That is not true.

Q. We will call Kasw to tell the court that he wore your Luluai's hat for some years.

A. That is true.

Q. How could he wear the Luluai's hat when you were Luluai? What you have said proves that you are a liar! Therefore everything else you have said is a lie!

OBJECTION by Quinlivan

Question WITHDRAWN by Mr James.

Q. Can you explain to the court how Kase could wear your hat when you were supposed to be wearing it?

A. One day a letter came to a man in our village. It was from his former employer and, since it was written in pidgin, all the people assembled and he read it to us. It said, "When you went back to your village and I came to England to serve in the war on the other side of the world, I thought you would be safe".

OBJECTION by Mr James: "Not interested in employer/employee relations".

Quinlivan: Witness was asked to explain something and is entitled to do so in his own way. If it becomes clear that he is wasting the court's time, he can then be reined in. At this stage, he is only beginning his explanation.

Court OVERRULED Mr James saying, "He will be stopped if or when his explanation becomes irrelevant. Let him proceed".

A. The letter said: 'I thought you would be safe but the Japanese have bombed some American warships so Japan has now joined the war and you and your family may now be in danger.

My First Talk is that this danger is very real. The Japanese will try giamining everyone that, because they have coloured skins, they are wantoks, but they have been raping and killing people with coloured skins in Manchuria and China for years.

My Number Two Talk is that, because Australians are helping England fight this war, many people from this side of the world, including the Americans who have just been bombed, will come and help Australia. So, although the Japanese may arrive, they will not be allowed to stay long.

My Number Three Talk is that you must get your people to build gardens in a far-away place which is secret so that, when the Japanese come, you can all move to safety until the Australians come back and get rid of them". What he said had wisdom so everyone agreed to do what he suggested. Then, when the new gardens were built the Japanese came so we moved to the new gardens and stayed there. Before we left, however, I said to Kase, in the presence of all our people: "You have always coveted my hat. Here it is. We are now leaving for our safe place but you must remain here and wear my hat so that you can convince the Japanese that you are the Luluai and they will stop searching for us. When the Japanese are got rid of, we will come back and I will want my hat back. Make sure that you do not dirty it while I am away". "That is why the Japanese never found us. And that is why, for a time, Kase wore my hat but I never lost it".

Q. How can we know if what you are saying is the truth?

A. Ask the Big Judge here (pointing with his chin to the Bench). He can tell you! It was he who wrote the letter his former servant read out in the village.

JUDGE: I have not been writing down what was said because we have been in a voire dire (a trial within a trial) to see whether the explanation is relevant. That last answer gives us something

totally unexpected. It would appear, Mr James, that if you wish to pursue this line, I may have to make an important decision.

COUNSEL FOR BOTH SIDES CONFERRED and it was agreed that the Judge was intimating that he would stand down and order that another judge do the trial again, from the beginning, if Counsel for the Defence wished to take this line of cross-examination any further. Mr James: "I do not wish to pursue this line of cross-examination". (End of my notes)

It is interesting that, although the discovery that it was Monte who had written the letter did cause a flurry of interest, this was because of the discomfort it caused Jameson's lawyers, not because Monte had laboriously pecked away on a typewriter because nobody could read his writing and his letter was in pidgin. That was 'no big deal' because everyone who had 'grown into their careers' in the Territory would, I am sure, have done the same if danger had arisen again. Nor was there any significance in the fact that, since we had discovered this letter, it is probable that he wrote many because he had 'worked bush' with many people who would have come into jeopardy. But, as more and more people arrived to take up important positions, this aspect (which originally had had no significance) began to take its place beside another feature of the case which impressed me greatly in those earlier days.

Two Asians and eight Australians were there for much of each of the eight days of the trial and, since I had been told that Kiaps often sat in to see how courts should be conducted, I remarked to Tom Aitchison, the DC, that he must have a lot of spare Kiaps. He laughed and said, "They're not Kiaps. They're planters or traders and they want to see the bastard go for a row! Some of them were caught up in the Jap Occupation and owe their lives to growers he fleeced; others employed one or other of the growers and, in their own quiet way, they want to show support". This was my first trial and I was supposed to have an accountant sitting beside me, piloting me through the exhibits, but he disappeared after the first day because of a foul-up in Moresby. I could easily have become dispirited but the fact that so many busy planters and traders were there, day after day, to give support to people who had been victimised, gave me a continuous boost. And I have often wondered just how many, in other parts of the Territory, helped former employees, etc., in more lasting ways. Mowapo, Andy O'Driscoll's "monkeymaster", told me Andy left his estate for the education of his (Mowapo's) children. And the trusts set up by Fred Archer and Dr Strong are well known. Who are the others who should be remembered because of the quiet works of goodness they did?

What "Trusteeship" means, Part one

In the Jameson Case I produced evidence that he had used several different schemes for stealing the money, all of them directed against village people and never against European or Asian producers or companies. In a lengthy judgment Monte went through the evidence in regard to each of those schemes and seemed to enjoy saying that Counsel had raised a 'reasonable doubt' in regard to several. He convicted Jameson of stealing £33/2/5d by means of only one scheme and sentenced him to six months gaol. He then said, "There is a further Order which all Europeans, tempted to adopt the course of action which you took, might well ponder. This is a Trust Territory, administered by Australia under the terms of a Trusteeship Agreement which Australia has signed and for the upholding of which she has pledged her good name. And, incidentally, your good name and mine. You were employed by the Production Control Board in a position of trust. A trust which you depended upon for the success of your various schemes. For that reason, alone, you are a person whose presence in this Trust Territory must be reviewed in light of what the Legislature has decreed regarding 'Expulsion of Undesirable Persons'.

"Apart altogether from the fact that you were employed by an organ of Government, there is another reason why I will be recommending that you be deported and forbidden re-entry for as long as this remains a Trust Territory. You are a European who deliberately preyed upon the Native producers. You never attempted to use your schemes on Europeans and the only explanation I can think of is that you thought Europeans might find you out but Natives were, to your way of thinking, uneducated and therefore easy prey. In this case the fact that the Chief Accountant was unable to remain here for the duration of the trial

meant that Counsel for both sides had to rely on their own resources in regard to the intricacies of the documents. Had it been otherwise we might not have seen an elderly witness, who could neither read or write, pointing to his Weightnote amongst the array on the Bar Table and then, when Counsel for the Defence mixed it in with dozens more to test him, selecting it a second time although it appeared, to untrained eyes, to be no different from the others. And that is my point. To untrained eyes they all appeared to be the same but, to one educated in what to look for, it was clearly a unique item. I am sure that, had a jury been determining this case, its members would have been greatly impressed and it is possible that, on the parts of the charge where I acquitted, that jury might not have been so kind. Be that as it may, the question of who is an uneducated person is by no means as simple as you seem to have thought. More to the point, your duty, the duty of all Europeans here, is to advance the local people so that they can become rulers of their own country and members of the Community of Nations.

"What I want to be very clear is that any European who tries to 'take the Natives down' undermines Australia's sworn task. He besmirches Australia's Good Name and he can expect to be declared an UNDESIRABLE PERSON and expelled."

What "Trusteeship" means, Part two

God alone knows how often Monte hammered home the 'Expulsion of Undesirables' warning before I arrived in TPNG but he returned to it (so as to make sure that it was not applied) in The Queen against Francis Terence Murphy (Rabaul, 3 March 1952) but my report of that case is too long to be given here. He returned to it in The Queen against Reverend Johannes de Roo (Lorengau, 13 March 1952).

De Roo was in charge of Loniu Protestant Mission and, with Hilun, a Manus man, he was charged with stealing an oil drum and 25 gallons of oil from ComWorks. He claimed that he was justified in taking it because "everybody was doing it" and this meant that Hilun's case was separated and the court was compelled, by section 22 of the Criminal Code, to hear de Roo's "bona fide claim of right". When he was unsuccessful in this he claimed a second "claim of right" in that ComWorks owed him money and this was the only way he could get the debt repaid. He was unsuccessful again and was convicted and sentenced to two months gaol.

The Judge then spoke about TPNG being a Trusteeship Territory, as he had in Jameson's Case, and then said, "You failed, signally, in your duty in regard to Hilun but there is a substantial difference between failure to be a good example and 'taking a person down because he is a Native'. Moreover, I have taken account of this when imposing a light sentence on Hilun. I have decided that, as far as this Court is concerned and I am, of course, speaking purely in so far as this Court's jurisdiction is concerned, I should order that your sentence be served at Rabaul, rather than draw the attention of the Administrator in Council to the fact that you have been convicted and can be deported under the Expulsion of Undesirables Ordinance 1935."

What "Trusteeship" means, Part three

Not that it was only Monte who was talking about deportation and "undesirables". The case of Queen against Donald Drury (no relation to the then Director of Civil Aviation) was the first of the series of more than a hundred roneoed documents which became widely known as the "Q" Reports and came about because the case, which I prosecuted in Port Moresby on 20 September 1952, was so badly reported by the South Pacific Post that the trial judge, Judge Bignold, asked me if I would publish a "law report" on what actually happened. My report was also issued to the Law Students.

Drury worked with ComWorks and the facts which I proved were that, during the night, he forced his way, uninvited, into a Papuan home in Hanuabada village and banged an unopened bottle of rum on the table, making movements which the people in the house interpreted as indicating that he wanted a woman "unspecified" to have sex with him. I quoted a ruling from New Zealand (in Boland's Case, 1907) which said that it was not necessary for the prosecution to nominate what purpose the Accused was in the house for

but I also called witnesses to show that the body movements he had made had been made by other Whites who had intruded into other homes in Hanuabada recently and the interpretation I have mentioned was what a "man on the Clapham omnibus" would make.

Despite Drury's claim that he went into the house because he thought a friend of his was there (a friend he named but whom nobody had heard of) he was convicted. The Judge gave a long speech in which he said, "Before the war, everyone knew that Papuans were protected in their homes by 'The Law' but, when the Army used the Wartime Emergency Powers to forcibly remove them from their homes in the Port Moresby area simply because they were Papuans, and resettle them elsewhere, doubts arose. The evidence in this case shows that Papuans no longer feel secure in their homes so it is necessary that 'The Law' restore their security. For this reason, I want it known, far and wide, that anyone doing what this man has done must expect to be deported, as an "Undesirable Person", in addition to any other punishment, and he will never be able to return no matter what business or other connections he might have here".

The local weekly newspaper, the South Pacific Post, reported the case in its issue of 26 September 1952, under the headline "Man Fined for Entering Native House" but it failed to mention any part of the speech which Mr Justice Bignold made, or the order for deportation. My report rectified this omission.

The comparison with Quislings and collaborators elsewhere

In previous Snapshots I have described certain roneoed sheets so that, if you come across one when clearing out an old collection of papers, you will think twice before you throw it out as useless junk. But, since most will never have to do that kind of sorting, we will now deal with matters where the reference is in the public domain. The first is brought to mind by the statesmanlike attitude of the leaders of both sides in East Timor. In Europe after World War II there was an attitude that, in addition to the hunting down of murderers, rapists and other war criminals, very ordinary people who had 'fraternised' with the Occupiers in any way should have their heads shaved so that they could be deprived of their livelihood. In TPNG the attitude was very different, as can be seen from The Barry Report (dated 2 August 1945) which recommended that War Damage Compensation be paid to Papua New Guineans for canoes, houses, cooking pots and other items damaged, taken or destroyed as a result of the war. At page 26 we read this:

> 76. The views of Chief Judge Phillips command our full assent and concurrence. He writes – "Let me take the case of the Natives… In the middle eighties of the last century, they were subjected for the first time, and for reasons beyond their ken, to government by Europeans – the Germans. They found, after some disastrous clashes, that the newcomers were too strong to be resisted. After approximately thirty years of German rule the Germans were, for reasons unknown to the Natives, conquered and supplanted by Australians who bore arms and whose governance it was hopeless to refuse to accept. After nearly thirty years of Australian rule, the Australians, again for reasons quite unknown or unappreciated by the Natives, were ousted by the Japanese. With negligible exceptions these Natives had never been outside their islands and had no conception whatever of world politics, or of the size, strength, population and resources of other countries. They therefore completely lacked the knowledge and experience which might have enabled them to judge just when a de facto government should be recognised as one de jure, a question which even enlightened European governments have found embarrassing … It is submitted that Natives who, at the point of the bayonet or under other enemy duress, have led the enemy to an aerodrome or landing site or along a road cannot fairly be classed as "collaborators".
>
> 77. We consider that Natives who are alleged to have actively assisted the Japanese should be interrogated by the Director of District Services and Native Affairs. Unless he is satisfied beyond reasonable doubt that in so acting, they did so voluntarily and without coercion or duress and with a realization that it was wrong to do so, they should be entitled to come within the compensation scheme."

The result was that, in addition to normal patrols and those for special purposes (eg chasing suspect murderers, immunising whole populations in the anti-yaws campaign, etc.) a minimum of three patrols went out into every area which might conceivably have been affected by the war: one to tell them the good news, the second to find out what was being claimed, and the third to cover items forgotten or people missed out on earlier patrols. It was a way of saying, "We are back. The war is finished," and this simple (but unfortunately forgotten) fact had much to do with the wonderful spirit of inter-racial harmony and trust which was so impressive in those days.

Difference in the Commonwealth Grant

There can be no better indication of the difference between the early 50s and, say, the mid 60s and 70s than the report in The South Pacific Post, in its issue of 16 September 1953 that, "The Administration will receive an increased grant from the Commonwealth Government this financial year. The 1953-54 grant will be £5½ million, which is £30,000 more than the 1952-53 figure." This was thrilling news because, up until then, we had all been led to believe that the grants from Australia would soon be reduced and the Territory would have to rely entirely on internal raisings.

A little further down the report, however, it said, "The handing over of stevedoring to private enterprise meant a reduction in collections. In 1951-52 the Administration received £79,000 from stevedoring charges and had budgeted for an estimated £50,000 for 1952-53," so 29 of the 30 thousand was already eaten up and the report went on to say that, "Mr Reeve said internal revenue had also shown a drop in the collection of Customs Duties (due to) import restrictions," so, since those restrictions had been imposed by Canberra, the increase was actually a loss. To give some measure of scale for the five and a half million I would point out that, on 14 June 1962, there were complaints (see Legislative Council Debates of that date at page 491) that £5.8 million was in the latest estimates for the provision of housing for just the Design Staff of the Public Works Department who, of course, would all be newcomers to the Territory.

Four unusual items of expenditure covered by that £5½ million

The Commonwealth Grant paid for all Administration expenses including salaries, housing, hospitals, roads, bridges, schools, ships, prisons, etc., but there are (amongst many others) four special items of expenditure in the early 50s figures and, since they did not occur in the 60s or 70s, I feel I should mention them here.

The first is Price Control (which we will mention in a later Snapshot), the second was Bomb Disposal, the third is the anti-yaws campaign and the fourth – the one in regard to which the South Pacific Post for 29 March 1953 reports that £1½ million had been paid already, and a further half a million was in process of being paid – is the payment of cash to Papua New Guineans whose canoes, gardens, homes, spears, cooking pots, or other possessions were destroyed as a result of the Japanese invasion.

Comparison between Australia and TPNG

Librarian Ruth Carter (who referred to herself as 'The Original Lady Who Lived in a Lavatory' because the library had been an Officers' Club during the war and she had converted their 'ten holer' into a flat) was the driving force of the Discussion Group mentioned in No. 6 and when she saw that I was not just another dropper-in with nothing to do, she nominated, as my first discussion paper, the article by Murray Groves on the way Natives were dealt with in the Supreme Court of Papua New Guinea.

I begged off, saying that I had only been in the Territory six months, but she said that the article (which is at pages 582-588 of the 25 January 1952 issue of the Australian Law Journal) was written as a result of an earlier article by Professor Elkin of Sydney, about the way Australian courts had treated Aborigines and that, since I had done my schooling at New Norcia, the oldest and largest Aboriginal Mission in WA, it was right up my alley.

This was a time when MauMau was in the Australian newspapers almost daily and we all had strong views about it and its effects. Nobody, however, had said anything bad about Australia's treatment of the

Aborigines and the first reaction to Elkin's article was outrage because he claimed that Aborigines were dragged, terrified, before the courts without anyone bothering to explain what the Law's 'standards' were or what the consequences of being brought before a court could be. My task was to tell the Ela Beach Discussion Group whether this 'Australian characteristic fault' applied in Australian TPNG.

Since Murray Groves had only been in Port Moresby and along the southern coast of Papua, it was unfair to expect him to speak about the former Mandated Territory but I had just spent six months there with the Supreme Court so I must be able to fill the gap, Ruth said. To cut a long story short ('long' because I had not seen Professor Elkin's paper and I had only been in the Supreme Court in TPNG, not in Magistrates' Courts) I said that the summary of Elkin's paper which they had provided resonated well with my own experience in Magistrates' Courts in Perth, Bunbury, Geraldton, Sydney and Melbourne, but the victims were not restricted to Aborigines.

Too many people running those courts seemed to have become immersed in their own work (or their own importance) with the result that they forgot that it was all quite terrifying for newcomers. And I said that I had been thrilled to see, in every town I went to in TPNG, the care with which Kiaps listened to Monte's speeches about making sure that every Native hailed before them was properly treated. And I have repeated that many times e.g. in my paper: "TPNG and the Common Law", my lecture "The Papua New Guinea Precedent for Taking a Plea", and in my lectures to Magistrates.

Comparison Between Australia and the former Territory of Papua

In regard to Papua my task was very different. I simply had to read Murray Groves' conclusion (p. 588 n. 39) where he said: "On the general question of native attitudes to Court procedure, it is not considered that the situation in Papua is in any way very similar to that described in Professor A P Elkin's article, Aboriginal Evidence and Justice, Vol XVII, p.173." And, in the text on that same page he says, "It can be safely stated, on the positive side, from observation of a large number of Papuan accused in Court, and from conversations with Papuans elsewhere, that the Papuan accused is normally aware of the law's 'standards', in the sense that he knows what sorts of activity the Government discourages and for which the Government sends him before the 'big Judge', and also that the Papuan accused understands with some clarity 'the consequences of the proceedings to him'. It is also considered that the alertness shown by accused in Court, the eagerness with which they give their version of the story, and the normal clarity of their testimony, indicate that they probably understand fairly well the 'proceedings' …. and even consider them 'reasonable'."

Since I had learnt that Murray Groves spoke perfect Motu and was present in all cases conducted by the Supreme Court in Papua, over a period of two years, I told my audience that this evidence is invaluable and a great credit to those responsible for the administration of the legal system. And, with pride, I repeat it here.

My first hearing of the term 'The New Guinea side'

The Ela Beach Discussion Group did not let me get away with my simple statement that Murray Groves' evidence was of inestimable value. There were 14 members present and several said, "Yes, but he criticises the New Guinea Side!". This was the first time I had heard anyone talking about 'sides' but they pointed out that, at pages 587 and 588, Murray Groves said, "It is not proposed to discuss the 'atmosphere' of the New Guinea Court; this the writer is not qualified to do. But the 'bare bones' of the New Guinea court procedure have been familiar from the perusal of verbatim reports of proceedings (and)… scattered sentences from a 'summing up' of Mr Justice Phillips may illustrate the practice more clearly :-

"I propose to direct myself, first, as to the law relevant to the charge, and later, as to the evidence…"

"It is now necessary for me, as Judge, to direct myself next, as Jury, as to the evidence …"

"That is a question for the Jury to answer, bearing in mind …"

“That completes my summing up and, at this stage, had I been addressing a jury of good men and true, instead of directing myself, they would retire to the jury room… Whatever the jury’s decision might be, no reason would, or may, be publicly given for it. When a Judge is also the jury, however, he should, in my opinion, give (even though briefly) the reasons for his findings…” And from this Groves concluded that “prima facie, the New Guinea procedure would on the whole be less comprehensible to a Native…”

It is perfectly true that Monte wrote lengthy judgments and that they were filled with the precise words quoted by Groves. But each of those ‘scattered sentences’ was followed by a string of figures and letters which were never read because they were there for the typist if there was any appeal. The words quoted in the article were such that I could chant them with him because I heard them innumerable times and he, himself, said them without bothering to look at the page. My point is that, by looking at what is written, without understanding why it was written, one can get a totally wrong impression. Monte always gave a lengthy explanation to the Papua New Guineans in the court and that is why they flocked in, crowding every courthouse and leaning in through windows and, in one case, at Buin, crowding below the courthouse and listening through the floorboards.

His constant harping on the difference between this section of this ordinance and the other section of another ordinance was for a different section of his audience, the Europeans, and was to show that ‘near enough was not good enough’ and it was only the legislation which mattered, not any personal idea of the prosecutor or court. It was not until some years later, when I went into “Pen’s Book Store” in Little Collins Street in Melbourne, that I learnt why he did this. The owner, Mr Penhalurick, had been a Kiap and he told me that, in the ’20s, Chief Judge Wanliss had awarded costs against a Kiap Magistrate and this caused consternation because Kiaps had joined the service because they had served in New Guinea during the war and had fallen in love with it. But they had not been trained so, one day, at a cricket match (and although Monte’s leg could not bend, he was an avid player) they asked him if he would teach them their duties as Magistrate. So, he set up a training course for Kiaps and, every Wednesday in Rabaul before the War, he gave lectures on the law. And after the Second War he continued, this time making every court case another lecture. The fact that those lectures were appreciated is obvious from the fact that, as I have said so often, his court was always crowded and any Kiap who could make it, made sure he attended. That is why Monte made the distinction (ad nauseam, to some of the lawyers appearing before him) between the Kiap as an executive officer of the Government and the Kiap exercising his jurisdiction as a Magistrate. And the difference between his exercising his jurisdiction as ‘jury’ and as ‘judge’.

Doug Parrish and the difference between kiap and defending officer

I could give any number of cases which proved how deeply Kiaps had taken to heart Monte’s lectures about the difference in their exercise of the various functions which they were sworn to perform. In fact, on the last analysis, every time they put forward a client’s defence they were ‘going against the grain’ of their Kiap function or their police function or their ‘administration of quiet governance’ function.

The case of The Queen against Gumi at Lae on 7 April 1952 illustrates what I mean but, before describing it, I should mention that, in those days, there was no position of District Commissioner. At the top of the list of ‘people with power’ were the District Officer administering the district (whose power was restricted to his district) and a group of three or four men with the special rank of District Officer (Magisterial) whose power extended everywhere. And the senior of this second group of godlike creatures, who brooked no interference, was Ernie Britten who had been in the Service since 1929.

He had conducted a Preliminary Inquiry into a Garaina case of Grievous Bodily Harm and decided that it should be committed for sentence. Doug Parrish had been brought in from Finschhafen and, since he had been told that he was Defending Officer, he saw his client and his client told him that Ernie Britten was wrong. What to do? Garaina was a very remote place, bordering the Uncontrolled Area, and Grievous Bodily Harm cases were of vital importance to the ‘administration of quiet governance’ function because Payback could lead to intertribal war. Ernie Britten’s decision that the case warranted a committal for

sentence meant that the witnesses had not been brought in. If Doug put forward his client's claim that Ernie Britten had made a wrong decision, this would mean that a special patrol would have to be mounted to collect them. From the point of view of the 'Kiap function', this was disastrous because it would not only divert scarce personnel from essential duties but it would involve a 'loss of face' because, as Monte was always telling everyone (but not in these words) OLI would know that Masta Britten had made a fool of himself. And there was the fact that Ernie Britten would be sitting in the back of the court. It would be very easy to 'cover up' and let the committal for sentence take its normal course. But Doug Parrish decided that his duty required that he contest the committal and this he did. Successfully. And I felt that this was a good augury for the future when the Trust Territory became an Independent Nation.

Rescuing a judge in Samarai

Because of the poor food generally available, people used to pool their resources when something special was on. The arrival, in March 1954, of the first new judge of the Supreme Court was such an occasion, so the expatriates of Eastern Papua planned three receptions for him, the first at the District Commissioner's residence, the second at the home of Don and Marion Grove, and the third at the Cottrell-Dormers. But everything went wrong the moment the judge arrived at Samarai. His was only an "Acting" appointment and, for reasons which will become obvious, I feel that I should not mention his name.

The facts are that I returned from leave on 10 March 1954 and, on Monday 22 March, I received a call to go to Government House where Sir Donald Cleland told me that one of his house-guests was in Big Trouble at Samarai and I was booked on the Sandringham flying-boat, next morning, to salvage the situation. Seeing my blank look he continued, "He is a new judge of the Supreme Court. He is taking refuge on the Government trawler Leander because half the local community have threatened to tar-and-feather him. You'd better sit down and read this," and he handed me a long – a very long – telegram from the judge, in plain language, which not only stated that he had been threatened with tarring-and-feathering but that District Commissioner Healy had interfered with the course of justice by attempting to bribe him. I said something, and Sir Donald said, "Precisely! Imagine the headline! But if the DC did make even the slightest attempt to interfere with the administration of justice, there'll be no mercy shown him. He'll be out on his ear in no time! I can't tell you to keep that telegram secret because it was sent in clear and half of Papua will have heard it on the sked. But remember: Australia's Good Name can be destroyed by this."

In the mail that afternoon I received a reel of 8mm cine film I had taken on leave and, for reasons which I can't explain, I packed it to take with me. My guardian angel was working overtime because that reel of film solved all my problems. On arrival at Samarai I was met by the DC, Mick Healy, who said, "I don't want to appear to be influencing you so I've booked you into the Qantas Guest House." I said that the Administrator had given me instructions to protect the new judge and I presumed that I could only do that by living where he was living. He said, "I am fully aware of why you are here and, since this is the first available opportunity, I have the right to simply say that I have never spoken to the judge, except to introduce myself, and as soon as I said who I was he burst into a tirade of abuse! I have certainly never tried to bribe him, or anyone, in any way, shape or form and I'm bloody disgusted by all this." I asked if he had written something which the judge could have misconstrued and he said, "No! I've never sent him any note. I simply went to Leander to ask him why he was not staying at the Residency, as the judges always do, and he blew up." I asked about the 'tarring and feathering' and he said there was a wall of silence but it was clear that the judge had somehow got the Mixed-Race community 'up in arms'. He then went on to say that he (the DC) had brokered a deal with the Mixed-Race men and, out of respect for Judge Gore, whom they all loved and admired, no harm would come to the new judge while he was performing judicial functions (including going to or coming from the court) but that if he stepped outside this protected circle there was no way he could be protected because of the numbers involved. I asked what those numbers were and he said that the term 'Mixed Race' meant everyone who had a Licence to Drink and there were hundreds. When I said that tarring-and-feathering was a strange term, he said that Kwato Mission had inculcated many English upper-class expressions. And when I asked how the Samarai community in general

were reacting, he said that the Mixed-Race community and the judge were keeping it to themselves and he hoped it would remain that way.

I then said that, since there was an agreement in place, it would be unwise to give any appearance of 'tilting the balance', so he took me to the Guest House and left me. After establishing myself there I went to the Government wharf and found the judge. I introduced myself as the Crown Prosecutor who would be taking over the rest of the circuit but instead of talking about the troubles I had come to solve, he talked about the weather and said that he regretted that there was no space for me on the trawler! He was very nice, but it all seemed very odd. I noted that several burly Mixed-Race men were sitting on deck in the forward part of the vessel, in addition to the crew who were sitting separately. There were an awful lot of people on that boat! And they were all very busily doing nothing! I asked where the captain was and was told that he was ashore so I went in search of him. He was Bill Johnson who said that things had been very harmonious all the way from Port Moresby; that each evening the judge had asked him (Johnson) if he would care to join him in a few drinks and he had replied, "No thank you, Judge. I don't drink when we're at sea," and that would be that. And the judge had told him, on a number of occasions, that if he had any laundry which he wanted done, his (the judge's) servant, Andrew, could do it, an offer which he continued to politely refuse because he had his own servant, in addition to the crew, to do whatever was needed. Everything was going well, he said, until they arrived at Samarai when all hell broke loose. He did not know what had triggered that explosion, he said.

Next day I sat in on the criminal trial which was almost completed. An Australian named MacKay was charged with stealing money as Honorary Treasurer of the Samarai RSL Club. He was convicted and sentenced to six months hard labour and ordered to make full restitution. It was a tawdry case and it seemed strange that a DC would jeopardise his good name and career by attempting to bribe a new judge to protect such a man. But, apart from the statement in the telegram, I still had no information about that except for Mick Healy's denial.

That evening I went to a large gathering at the District Commissioner's residence to honour the new judge. It had been organised months before and people had gone to a great deal of trouble but the judge did not attend. Despite this, it was a very pleasant occasion and a letter from Dame Rachel Cleland was read because she described her recent meeting with the Queen. Nowadays it is difficult to appreciate how important the reading of such a letter was, but in those days, we liked being part of the British Empire and the conversation turned to the war and Mick Healy told us about Colonel Situ, a Japanese officer who became mentally afflicted and lived for quite some time as a sort of pet in a Trobriand Island village. Then, in an unguarded moment, I said that I had a film of the Queen's visit to Brisbane in my luggage. That broke up the party! I was escorted back to the Guest House to collect the film and someone else raced off to get an 8 mm cine projector. The party continued with my film.

After that Rev. Cecil Abel, from Kwato Mission, buttonholed me and said that he had been talking to Brother Vogt MSC, from the Catholic Mission at Sideia, who was building a church on Samarai and they felt that, between the "Mixed Race" men Brother Vogt had trained as carpenters and builders, and those who had been to school at Kwato, they might possibly have enough 'friendlies' to convince the others to free the judge. I said, "That would be wonderful!" and he said, smiling, "It will cost you, of course! We could use that film of yours at Kwato. Would you lend it to us?!" And just over a decade later, when I was trying to get Magistrate Training off the ground, against enormous odds, it was Cecil Abel (and Christine Kaputin) who came to my aid. And from those efforts, at the old Ray Gorris Home at 6 Mile, the Administrative College grew and, with it, the whole of "advanced training" for Papua New Guineans which had been so dear to the hearts of Monte Phillips and Judge Gore.

But to return to my Samarai visit. Next morning – and with two other welcoming parties still to be held – the judge informed me that we were leaving immediately to go back to Fyfe Bay and Abau, where Leander had taken the judge the previous week, before returning again to Samarai to hear the other Samarai cases. I found out later that the judge wished to meet, at Maiva Plantation near Abau, the cousin of his friend Bill

Elworthy. It all sounded like a millionaire's luxury cruise, but I had no choice in the matter and, in any event, it would remove the judge from Samarai until Cecil Abel's/Brother Vogt's plan had a chance to work. In fact, when I found out that Fyfe Bay was the LMS Theological College where one of my Papuan friends (mentioned in Snapshot 6 in Una Voce No 2 of 1999) was studying, I started looking forward to the trip.

On a millionaire's cruise, one would expect excellent meals but this was a trip like no other. Relations between the judge and the captain were studiously correct but frigid, for reasons which neither would explain. And when the midday meal was very late, the judge announced that 'we' will be feeding ourselves and Andrew (his servant) was experiencing some difficulty in the galley. When lunch did arrive it was pork and the smell was such that even the judge thought it might be dangerous so I got out a packet of biscuits and some dried fruits which I always carried "in case we had a forced landing", and tried to get him to talk. But the only topics I could get out of him were 'fair rent' cases which he conducted under the wartime National Security Regulations. One good result of my supplying the biscuits was that, although he never mentioned the 'tar and feathers' topic, I was able to tell him of Cecil Abel's offer. Whether it pleased him or not I could not say because he merely gazed fixedly at me and said nothing.

When we reached Fyfe Bay, I started to disembark but the judge said he would go alone. He soon returned, with Rev. Perry (of the London Missionary Society, a foundation of the Congregational – now United – Church) so I went ashore to meet them. Rev. Perry was clearly upset and, without introducing me, the judge went on board leaving me free to ask Rev. Perry about my Papuan friend who was at his Theological College and he gradually calmed down. He then took me to the College, went inside and returned with two baskets saying that they contained fruit and two live crabs, "one to bribe the captain's cook with; one for you", so I gathered that bad news had travelled fast! I gave both baskets to the judge and we had their contents as our meal that night.

We departed at First Light for Abau. Mert Brightwell (who joined the Field Staff on 9 June 1947 and who did excellent work looking after the interests of those charged with the Telefomin killings some months later) was the Assistant District Officer and he invited me to stay with him, so my meal problem was solved. He also sent supplies on board for the judge and was able to provide me with fresh milk! He defended Meka-Ori who was charged with rape, obtaining a well-deserved acquittal, and we then set off back to Samarai, arriving at 11.20 am on Monday 29 March. On the way I borrowed a fishing line from one of the crew, purely to get away by myself and, by a stroke of luck, I caught a large fish which provided another meal and an opportunity for me to attempt to find out more about the judge. But I got the same empty result as before.

When we arrived back at Samarai the Mixed-Race guards were soon back so I asked them what their intentions were. They said that the judge would not be harmed provided he acted like a judge. I gathered that Cecil Abel's negotiations had not succeeded so I said, "The District Commissioner arranged an official welcome for the judge and he did not attend. There are two more parties and he should attend them because he is the judge." They said that "anything he should do as a judge, he could do and this has been made clear to him" so I went to the judge, told him what they had told me and asked if he wanted me to remain on board. He stared at me and then said that I was being impertinent and he could look after himself! I had no choice but to leave so I did, returning to the Guest House.

At 3 pm the Samarai Sittings began again, and at 5.20 pm we adjourned. That evening we had the rescheduled welcome at Don and Marion Grove's home where, in addition to local residents, I met Bishop Philip Strong (later to become Archbishop and Anglican Primate of Australia) and vulcanologist Taylor who received the George Medal for his work at Higaturu. But, once again, the guest of honour did not appear. One of the results of that party was that, when Monte asked me to reconstitute his Land Judgments from the tattered remnants, he had been able to collect after the destruction of the war, Don (who joined the Field Staff on 20 September 1946) undertook the distribution of the result which, in some cases, involved reports of over 140 pages. Had he not helped, the project would have collapsed and the world (including Australia's march towards Mabo), would have been much the poorer.

Next day, Tuesday, the cases continued and, that evening we had the third of the welcome parties, this time at the home of Bill and Kath Cottrell-Dormer, the former Director of Agriculture and now in charge of a Native Economic Development Project. It was at that party that I met Brother Vogt. He told me that, in 1935, he and his team of Papuans had built the District Office at Samarai for £600 and that practically every carpenter or builder in Eastern Papua had been a member of his team at some time. Since Papuans who were trained carpenters could usually get a Drinking Permit, I realised that Cecil Abel's belief that he and Bro. Vogt could influence the Mixed-Race community was well placed.

At 2.50 pm the following day the cases were completed and, since I believed that Leander would (as would have been normal) be returning to Port Moresby as soon as possible to take up her next round of duties, I went to the wharf to find out when we were leaving. The lookout which the Mixed-Race community had maintained on board had now disappeared. I asked Captain Bill Johnson our time of departure and he told me that the judge had given him written orders to remain a further 24 hours at least. When I asked why, he said no reason was given. I said that I noticed that the Mixed-Race group had left and he said that "everything was now settled" although he was saddened that, to quote his words, "the judge did not have the guts to apologise". I asked him "apologise for what?" but he refused to explain saying he had "always been trusted by all the judges and that was enough" for him.

I then searched out the judge and said that I understood we were not leaving today. But instead of answering he simply stared at me. I told him that I had noticed that the forward parts of the vessel were now clear of Mixed-Race watchers and still he did not answer. I then said, "Look, Judge, this is no good. What is it all about?" and, with eyes which suddenly came alive but with an impassive face he said, "I discovered two Boongs conspiring with Andrew to take my gear off the ship and I demanded to know why. They said that the District Commissioner told them to bring my gear to his house. I told them that this is my ship and it is interference with the independence of the judiciary for anyone to touch my gear. I made them put it back. That is all that happened! I don't know what this is all about, as you so inelegantly express it."

I said, "But did the DC himself say anything to you, or write you a note?" He said, "That is a stupid question! You really must cure yourself of this habit of asking stupid questions, Quinlivan!" That floored me but I said, "I ask because, as you well know, Judge, I have been sent here because you sent a lengthy telegram alleging that the District Commissioner had tried to bribe you." He said, "Bribe me? How? I have never heard anything so stupid!" I said, "But you wrote that he had attempted to interfere with the administration of justice in your first case here. McKay's case." He gritted his teeth and said, "I told you that his SERVANTS were interfering with the administration of justice. That is all that happened" – and I believe that, if there had been a table close by, he would have thumped it on 'servants' and on each of his final words, because of his emphasis. He then turned and walked away.

It was one thing for him to say "That is all that happened" but the telegram had specifically said that much more had happened so I went to the Wireless Office and started saying who I was but the official there said, "I know who you are and why you are here. But telegrams are confidential." I said, "I know that. I'm not trying to get you to tell me what was in the telegram. All I want to know is if it was ever sent." He misinterpreted my question and thought I was charging him with not doing his duty for he replied, without thought, "Of course it was sent. I told him I could not accept it unless he paid cash for it but he went off his rocker and said I was involved in a conspiracy of some sort." I said "Who?" and he said "This new judge. I told him it was too long but he said that he was the new judge and I had to accept it. I decided to give in to him, and tallied the words and told him how much it would cost and he said, 'Get Healy to pay it.' I said I could not do that and then he really did his lolly. So, I sent it."

I found this last piece of the jigsaw the most disturbing and, since I now had nothing to do but wait, I began to write my report. It was, of necessity, a very long report and I found evening falling, and a note for me to come to Don and Marion for dinner, which was typical of their kindness and greatly appreciated. I spent next day (Thursday 1 April) completing the draft and was told three things (i) that the passenger ship Soochow had arrived, (ii) the judge would be sailing in her at 5 pm and (iii) that Leander would sail at

midnight. I felt that the judge was guilty of grave discourtesy leaving like that and I must record the fact that, some weeks after he left, he wrote me a charming letter of thanks for all I had done and, in it, he said that he envied me greatly because of the wonderful future which was clearly ahead of me! Unfortunately, some days before he wrote that note, the Administrator ordered the Crown Law Officer, Wally Watkins, to 'sort out' the Telefomin massacres and Wally took me with him to Wewak and left me there, so I did not receive the note for many months.

I had a final dinner with Don and Marion and then boarded Leander for the return to Moresby. And I again borrowed a fishing line, for pleasure this time, and caught another fish which I gave to the ship's cook. It was the fish which broke down Bill Johnson's resolve to say nothing because he suggested I talk to Andrew, the judge's servant who, unknown to me, was travelling back to Moresby with us. Andrew said that when he arrived on board, he asked the crew what his job would be, and they told him that since there was only a small galley, his job would reduce itself to packing the judge's gear and taking it ashore when they reached Samarai. When they reached Samarai, he said, the judge started shouting at the captain's wife's relatives in a very frightening way so, when the DC's servants came, he hurriedly bundled the judge's gear together and handed it to them so that he could escape 'this madman'.

I said, "What do you mean, this madman?" He said, "He is often like that. Most of the time he is OK but then, for no reason, he goes mad. And he seems to enjoy hurting people. When the DC came, he started shouting at him. Sometimes he shouts softly at me and that is worse. He shouted loudly at Captain Johnson and his wife's relatives but, after that, he just stared at them and said nothing. But it was an evil eye he gave them each day." I said, "What do you mean, the captain's wife's relatives?" and he said, "The Half Castes".

All Saturday the weather was unpleasant but at dinner time we entered Wolverine Passage and the rain cleared and we enjoyed a glorious sunset. At dinner Bill Johnson opened up saying, "You asked me why he blew up at me. I don't know why he did. But you must understand that this vessel is my home and, when we are in Samarai, it is my wife's home. And since she is from there, it is her relatives' home also. All the judges and everyone else respect this and, when we reach Samarai, they go ashore and my Mixed Race relatives come aboard. But when this new judge saw them, he hurled abuse at them for perverting me. Can you imagine it? 'Perverting' me! You don't say things like that! He thinks they don't understand English! Then he said he would call the Police and have us all kicked off his boat! His boat! It is my home and it is MY command no matter who is on board. And he went on and on, insulting all my relatives and friends calling them Half Caste Bastards and Half Breeds."

We arrived at Moresby at 2.30 pm and I reported to Government House after cleaning up. Sir Donald thanked me and I then said, "I'm afraid the report is rather long and I don't know when the typist will complete it." He said, "Don't worry about that. If you think the DC has done wrong, even if you can't prove it, he will have to be charged. We've never had interference with the administration of justice before, and it's not going to start while I'm Administrator."

I said, "The DC did nothing wrong. In fact, by negotiating a truce in the early stages, he saved a very dangerous situation created by a series of misunderstandings. The new judge thought that Leander was his to do with as he willed. He seems to have thought she was "The Judicial Yacht"- like the Royal Yacht – and did not know that she worked for many different departments. Or that she was Bill Johnson's home; that, when Leander was in Samarai, members of Bill's wife's community were accustomed to visit. And when they visited he drank with them, not because they 'perverted' him, but because he was no longer responsible for a ship at sea. It was a clash of cultures, both in the ordinary sense and in what the new judge expected. The DC's only involvement was through his servants who, when they arrived, as usual, to help the judge up to the Residency, had the new judge's belongings thrust at them by his terrified servant. Now, as to the rights and wrongs of it …" and he stopped me, repeating that he only wanted to hear about the DC at that stage, and he would read my report in due course. He thanked me again and I left.

Postscript. I have updated the report to make it understandable today but there is something which should be explained. I wrote in longhand and included everything which could be useful both to the Administrator in his task of deciding whether an official investigation should be ordered, and to the person making the investigation if one was ordered. I therefore included the paragraph which appears below but, on further consideration, I felt that I was being emotive and the paragraph was 'political' so I struck it out. Then I was sent to Wewak for many months and never saw the typed product. Since I had been commissioned to get a house-guest out of trouble, I felt that it was a private matter but the Crown Law Officer did not have the same opinion for, when a similar situation occurred some years later, he re-issued my report to tie in with a submission he was making on the basis of some other reports I will mention in a moment and, in that re-issue, the paragraph I had deleted was included. The circumstances were that an official from Canberra had been appointed Assistant Administrator and he made serious accusations against a number of senior men who had served the Territory well for many years. I do not know how many he hurt but I personally had to investigate four, one in the Sepik, one in Morobe District and two in Port Moresby, and in each case, there was clear evidence that the person accused had been gravely maligned.

The paragraph read: "A stable person does not normally lash out at the clerk behind the telegrams counter, and I wondered just what investigations the authorities in Australia had made as to the appointee's mental health before imposing him on an unsuspecting Trusteeship Territory as the equal of judges who had devoted their lives to creating a viable legal system for its peoples."

George Greathead's report on 'Crime in Mount Hagen'

On my first circuit (January-May 1952) I found copies of this report at many Government Stations because the judges wanted it used as a precedent where cases arose in areas the Supreme Court had not been to before. It was written on 1 June 1947 by George Greathead, who was then District Commissioner at Wewak, because the Chief Judge had, on 28 May 1947, completed the first Supreme Court trial at Mount Hagen (The King v. Porge) and had called for a 'report on the local situation'. Although I have compressed it slightly, the wording is exclusively George's – especially 'my staunch local Native advisers', 'we had made considerable progress', 'our stocks … would slump', 'rehabilitate our position'. It presents a wonderful picture of a dedicated kiap on a busy one-man station, several days' walk from anywhere.

The Hagen country was first penetrated by a Government Patrol conducted by ADO Mr J.L. Taylor accompanied by Messrs M.J. and D.J. Leahy (prospectors) and Mr K. Spinks (Surveyor) during 1932-33. During 1934 the Leahy brothers were granted a Mining Lease at Kuta, 4 miles south of the present Government Station at Gormis, and immediately commenced working the lease. The same year the Administrator, Brigadier-General T. Griffiths, invited the Lutheran and Catholic missions to establish Stations in the newly discovered country from Chimbu west as far as Mt Hagen. This invitation was immediately accepted: the Lutheran Mission established stations at Ega and Kerowagi, in the Chimbu sector, and at Ogelbeng, in the Hagen sector, while the Catholics established themselves at Denglagu, at the head of the Chimbu River, at Dimbu, in the Chimbu sector and at Wilya, in the Hagen sector. The Wilya station was moved during 1937-38 to Rebiamul, adjacent to the present Government Station. From the outset the Hagen people traded freely with the Leahy brothers and the Mission Stations, and were quick to offer themselves for casual labour. In no time, many hundreds of young Hagen warriors were experienced miners, understood the use of a spirit level, and generally made themselves very useful units in assisting their new visitors from the east. Tribal fighting continued but it appeared to be the Hagen code that the Europeans were not to be molested – a code that was rigidly adhered to. Hagen was only visited periodically by Government officers from 1933 until 1935, the visits becoming slightly more regular and of longer duration after 1936, following the establishment of a permanent Government Post at Kundiawa – 70 miles east of Hagen. In January 1938 administrative consolidation began at Hagen when Patrol Officer M.S. Edwards established a post at Gormis and, by the time of his departure in December 1938, he had laid down solid foundations upon which future intensive consolidation of Government influence was pursued.

Inter-tribal warfare has been reduced to a minimum; offenders being detained on the station more for educational purposes, than as punishment.

It was my privilege to relieve Mr Edwards at Hagen in December 1938. From the outset it was evident that the Hagen wanted to be directed; they could not help themselves and, probably quite unconsciously, they became amenable to discipline and were accepting direction as though they had been doing it for years past. A court-house was built on the station which the people were given to understand was their house in which their differences were to be presented to the Government Officer as against their previous practice of settling disputes on the battlefield. Their reception of this innovation was immediate; and for the time being it was effective – the differences for the most part were of such simple nature as minor domestic common assault, trespass, with a limited amount of stealing. The usual punishment amounted to detention at the station on general labour jobs for varying periods of from one week to three or four months.

But by March 1939 there appeared disturbing signs on the west flank. From the outset it was my policy to confine administration to a radial of 12 miles from the station. The people within this radial area indicated their acceptance of Government control and direction, in return for which the Government accepted the obligation of protecting them from attack from outside the radial. Up to this stage not one instance of a capital offence had occurred within the radial area, although quite a few instances had occurred just prior to my taking over. The try-out of the new Government Officer came towards the end of March 1939 in the form of the wilful murder by Andagelgangam Natives from beyond the area of radial control, of a man of Kuli, just within the area. The demand from my staunch local Native advisers for tangible evidence of my good faith in assuring protection from outside attack was immediate and sustained. Death must be met by death, they clamoured.

My first step was to request the presence of the offenders at the Station court-house. With what result – "Who are you to tell us what we will do? Are you a flower that we can cut down only for you to spring up again? Have you not blood in your veins that we cannot cut and bleed you to death? If you want, come and get us!" – were the retorts. Government prestige demanded that I accept the challenge to 'come and get' them. It took the form of a dawn raid since that was the only practical possibility of securing the wanted men. Well prepared for our arrival, the patrol was greeted with showers of spears and arrows. The patrol, forced to protect itself, opened fire, resulting in casualties among the Native attackers. Regrettable as the affair was, it meant the saving of many Native lives in the future, it advanced administrative consolidation many years, and was welcomed by the community as satisfying the requirements of justice and a realistic deterrent to the contemplated revenge for past killings. Contact with the Andagelgangams was quickly established and they remain to this day among the most co-operative and most understanding supporters of Government consolidation. With Government prestige and good faith now established the way was paved for permanent consolidation. The construction of the great arterial highways of which Hagen boasts today were got under way, each group constructing roads surveyed through its own territory, and court arbitration became a daily routine. This state of affairs prevailed until about July 1939 but it was the transition period when a flare-up was to be expected at any time, and in any locality.

Up to this time the Native population was profuse in its assurance that they had attained a status equal to that of the coastal Natives, eg under complete Government "control". I assured them that we had made considerable progress and that our goal was in sight, but that we had not yet achieved that objective. "But we have reached the status of coastal Natives" was their retort. "We built the roads; we have abandoned criminal offences; and we bring our differences to you for arbitration and adjustment. What else must we do to convince you that what we claim is correct?" They did not have long to wait! Towards the end of July 1939 an influential citizen of the Diga Andabanch reported early one Saturday morning that a difference had arisen at Andabanch. Asked for further details he told me that a slight difference had arisen between two couples who had been attending a private courtship dance. Pressed for further details he said that other family members of each aggrieved party had interested themselves in the difference and were throwing mud at each other. "Just a friendly quarrel; nothing to worry about" was the philosophical reply of my informant when I demanded the presence of all participants at the court-house. It will suffice to say

that by the time my informant returned to the scene of the disturbance, four warriors were dead and 35 were seriously wounded.

Here, indeed, was the test. Throughout the day influential citizens of adjacent Native groups visited the station and expressed their disgust at the turn of events, and their sincerity was not to be denied. All leaders of groups bordering Andabanch were called together and the position outlined to them. It was impressed upon them that the goings-on at Andabanch had cast a grave reflection upon whatever progress we had made, and that our stocks in the eyes of the District Officer at Madang, and the Administrator at Rabaul, would slump immediately. It was then put to them that they alone could rehabilitate our position with those above, whose eyes were now focussed upon us. “Well, boys, the ball is in your court”, I told them. It was indicated to them that the following morning a patrol would proceed to the scene of the disturbance and, since this would be the cue for every man, woman and child to move out and take refuge with relatives further afield – such was former procedure – I suggested to the chiefs that such evacuation had to be cut off and every participant apprehended. By so doing it would be some basis for our rehabilitation.

The results were far beyond the highest expectations. Probably 4,000 warriors put a block on every exit and, by the following evening, the total of 218 Andabanch Natives had been apprehended. This work was facilitated by the fact that a census of the group had been completed only a week previously. “What is the use, he has our names in the book” – was the thought uppermost in the minds of those turned back from escape through the cordon, to hide along the undergrowth fringing the creek banks. In all, 76 of the 218 arrested were detained on road construction work for various terms compatible with the seriousness of the part each played in the disturbances. The populace considered that justice had been done, not by reason of arrests, but because of the fact that two men had been killed on either side. The terms of detention of those arrested were considered by the responsible citizens as commensurate with the offences committed by the offenders.

This disturbance marked the close of serious crime in the sub-district until about September 1940. Then there was the isolated killing of a man by Gur of Kuli, on the eastern flank. Gur was arrested and escaped on two occasions, with the result that it was possible to try the experiment of committing him to Kainantu gaol for a term of 18 months. At that time there were no Hagen Natives in the Police Force and Hagen Natives never made the journey to Kainantu. Gur went out of the minds of people at Hagen and this factor is interesting. Nowadays, however, Hagen police are located at all Highland stations and members of the local community travel freely from one end of the country to the other. Having due regard to health, it would appear that Wau is the logical location for committal of Highland natives on long term sentences.

But happenings at Hagen from April 1946 to January this year have brought us face to face with the real problem of the administration of justice in the Highlands. In late April of 1946 Porge of Diga Muguga, who had worked for some years on the Leahy mining leases at Kuta, committed the deliberate, cold-blooded pitiless killing of a woman of Ruruga – the crime for which he appeared in the Supreme Court last week. In my long experience among the Hagen people, I cannot recall any similar method of killing and I would suggest that it is entirely against the code of the people. It disgusts every decent citizen. Barely two months later, a long woman of Palinger was stoned to death in her house at night by an unidentified killer. Later, in July 1946, a woman was cut to pieces about sundown at a point not more than one and a half miles south of the station. The following day, over 500 warriors armed with spears and bows and arrows and in full war splendour, marched on the station and demanded that the time had come for direct action. Threateningly, they asked what I was going to do about it. A suspect was already in custody and the warriors demanded that, if I did not propose to take immediate and direct action, they would tear down the prison and deal with the culprit in their own way. For over two hours the atmosphere was tense and ugly – to such an extent that I deemed it essential to issue ball ammunition to selected police and I put a strong protective guard on the suspect. Quiet was restored only when I took the matter up with the District Officer, Lae, on the radio telephone, and gave an assurance that I would leave no stone unturned in my efforts to invoke the jurisdiction of the Supreme Court.

Late in 1946 and in January 1947 came two more brutal killings of women by tomahawks – one on the mountain slopes 4 miles south of the station and the victim slain, as she walked innocently along the track, by a Hagen man who had worked for months on the mining leases at Kuta. The January 1947 homicide was similarly perpetrated north of the station. Never before has Government, in the Highlands, been faced with a problem of a magnitude comparable with what confronts us today.

Your Honour has heard, from the lips of the community itself, its reactions to homicides of such revolting nature as those perpetrated at Hagen during the past twelve months. These people, from the first days of our Administration amongst them, have co-operated to the fullest with us. Our conception of law and justice has been diligently interpreted to them over a period of 9 years. For over 4 years I have considered that all Natives within a radial of 12 miles of the Government Station are under complete 'control'. All of the killings referred to have been committed within this radial area.

I submit that capital punishment is by no means foreign to us in the past consolidation of Government influence in the Territory. I submit, further, that for some years past the Hagens have been placed on a pedestal and there has been a disinclination to invoke the jurisdiction of the Supreme Court. My long experience among them has convinced me that they are no different from other Natives of the Territory. Certainly, they would appear to have a more highly developed system of society – but it is a society that demands of us that we mete out punishment commensurate with crime. Today we must face up to this obligation. If we evade that obligation most serious repercussions and loss of Government prestige at Hagen will be very imminent."

'Boots an' All'

Tessa Jones' wonderful sharing of her mother's memories (Una Voce No. 4 of 2000), particularly those of Beatrice Grimshaw wearing long black boots when she sat at table for morning tea, and its juxtaposition with an account of the deaths of Reverend Chalmers and Mr Tomkins, brought a surge of memories. The long-time interpreter at the Supreme Court in Moresby was Kabua, a Hanuabadan with a usually immobile and heavily lined face, six (or was it seven?) Long Service stars on his police uniform with its yellow piping, and legs like a thirty-year-old Rugby player! He was telling me that he had just joined the Government Service when Chalmers and Tomkins were killed and that he was in the party which went off to Goarabari Island to recover the bodies. And, as he was talking, he suddenly started laughing. 'Poor Goarabaris!,' he said. 'They thought they were so clever, inviting people from other areas to come and join the feast! As a means of cementing alliances, it was a failure because, try as they might, nobody could eat the legs. They were very uneducated,' he said, now nearly falling over with uncontrollable mirth. 'They did not know that in those days – and because of the mosquitoes which always lived under the table – the gentlemen always wore long boots. That is why nobody could eat the legs!'

Kiaps and their former role as defending officer

Several members have remarked on my comment, in Snapshot No. 22, that Mert Brightwell obtained 'a well-deserved acquittal' in the case against Meka-Ori and they have asked whether there were other notable cases where a Kiap acted as Defending Officer. The answer is, of course, that there were hundreds! In fact, I have often said (and this is despite the fact that it was because of my efforts that the Public Solicitor's Office was created) that, except for those few cases where a legal defence could be argued, Kiaps provided the best defence for the vast majority of non-city cases. And I note that, as I write (26 January 2001), the distraught lawyers of the Torres Strait Islands Legal Service are giving the precise argument I used to give, as their sworn evidence in a Coroner's inquest: that they have neither adequate time nor true linguistic ability to talk to their clients. My sympathies are all with them, and their constituents! But times were a-changing and, although the Public Solicitor was created to assist Papua New Guineans who had a civil case against someone and not to take over the Defending Officers' job, the new judges wanted to be surrounded by lawyers in Court and Chief Justice Sir Alan Mann deferred to them. But, with his usual graciousness, he also arranged for the 'Q' Reports to be published by the Government

Printer as a historical record – and I would point out that it was he who gave them that name, not me! He also arranged for a notice to be included, when everything was finished, asking everyone to send in 'reports' of cases which I had not published so that they could be printed in a final volume.

If that had happened, we would now have access to hundreds of cases showing that Kiaps can be justly proud of their efforts as Defending Officers. Unfortunately, Sir Alan handed to someone else the supervision of the project and, when he went into hospital, the whole plan was frustrated. The resulting saga is a very sad one and, beyond me saying that we have lost most of even the little we had, cannot be recorded here. Part of what would have been published has survived and, with the references to previous Snapshots, which I have added, it reads: Category 'B': Notable Defences in Individual Cases

Before listing these reports I would repeat that these cases were reported solely because, as Honorary External Tutor for University of Queensland Law Students, I had a need to provide 'local materials'. When that need ceased, I stopped, and, after that, it was Law Reports that I produced, which were limited to what the Judge said, and not what the Defence was. I would therefore like to repeat my apology to those whose Notable Defence is not included. Note also that the duties of Kiaps and Crown Prosecutors in regard to the defence of certain cases are explained in items (vii) and (viii) at the end of Sir Beaumont's speech of 12 February 1952 (see Snapshot No.8). Among the 'cautionary tales' the climax to B.25 gives a unique insight into the personality of Sir Beaumont Phillips C.J. (See Snapshot No. 11, where the ancient Luluai said, 'Ask the Big Judge here … It was he who wrote the letter…')

B01 TOWATIA (Copley) – See Snapshot No. 3
B02 TOLUBUNG (Copley) – Superior Orders; Reichstag Speech
B03 KABO (MacIlwain) – See Snapshot No. 4
B04 LAPAE (Leabeater) – See Snapshot No. 7
B05 IKUAR (Royce Webb) 'Boanarra case' Madang 24 March 1952
B06 LAM (Seale) cross exam of White Woman in Wau
B07 GUMI (Parrish) – See Snapshot No. 21
B08 BULAI (Parrish) heavy cross exam of White witness
B09 IMANAIVA (Humphries) 27 Oct 1952 burglary of Bignold's house
B10 KAUBA (Wau) (Ernie Britten) causing new V.J. instructions
B11 ORI s/o AIS'E (Humphries), unlawfully in house, Bignold J acquitted
B12 ROMBUSA (Humphries) provocation … standard
B13 Telefomin Killings (Peter Lalor) Sudden Emergency
B14 Kingsley Jackson defence of man charged with rape of ex-nun
B15 Defence by Gerry Szarka of TIMIO SIONI, 8 May 1951
B16 Defence by Tom Ellis of grandfather & daughter, infanticide, 10 May 1951
B17 unknown ADO in R. v. IARUMAGIN and 7 others 6 May 1955, Kelly J
B18 R. v. TOGASU of Moarasa 22-2-56, Gore J
B19 Bob Daugherty's def. of Minj man by claiming 'hallucinogenic mushrooms'
B20 GEBU, Bignold, Kerema Eric Flower def. attempt rape Euro
B21 Phil Robb defence at Mount Hagen that offence occurred in Papua
B22 Nep Blood's defence of PORGE
B23 MULI and N'DREYE, Manus, cargo cult, (Bill Bloxham D.O.)
B24 3 June 1957 my legal opinion re defence by senior Kiaps
B25 Jameson (No. 2) cautionary tale re qualified Counsel – See Snapshot No. 11
B26 Ronald Schmidt; Judge Kelly criticises lawyer Foy's treatment of Kiap Magistrate
B27 Stanis ToBOROMILAT 24-11-53 Phillips C.J. chides Dudley Jones & Craig Kirke.

An aspect of defending which tends to be forgotten nowadays

It is important that we understand that 'defending' someone on a criminal charge means 'doing, for him, what he cannot do himself because he does not have your specialist knowledge'. There are three basic facts which are important here.

The first is that it does not mean 'getting someone off' unless, of course, that is what the Accused would do if he was qualified. But, although we have already seen in Snapshots Nos. 4 and 21 examples of this, the chances of it happening are pretty remote, unless the prosecution has fallen down badly. There are, however, many other ways a person can be 'defended' and we will return to them after noting the two other facts.

Secondly, until they obtain a great deal of experience, most lawyers, despite their degree, do not have the specialist knowledge to do for their client what he needs to do for himself. And there are many people (Kiaps as well as criminals) who do have that ability, and have it in abundance. We used often talk about Horatio Bottomley in England, and Guba Guba in Port Moresby, who were famous for besting the lawyers every time they went to court.

Nowadays, if TV programmes can be believed, many lawyers tell their client to 'clam up'. As I write, Mark Waugh's case shows that this can, in certain cases, be the worst defence possible, second only to that other TV favourite of 'pleading insanity'. Imagine! The maximum is a fine but, not having checked to find out what the 'general tariff' is, – that is, 'what sentences are currently being handed out', as distinct from what the law books say the penalty is – his lawyer condemns him to imprisonment for life. Some defence! In the period we are talking of, every Kiap knew the 'general tariff' because he sat in court every time the Court came. And he knew that, in every murder case and in many other types of cases, the Judge would write a lengthy 'report' based on the belief, which I mentioned in Snapshot No. 8, that he was being constantly watched to see 'whether our system produced an inferior result – as, of course, would be obvious if we allow ourselves to convict 'Z' when they know, since they go into these matters with a background of knowledge we can never have, that 'A' is the person we are seeking.' He also knew that, for New Guinea cases, Crown Law also considered this point of view and, if there was any doubt, they did not go ahead – Snapshot No. 4 is a case in point. In some cases, however, there is a slip-up. Such a case was The Queen against Atemba which we will look at in Snapshot No. 27.

'Better late than never': Defending the rights of a convicted man

The Queen against Atemba was one of two cases which caused confusion because, in the Committal Hearing, they were prosecuted by the European Police, giving the impression to the Magistrate, and to everybody else, that they were 'town' cases. In fact, they had been brought in from a remote area but the European Police were 'helping out' because the Kiap who did the patrol had become ill and was then posted.

On 27 April 1957 I returned to Madang after spending nearly a week with Jack Page and Jack O'Shea slithering down the escarpment from Dr Braun's hospital at Amele and slogging through the jungle to the remnants of the old German road to the Sepik – and living down the rollicking hilarity of the PNG Police who had rescued me when I sneaked off to have a pee in private. There was no pathway and we were moving along the river bank so a path had to be cut through the thick growth. Suddenly, to one side, there was this gloriously clear patch of white sand so, never having been in the bush before – and busting to relieve myself – I ducked towards it not knowing that I was stepping onto the quickest quicksands in TPNG!

The District Commissioner, Les Williams, told me that some long-term prisoners had told one of his Kiaps, John Thyer, that they thought that Atemba, a 'not very bright prisoner, mentally', was wrongly in gaol. In most countries long-term prisoners would have got a thick ear for talking like that but, in the TPNG of those days, Kiaps believed that there is nothing worse than having the local community laughing behind your back because you have the wrong person in gaol. They also had real feelings about the Trusteeship

Agreement, the Rule of Law and the Liberty of the Subject. In this case, the DC said that John Thyer had made a special inspection, as Visiting Justice under the Prisons Ordinance, devoted exclusively to Atemba, and he agreed that the long-termers might be correct and he gave me the file.

I had, by that stage, prosecuted hundreds of cases before the Supreme Court and defended dozens so, although I remembered Atemba's name, it meant nothing to me. When I read the file the case immediately came to mind and my evidence at the trials of Omis, the real killer, and Kikisauma, the interpreter who was his accomplice, was as follows: I remembered the case very clearly because not only was it the only one I had ever been involved in where the same interpreter was used in the Supreme Court and in the Lower Court, but also because it was about the only time, during my first six months on circuit, where I had had a day off! And I spent it, with Monte, searching for an interpreter! The reason for the 'holiday' – which was a Sunday – was that our Sittings in Manus were lengthy and we had to shuttle back and forth on the Islands-hopping 'Milk Run' plane to keep up with our schedule. Monte was always most meticulous about making sure that the interpreter in the Supreme Court was a 'clean skin' and the Kiaps, knowing this, went to great lengths to find an independent interpreter but, since most Papua New Guineans were naturally gifted in languages, this generally presented no great problem. As soon as we arrived at Madang, the first time, however, they informed me that they had exhausted all avenues of inquiry – even sending out a general plea to all plantations – but had failed. Then, on Sunday morning, a report came in from the Catholic Mission at Alexishafen saying that they had a man nobody could talk to out at their new caribou pen at Sek, and he might be from the area. So Monte got the DC's car and off we went, taking Atemba with us. But our trip was unsuccessful because Atemba and the man could not understand each other.

Because of the V.J. Report (and mine) the Administrator released Atemba and a patrol was mounted to take him back home. It was an excellent example of defending an innocent man, even though it was a little late. In other countries I feel that nobody would have bothered, but Les Williams, John Thyer and everyone else at the Madang District Office did what was right, and they should be justly proud of it.

R. v. Ikuar (Madang, 18 and 24 March 1952)

This case was about a government patrol being attacked. Ikuar was only charged with 'unlawful wounding' but he could easily have killed the policeman he speared and J.K. McCarthy (who himself had been grievously wounded in a similar spearing) told me he liked my report because it highlighted the fact that 'signs of peaceful intention' may be misunderstood. His Patrol into Yesterday is hard to get but John Cooke's Working in Papua-New Guinea 1931-1946 (1983, Lara Publications) describes, at page 59, how McCarthy, Eric Feldt, and a large party of carriers and police were attacked. The point is that they were being extra careful because they were there to investigate reports that Bill Naylor, an experienced prospector, had been clubbed to death along with his partner Emile Clarius and a large party of carriers! Because of Geoff Melrose's fascinating 'This and That from My Father's Mouth' at page 26 of the last Una Voce, Ikuar's case is once again relevant because, after Melrose Senior had listened to the experts of Canberra for several days he said, 'I have never heard so much concentrated bull dust in my life…' After all – and in addition to skirmishes which, like Ikuar's, were not reported by the newspapers – Ikuar's case was followed by headlines such as, 'Goilalas Attack Patrol – 1 Dead, 2 Wounded' (South Pacific Post of 24 December 1952), 'Savage Attack in New Guinea – Patrols Slaughtered by Hostile Natives' (SPP of 11 November 1953). And yet we also had, 'Hasluck Wants All Areas Opened Up By 1955' (SPP of 5 December 1952)!

The case was important in its own right, firstly because it was another instance of 'defending an innocent man' (see No. 27, Mar. 2001, which was from the same patrol). It was also a cautionary tale, for things are not always what they seem. Here, the Prosecutor at the committal hearing was a Police Inspector so, since the police only dealt with 'town cases', the Magistrate assumed that the case came from behind Madang where all the people had, since German times, been 'under control'. (The Magistrate was merely passing through Madang and had been roped in to assist because Monte, the Chief Justice, wanted to clear up the backlog and leave a clear slate.) And since the evidence was not only plentiful and clear, but the Accused

admitted his guilt, he was committed for sentence. Actually, the case was from a unique patrol into the Adelbert Ranges and the Police Inspector was only helping out because the Patrol Officer who had conducted the patrol had been called away.

In all of these Snapshots I have been reporting as a person who merely happened to be present. In this one, however, I must intrude a bit of 'me'. But it is not really boastfulness. When it is one's duty, day in day out, to 'think on one's feet' one develops a sixth sense that something is not quite right. We have already seen, in No. 11, an example of what I mean because, although there were two highly qualified lawyers against me, I won, not because I was clever but simply because they had fallen into the trap of following their hunch without investigating first. In this case the feeling became overwhelming after (in accordance with the invariable custom in those days) I had read out all the evidence taken in the Committal Hearings and it had all been translated to Ikuar through two interpreters and he had agreed that that was what had been said. The depositions showed that the Accused kept talking about the injured policeman's rifle, and yet there was no rifle with the papers; a lapse which was most unusual because all courthouses were cluttered with all sorts of things brought in simply because the Accused had mentioned them and the trial judge might ask to see what he was talking about. My feeling was also due to the fact that I could have sworn that I heard the word 'boanarra' from the Accused's mouth but it was not being translated – presumably because the middle interpreter knew that policemen did not use bows and arrows. So, after I closed my side of the case, I applied for a 'smoko adjournment' and got it. I then asked one of the kiaps in the back of the Court if he could get me as many rifles as possible and, when he produced eight or ten, we laid them out on the bar-table.

In an earlier Snapshots I mentioned the speech which Monte – and all the other judges – traditionally gave to new prosecutors. I should have reproduced it long ago because it was the Ground Rules under which we operated in those days. Nowadays it would be unheard of for a prosecutor to do what I did, but The Speech said that the duty of the Crown Prosecutor was not only to see that justice is done from the Prosecution side, but also to assist the Defending Officer as much as possible. Because of this I had no qualms about saying to the Defending Officer, who had been watching what I was doing, 'I'd like to conduct an experiment. Could you ask your client which of these rifles looks like the one the wounded man had that day?'

This he did and the Accused, with a beaming smile, jumped out of the witness box but, instead of going to the bar-table to look at the rifles, he made for the door. In those days the Accused usually had the run of the place so nobody was disturbed and, when he stopped at the doorway, we all gathered around him, Monte included. Not too close because, although he was a most engaging personality, he was covered from head to foot with grille. I said 'Well?' and the Accused said, gesturing towards the bar-table with its array of rifles, 'None of them is anything like what he threatened me with. But that man has one!' and he pointed to the Flag Lowering Party which had just arrived at the flagpole some twenty yards away.

We all stood to attention as the Australian flag was lowered and then my friend the kiap went and brought the whole of the Flag Lowering Party over. Except for one, they all had rifles like those on the bar-table. The exception was that one of the rifles had a sling on it.

The Accused, still with his intelligent smile, said, 'He wasn't holding it like that' (the policeman held it resting on his shoulder). 'He threatened me like this.' And he gently took the rifle from the policeman and held it butt down and muzzle into the air. But as soon as he took it in his hand, his whole arm dropped a little and a puzzled look came over his face and he said, 'How does it work?'

His self-assurance had left him. It was, in a tragic sort of way, quite comical because he twanged at the strap as if it was a bow-string, but it was an empty gesture and he repeated, 'How can this thing kill?'

Monte said, 'I think this makes it clear that we will have to hear all the evidence!' and we took our official places in the Courtroom and he adjourned the case until the Court returned from Manus. That was on 18 March 1952. We returned from Manus on 24 March and the case went to trial with Royce Webb (who

joined the Field Staff on 3 February 1947) as Defending Officer. To cut a long story short, Webb showed that the patrol had entered an enclave which had had no contact with white men before, or with any man of any colour dressed in trousers, shorts or a laplap. But they had heard about the fearsome weapon these foreigners had which went BOONG and you were dead.

It also became clear that the patrol had gone out of its way to show that its intentions were peaceful. The police had carried their rifles in front of them, held vertical, so that everyone would know that they could not fire them without changing their grip, lowering the muzzle and aiming. But it was a case where the intentions of the one side to show that they were peacefully disposed had the reverse effect on those on the other side. It augured ill for people trying to show they were peacefully inclined when entering Uncontrolled Areas.

Monte officially 'found' that Ikuar thought that the sling was the propelling mechanism and that he felt that he was being threatened. And that, because of this, he got in first with his spear. It was not until he held the rifle and saw how useless the sling was for firing purposes that he realised that these BOONGS worked some other way!

Monte convicted him but he then cited his 'brother Gore's statement of many years ago' (see No. 29 below) about how reactions such as Ikuar's were only to be expected in situations which the patrol had created. He said that we could not afford to have people throwing spears at policemen but, on the other hand, we could not punish a person for doing what we should have expected might happen. So, he asked the doctor how long it would be before the grille was cleared up and ordered that Ikuar be imprisoned for two months or until such earlier time as his grille was cleared and a patrol could be mounted to take him back home.

Paper by Mr Justice R. T. Gore on 'Punishment for crime'

I forget when I made this precis of Judge Gore's classic paper (referred to in No. 28 above) but it was circulated several times. I also re-issued the full text on a number of occasions – it can be found in Papua Annual Reports for 1928-1929 at pp. 20-22.

The paramount object of punishment in any community is the prevention of crime. The difficulty (in the Territory) is to carry out the paramount object while at the same time to guard against a result which would be detrimental to the preservation and advancement of the people. The punishment . . . (must take) into consideration all the matters essential to the preservation and civilisation of the native races of which the Court can properly take note.…

… the punishment may not entirely affect the paramount object, … but it is considered that such a contingency is to be borne rather than that the native races should perish through a failure to take into account those matters which appear to be essential to their preservation and development. …

The Native becomes criminal only because of the law which somebody, of whom he has never heard, has imposed upon him. In justice the Court cannot award any punishment at all. The mere conviction without penalty is not without beneficial results for it has a certain civilising value from the enforced visit of the distant tribesman to a government centre. What he has seen and what he has experienced is carried back with him and remains with him, at least, even if he does not influence others of his tribe by his impressions. …

The Native can scarcely be expected to refrain from resorting to his own primitive method of redressing wrong merely because somewhere to his knowledge there is a government existing. If his tribal district is hemmed in by other hostile tribes through which he would have to pass in order to lay his complaint, or if the innate fear of the world beyond prevents his seeking the aid of the Government at a distance, and the visits of a government official to his district can be but rare, his tribe cannot be considered within the ambit of effective government control which postulates a strict adherence to the law. It is impossible to preserve constant contact with many tribes owing to the physical features of the country … but until such time as

the inability to seek the aid of the law can be negatived, the courts cannot award punishment for crime. Crime is never countenanced and arrest and trial follow as a necessary sequence but the delinquent cannot receive punishment for following his natural bent when nothing has been effectively provided to supplant it.'

Reality and imagination

It is because of the tendency for false allegations to supplant truth, that I am writing these Snapshots and, in a curious way, an incident on tonight's SBS typifies what I mean. In the 'book segment' of Jim Lehrer's News Hour they promoted a novel about a Catholic priest who is alleged to have ministered to the American Indians for over 40 years and who, only when she was dead, was discovered to be a woman. The author freely admits that there was no such priest and that it is all the product of her imagination, but I am sure that the book will make her very wealthy. I am not so sure that today's American Indians will enjoy having their forebears portrayed as unobservant clods! In case anyone decides to make their fortune by writing a similar book about PNG, I will mention two experiences which I personally had.

The first was in Chimbu in 1952. I was walking to Mingende when I had a call of nature. Taking all precautions to make sure that there was nobody about, I ducked behind a tree but, in the twinkling of an eye, I suddenly discovered that there were five women only a few feet away, looking at me, giggling. When I reached Mingende the bush telegraph had already reported the event so the priests there told me not to worry because it happened to everyone because OLI wanted to know whether white people were, anatomically, like others they knew. When they arrived, the priests said, the usual form of 'first contact', in quite different parts of the Territory, was a swift grabbing of the crotch to make sure that a 'man' was a man!

There was one exception to the crotch test and that, curiously enough, is the second incident I want to talk about. I was on circuit with Chief Justice Mann in the Papuan Islands and we called in at Iwa and Gawa, two very remote islands where no white woman had been before. Lady Mann was with us, dressed in boots, jeans and jacket. As we walked up a hill a group of women appeared and, surrounding Lady Mann, moved her to one side where, ever so gently, they started prodding her upper body in a most embarrassing way. Lady Mann took it in good part when the interpreter said that the women were explaining that their menfolk were sure that she was a woman but, since the Europeans said she was a Mann and since she was dressed like a man, they had been deputed to do what they were doing!

Return to reality: The reform in the 50s of the PIR (Pacific Islands Regiment)

The summaries of Sean Dorney's excellent Blamey Oration and of the SMH report on the Papua New Guinea Defence Force, which were in the last Una Voce, refer to a period outside my time-frame since they start in the 1970s. They must, however, be of concern to all who remember that Papua New Guinea was a Trusteeship Territory of Australia so I would make three observations.

Firstly, it was only natural – and perfectly proper – for Australian Army personnel who were sent to TPNG in the 1970s to train the members of the PIR, to seek the best pay and conditions for the men they trained. It was for others, in Australia, to convince Cabinet that it had a duty to assert itself and say, 'Preferential Treatment can only lead to envy which would be destabilising. It would therefore be against the Trusteeship Agreement so it cannot be permitted.' After all, the Port Moresby riots which almost destroyed the PIR in the 50s were reported as being due to the PIR men's jealousy and frustration that their pay was less than that of the Police!

Secondly, it was not just the PIR who were, within the limits imposed by the standards of education, well trained in those days. Far too little credit is given to those who trained medical orderlies, interpreters, boats crew and the police themselves, so I will quote from my Telefomin Reports to remedy this.

Thirdly, it was not just the personnel sent up from Australia who did such sterling work in rebuilding the PIR. A great debt is owed to the Franciscan Missionary, Father Ray Quirke, the Rabaul planter and MLC, Don Barrett, and the unknown person who appointed the two to their highly unusual task. To explain what I mean I will have to breach my two rules of keeping myself out of the picture and of not dealing with events after, say, the Section Ten Inquiry which changed things so radically. My reason is that, although the incident I am about to relate occurred in the 70s, it showed how wonderfully the recovery process had succeeded long before the retraining of the 70s began.

Court had finished and a PIR man came into my Chambers, unattended and unannounced and, for reasons which will become clear, I feel that I should not say whether he was a private, an NCO or an officer. But he was clearly – and by any standard – a Leader of Men. After giving me a classy salute, he said: 'Although my father has never been a homosexual he has, in recent years, always dressed as a woman and gone to work in the fields as if he was a woman. He has just died there, dressed as a woman.'

Because all my seniors had either died or left, I was the Territory's senior lawyer and, despite my reputation for exploding if anyone tried it, some people had the idea that they could come to me when they wished strings to be pulled and pressure exerted. And, at face value, the words my visitor used could be read as an attempt to get me to put pressure on some poor unfortunate coroner to 'keep the family scandal out of the newspapers'. But this was clearly not so and I found myself explaining that coroners were independent. But he interrupted saying: 'No, Sir. You misunderstand! Everyone in the village accepted what he did, just as the people accepted the man at Chimbu that you used to talk about. It was something peculiar to him, at that period of his life, and no shame attached. My reason for coming and telling you is that you are family and you are entitled to know before the news breaks – if it breaks at all.'

That floored me and I said: 'Family? I don't understand!'

He said: 'You are family because you stood "sponsor" for me when the Bishop confirmed me. You probably won't remember me because you did it for so many but when Father Ray and Major Don Barrett came to help us get back our self-respect, after the riots, you used to come and talk to us. I always remember your talking to us about the good side of village life and about the man at Chimbu. And the lesson of Romeo and Juliet.'

It was one of the nicest things anyone has said and it ties in with two other very pleasant memories. The first is that, after the Telefomin investigations of 1954, a group of Wewakians shanghaied John Grainger and me (John was the OIC Police), and put us on a plane with instructions to spend a week at the army camp at Vanimo to relax and recuperate. Father Ray Quirke was in charge of the Catholic Mission nearby and he took us up to his place. The other is that, when the Administrator chartered a special DC3 to take just himself and me to Rabaul to deal with the Navuneram Shootings in 1958, Don Barrett was one of three wonderful hosts who took me into their homes and looked after me so that I could have freedom to operate – the others being Col Liddle of Vunadidir Training Institute (who joined the Field Staff on 22 October 1947) and Rev. Wesley Lutton of the Methodist Mission.

In between those two dates, '54 and '58, the PIR riots devastated Koki and Moresby and, by a stroke of genius, someone chose Father Ray and Don Barrett as the people to be brought in to raise morale in the PIR which was at an incredible low. It was (apart from the efforts of the army personnel themselves) the fact that two men who loved PNG were chosen which produced the turn-around; but, since they thought that access to 'sympathetic outsiders' might be a good thing, they asked others to drop by whenever they could. And since, even in those early days, there were remarkably few Australians in Port Moresby who could speak pidgin, I am proud to be one of those who was especially asked.

I am particularly proud that, as educational institutes were created a few years later, I was asked to speak there too; at the Papuan Medical College, the Teachers Training College, the Gorris home at 6 Mile which later became the Admin College, and the Bankers Training School opposite where the Travelodge is. At all of them it was the same basic worry gnawing at the students, and although it sounds rather pretentious

today, I talked about how 'tribalism' was not unique to PNG, as evidenced by the fact that an early law of King Ine, who ruled in England from AD 668 to 726, said that if you saw a stranger and he did not show that he had no weapon in his hand, it was your duty to kill him! And yet, during King Ine's own lifetime, the Venerable Bede said that, because of the success of the lawyers in bringing in the Rule of Law, the country had become so peaceful that a widow could walk from one coast to the other without an escort! And how, with more than 700 languages, PNG would find it easier to bring that happy state about if everyone worked together but that, even when that happened, she had to face the fact that Romeo could not marry Juliet because they belonged to warring 'houses' within a peaceful city. The explanation of the reference to 'the man at Chimbu' was that I used to tell them how 'Government' was the name of a longlong man at Chimbu who used to put on a Tultul's hat and dance around with an enormous spear, pretending to menace people coming to the Government Offices. I explained that whereas he would have been locked up in Western cultures, he was given a good life in the village – and a delicious name – because village life protected people.

A short description of the Telefomin attacks

There were many other Father Rays and Don Barretts doing wonderful jobs and, as I have said, I will illustrate what I mean by a couple of quotes from my Letter Recommending Awards for what happened at Telefomin. First, however, I should mention that the Telefomin Station was at a place called Ifitamin. It was here that the Ward Williams mining expedition landed in an amphibian aircraft in 1936. It was here that they made their base for a five-month-long survey. It was also here that Allied Soldiers had a rest camp during the war and during the 'clean-up period'. Because of this long period of occupancy, everybody assumed that we knew all about the Telefomin. Unfortunately, there was an incredibly powerful cohesive force emanating from the nondescript Haus Tambaran at Telefolip which was in a different valley system. We did not know that the tribalism which, as I have said in No. 31, worried most of the Papua New Guinean elite, was different, in this area, from what we were used to elsewhere in PNG, and that Ifitamin – the place we judged everything by – was really an irrelevant nothingness. The extent of the influence of that Haus Tambaran is described, in great detail, by Professor Jackson starting at page 35 of his Ok Tedi: The Pot of Gold (University of PNG, no date, probably 1982).

The point is that, from the very beginning, the Masters of the Haus Tambaran decided on two things: (a) these white intruders had to be destroyed and (b) that, since the intruders had powerful things which could prevent plan (a) succeeding, the Min had to get to know all about these new things so that they could work out ways to neutralise them. Aircraft were easy to deal with. You just put logs out to prevent them landing. Radio was also easy: just chop down the aerial masts. Getting at people inside buildings was also easy so they manufactured enormous numbers of five-pronged arrows which I will describe later. Other things, such as rifles, were more difficult but not impossible, and teams were trained to become so friendly with the invaders that nobody would object if they saw them wandering around. Then the individuals who were recognised as having right of entry were trained to make off with all the rifles without being noticed! The plan was complete and incredibly detailed, but although there were a number of occasions in the 40s when it was put into operation, the operation was always cancelled at the last moment. Then, as I said in the Letter of Recommendations:

> *On Sunday 3 November 1953 the Masters of the Tambaran House discovered that the whites would be in three widely scattered areas and their foreign Native helpers would be in five such scattered areas. This was the perfect opportunity. Instructions went out and the plan – in which the entire population, irrespective of inter-village hatreds and warfare, was involved – was implemented. The plan was absolutely comprehensive and superbly conceived. Attacks on all fronts were to take place without warning at an hour after daybreak on Friday. By a miracle an unscheduled aircraft landed at Telefomin station at that time and the attacks on that station and on the Mission did not take place at the planned time and, because those at those places became suspicious, they never occurred. Had the attacks succeeded – and only the inconceivable stopped them – the entire body*

of non-Telefomins in the area would have been annihilated and it would, conservatively estimated, have taken months and many lives of paratroops – the plan called for the demolition of the airstrip and the arming of a home-guard – before we could have got back into the area.

A Medical orderly who showed that he had been well trained

Medical orderlies were trained in many different centres and, since the anti-yaws campaign had caused everyone to believe in the wondrous effectiveness of 'a shoot', an essential part of that training was the proper preparations for injections. This is a passage from the Recommendation for Awards which I made in 1954:

BUNAT of MOIM, Sepik, Native Medical Orderly. This medical orderly, after being axed in the forehead and hit about the head with pieces of wood, carefully boiled his syringe and meticulously followed all instructions in giving the proper treatment to Cadet Patrol Officer Harris and Police Constable Kombo when the initial stages of the attack were repulsed. He stood by continuously throughout the whole attack, tending his charges. He did this so well that Kombo is alive and well today and Harris who (apart from multiple ghastly wounds) had his brain exposed, lived, without pain, from seven o'clock when that particular wound was inflicted, until 4.40 p.m. I know of no award which properly seems to fit such devotion to duty. It used to be the Albert Medal but I think this is now defunct. Others, with more knowledge than I, should know.

Two policemen who showed that they had been well trained

In the same recommendations I said the following about Constables PaahekiI of Mumuni, Popondetta, and Muyei of Saba, Waria. For a proper understanding of it I should mention that the Telefomins did not tie flaming rags to ordinary spears as in old-fashioned Cowboys and Indians films, but they had created a gigantic arsenal of five-pronged arrows and they wedged a live coal between the prongs because, when rushing through the air, the coal would burst into flame.

These two policemen were with the Harris patrol and were both themselves attacked in the initial stages. After Kombo's shooting had temporarily dispersed the attack, they stood guard in turn with Kombo's rifle and a total store of seven rounds of ammunition. He who had the rifle stood guard outside the place wherein refuge was being taken. At first this was the police barracks. Then after it was burnt to the ground, it was the resthouse and then after that was burnt to the ground, it was the stockaded pig-pen. At the pig-pen everyone except the unconscious Harris and Kombo and their medical attendant Bunat were outside the pig-pen, engaged in dodging arrows which came in their many hundreds (at least 280 were embedded in the planking of the pig-pen when it was inspected later). Paheki received one arrow in the forehead, but otherwise they stood guard thus from a little after seven o'clock in the morning continuously until twenty minutes past five o'clock in the evening. They could at any time have tried to run away (Tigori, on their instruction, successfully did so). The reason they stayed is that they had two wounded men to guard. This conduct is, I think, worthy of the Queens Police Medal for Bravery.

The Telefomin trials: Two points raised by newspaper reports

The September issue contained the first of what I intended to be three sets of Snapshots about the Telefomin trials but, because of something unforseen (which I will discuss in the third set), I find it necessary to extend the series into four sets. I hope you won't mind. This means that I will defer the main thing I wanted to deal with in this set. Instead, we will look at three matters which, at first blush, seem unrelated.

The first, The Kiap's Wife says 'It Happens Everywhere!', is necessary because, after the Telefomin trials were all over and I had returned to Port Moresby, the South Pacific Post published a headline report which disturbed me greatly. That report, dated 25 August 1954 (ie. nine and a half months after the killings) read:

> *NO INFORMATION ON MURDERED SON', Father Claims*
> *'I went to see Mr. Timperley about his statement that my son disobeyed orders' Mr Harris said.*

I was absolutely appalled that the bereaved Szarka and Harris parents had, all these months, been allowed to endure the totally unnecessary worries that their sons' deaths were due to them 'disobeying orders' – a charge which, to a generation whose minds were coloured by a lengthy war, could only mean that their deaths were 'self-inflicted'! I, myself, had been completely out of touch with the 'outside world' for the whole of that period and two questions immediately arose: Who spread this hurtful self-serving lie? And whose 'orders' were supposed to have been disobeyed? At that stage I did not know that an earlier report had said that it was 'Canberra' that had made the original allegation but I was sure that Alan Timperley would never have spread it. Since I knew that the parents' anguish was totally unnecessary, I felt that I had a duty to set their minds at rest but, since neither Mr nor Mrs Harris had raised this worry with me when they attended a luncheon, I put on to thank the people of Wewak for their cooperation, it seemed that a personal letter was not the way to go. So, I wrote the Oceania article which Professor Jackson refers to in his book mentioned in No. 32.

Now, as we approach the 50th anniversary, potential authors may feel tempted to rely on this mischievous allegation so I would point out that, before the Section Ten Investigation of the late '50s changed things for so many kiaps, they went out, in all weathers, when necessity called. Stopping tribal fights was the usual cause but I well remember the first time I met a particularly placid kiap's wife as she told me, amid tears, that her husband was absent because he had gone out to prevent two groups of BTOs (Big Time Operators – in this case War Surplus Collectors) shooting at each other! They were careful not to hit anyone, for that could lead to trouble with the Courts, but one group had caught members of 'the opposition' bathing in a crocodile infested creek and they wanted to keep them there so that the crocs would do their work for them! Her worry was that, since vast sums of money were involved, they might easily turn their guns on her husband so that their 'business methods' remained secret! I include The Kiap's Wife article (which I wrote in an entirely different context) because, to me, it defines the 'normalcy' of what Szarka and Harris did.

The second is an explanation of The Queen against Francis Terence Murphy which has already been mentioned in Snapshots 1(a) and 13. Although this may seem wildly unrelated it is actually necessary for several different reasons – one being the 'something unforeseen' which has caused my change of plan – but mainly because of the announcement, in the South Pacific Post of 7 April 1954 that, whereas the latest report showed that 'only' 83 Telefomins had been arrested and brought to Wewak Gaol, a further 43 had since been brought in. The explanation was quite simple. There were a number of search groups acting independently, and they continued to send in the men they had arrested. For reasons which I will explain later, I do not have the final tally but it was in excess of 200. This meant that the main question which faced me was how to preserve the Telefomin people from racial extinction! No matter how one looks at it, charging (as distinct from arresting) 200 of the most virile of any racial group's menfolk because four of our men had been killed was disproportionate and unless the vast majority of them could be returned, the Telefomin people, as a race, would be destroyed. But each had been legitimately arrested, and a case could be made out against each and every one of them! Who was I to decide who should be tried and who should be returned home so that the race could be preserved?

The third gives us a glimpse of what kind of person Gerry Szarka was, as well as being a rather good example of the detailed range of defences which kiaps used to raise as Defending Officers, even in the one case.

The kiap's wife says: 'It happens everywhere!'

I have just described why I feel that this is especially relevant in a sequence about Telefomin but I should also explain how it came to be written. From the 1960s on, as the foibles of 'Big Time Operators', War Surplus Materials Collectors and other post-war characters declined, the needs of the South Pacific Post changed. At the same time, it changed from being a weekly to a daily with a need to curry favour with the increasing number of planters and the multiplying number of public servants, all of whom were now called 'temporaries'. Since the kiaps were 'permanents', there was a move towards anti-kiapism (by referring to them as 'petrol officers' and so on) and, after one particularly unfair outburst I wrote this article. It was not published so, years later, when the editor dealt rather roughly with a call by Michael Somare for a return to the 'good old days when the kiap could be relied on', I sent it in again. This is its first publication. It reads, in part:

It is important to note that a patrol officer does a lot more than patrolling. In fact, the picture which that word conjures up in my mind is not of a man at all, but of an Australian woman nursing her new baby, at Kundiawa, in the most heavily populated area of the Territory. In those days, the Station was in two parts, the Kiap's part and, half a mile away, the hospital. Monte was staying with the kiap, ADO Bill Kelly, and I was staying at the hospital with one of the European Medical Assistants. On our last day there we finished quite early and the two Defending Officers flew out to return to their various posts. Then, since the Court had finished and there was no reason why I could not be seen hobnobbing with the Chief Judge, Margaret Kelly invited me to dinner. It was a lovely evening but, at one stage, there was a scratching sound near the open window and Bill excused himself and went out. He returned and said something to Margaret and the evening continued as if nothing had happened. Next morning, however, when I got up I found that the two European Medical Assistants had left to attend wounded men in another valley. And when I told Monte this, he told me that the diversion the previous evening had been the Sergeant of Police telling the kiap that tribal warfare had suddenly broken out in a valley on the other side of the mountain range so Bill Kelly had gone off, 'at first light' with three unarmed native police, to quell it.

This meant that, apart from the Lutheran missionary a considerable walk away and the Catholic missionaries at Mingendi, twice the distance in the opposite direction, Margaret and her baby were the only whites in the area, apart from the Chief Justice and myself, and we were waiting for a charter flight to take us out. So, we decided to cancel our charter and wait until Bill returned. It was the gentlemanly thing to do and, in my case, it was the desirable thing to do because I loved Kundiawa and I was entitled to a day off. The only problem with this masterful piece of decision-making was that we were not able to use the wireless transmitter so we had to let Margaret in on our decision. She exploded! Very courteously but quite emphatically, she said that she and her baby were in the safest place on God's earth and that the Chief Justice and I should catch our charter flight out because people were waiting for us at the next 'Court Town'. This – the kiap being suddenly called away – was a perfectly normal situation, she explained, and it happened on every station in the Territory.

The Queen v. Francis Terence Murphy (Rabaul 3-4 March 1952): Part one – The power to prosecute

When I arrived in TPNG, in January 1952, most of the files for the criminal cases I was about to prosecute were missing because a senior law lecturer, resident in Sydney, had been briefed to fly up and do the prosecutions. There was, however, a 'duplicate' file for the Murphy case and, when I read it, I said to the Crown Law Officer, Wally Watkins: 'This is really a compensation matter. It should not be prosecuted!' but he said that Canberra wanted it prosecuted and I was to go ahead with it. I did what I was told but, because of what I discovered when the case came on, I wrote to my parents to send me a file of newspaper clippings concerning the Stone of Destiny which I had been collecting because my name is Quinlivan.

Since this sounds obscure, I should explain that 'Quinlivan' is the spelling the English gave my ancestors when they outlawed them 900 years ago. The original spelling is Caindealbhan and The Annals of Ireland

show (see eg entries for the years 432 and 925) that we were Kings of Ui-Laeghaire, a small kingdom based on Ath Trim, the town nearest Tara. For readers who were taught to sing about the 'harp that once through Tara's Halls' I should mention that the legendary palace was like the temporary Long Houses which some Highlanders build for a special gathering and then tear down. Tara was actually an empty field in 'No King's Land' and its importance lay in the fact that, in that bare field, there were two drinking wells and a small and highly portable rock called the lia fail – the Stone of Destiny – which screamed if a person unworthy to be king sat on it. It was a very convenient way of getting social stability and for generations we Quinlivans had the sacred duty of guarding that rock! Then it was taken, first to Scotland and then to London where it was enshrined as part of the Coronation Chair. Then, just before I went to New Guinea, Scottish Nationalists burgled Westminster Abbey and stole it. And the authorities resolutely refused to do anything about it!

I don't suppose there was any lawyer, anywhere, more interested in the legal problem which unfolded. As I have said, it was our Stone and we had spent hundreds of years protecting it. Now, Government refused to gaol those who stole it! It was not because there was any lack of proof; the Nationalists named those involved, published their pictures and invited the police to arrest them. And there was no doubt they were guilty of burglary, sacrilege, theft and destruction of property, all serious charges! It was just that Government did not want to give the Nationalists publicity! And their legal experts said that 'the facts' were only one part of the equation; that the real issue was whether the Power to Prosecute was being manipulated by outside forces for their own purposes. The arguments and explanations flowed thick and fast and, in the end, formed the definitive statement of the law on Prosecutions, When and Why They Can Be Brought. The situation is best summed up in these words of Lord Simon:

> *There is no greater nonsense talked about the Attorney-General's duty, than the suggestion that in all cases the Attorney-General ought to decide to prosecute merely because he thinks that there is what the lawyers call 'a case'. It is not true, and no one who has held that office supposes it is.*

When, after working 12- to 16-hour days for three months, I again raised the Murphy Case with Wally and asked him what he meant by saying 'Canberra wanted it prosecuted', and I gave him a Grand Tour of my unique collection of newspaper clippings. And he gave me an assurance that local considerations, and not outside interference, would rule from now on. This is why he was so upset when an official announcement, made in Australia, forced the Telefomin cases on us at least a year before they should have come before the Courts.

R. v. Francis T. Murphy: Part two – The facts of the case

There are several levels of 'facts' in this case. The first is that, on 3 January 1952, Murphy deliberately threw a plate at a Native; the plate hit him in the face and Murphy admitted the assault to the police and offered to pay compensation. Since it was all so simple the police had no cause to do anything more than collect a few witnesses who had seen what happened. Murphy also admitted the assault to the Committing Magistrate the following day and he was committed for trial. The papers were sent to the senior law lecturer in Sydney but a copy of the depositions was kept in Moresby. A copy of the police report was also kept and it mentioned that Murphy was an elderly Commonwealth public servant who had been seconded to the Territory for a year preparatory to his retirement, and that he should have returned to Australia some months before the date of the offence. And that, if he did not get back there soon, he might lose his retirement benefits.

It was not until I was actually prosecuting the case in Court that I discovered the second level of facts. These were that, after being committed for trial, Murphy panicked about his pension so he saw Mr Foy, one of the solicitors in Rabaul. After listening to his client, Foy wrote off to three doctors in various parts of the Territory and as a result of their replies he then wrote to the Prosecuting Authorities (who, as I have said, were not the Crown Law Officer but the Sydney lawyer), disclosing his full defence and suggesting that the prosecution be stopped immediately by the Crown entering a nolle prosequi. The Sydney lawyer

refused this and placed the letter on his own file. But he added the names of the three doctors to the back of the Indictment which Wally signed and this meant that those three doctors had to be physically present at the courthouse when the trial came on. This meant – apart altogether from the expense of returning the two who had left Rabaul – that hospitals in distant towns had to do without their doctor for at least a week and, if someone had an accident or became gravely ill, it would be a case of 'Stiff Cheese: Canberra wants this man potted so that's all that matters'!

And why did they want him potted? The first thing to note is that 'Canberra' was a pejorative word which, in those days, covered many things and I have no idea who was meant. But the facts were that Murphy, although due for retirement, had been seconded to the Territory for a year because he was the only expert available to solve a particular need. He served his allotted term and did wonderful work, facts which are vitally important because, in April 1951, he had been bitten by a rat as he slept in the single officers' quarters and had suffered from fever for most of his working period. In the three months before the assault, he lost over 20 pounds (roughly 10 kilos)! Dr Wilson, who treated him for the fever certified, in his letter to Foy, that 'uncontrollable irritability' would be a symptom of his condition, even long after the fever had passed. Then came the Christmas festive season which, for many people living in single quarters in the Territory, was a time of heightened loneliness. This was quickly followed by the plate-throwing incident which was by no means as simple as previously portrayed. The facts were that a bread-and-butter plate was missing from the place Murphy was seated at in the Administration Mess so, in accordance with local custom, he called for one to be brought. Instead of placing the plate gently in its proper place the steward, who was named Kawas, dumped it there and, quick as a flash, Murphy grabbed it up and flung it back. It was not a deliberate, cold-blooded action but a reflex one and, as soon as he saw that it had hit Kawas, Murphy jumped up and rushed over to him calling out 'Sorry! Sorry!' And when he saw that he had drawn blood he told him that he would take him to the hospital for treatment. He drove Kawas to hospital and, instead of letting an Orderly treat him, he himself sought out and obtained the services of Dr Con. Salemann who examined Kawas, dressed the wound and assured them both, Kawas and Murphy, that there was no permanent damage. As they were leaving the hospital Murphy discovered that Dr Loschdorfer, the Territory's only eye specialist, was in Rabaul so he sought him out and pleaded with him to examine Kawas, which Loschhdorfer did, certifying that there was no damage to the eye. Murphy then drove Kawas back to the Admin Mess.

I formed the distinct impression that we (the Court, Murphy, the Sydney lawyer and I) had all been 'used' and that someone, somewhere, had decided to keep Murphy 'on the job, at all costs'. Monte's lengthy judgment included these passages:

> *The power to indict puts the Courts themselves on trial … the only justification I can see for this case coming before this Court … is the fact that the plate which was thrown was capable of breaking into sharp pieces which could inflict far greater damage than was, in fact, the case. … I also express the opinion that … the facts of this case would not warrant him being deported from a Trusteeship Territory as an undesirable person.*

Defence by Gerry Szarka of Timio Sioni (Manus, 8 May 1951)

In the unnumbered Snapshot at the beginning of page 33 of the March 1999 Una Voce, I mentioned that Monte got all the judges to select a 'notable defence' for me to circulate to the law students. He himself provided this one because, as he said, it showed how a clever Defending Officer can defend his client at a number of different stages. To my mind it shows much more. It tells us a great deal about Gerald Leo Szarka, who was one of the men killed at Telefomin. Before we look at it, however, I should mention that, according to 'The Stud Book' (the official list of Permanent Officers published in the Government Gazette of 11 August 1953) Szarka was only a Cadet Patrol Officer when he was killed and, since he joined the Service on 19 June 1950, he had been in PNG for only a year when he defended this case. Since only senior, experienced men could perform this task the question is: how could that be? The answer is that it depended on how good the District Commissioner thought his men were. And when we return to the

Studbook, we see that Szarka was six or seven years older than the other cadets. I was told (but I must admit I did not check this) that Szarka trained for some years to become a Jesuit priest. This would have given him a heightened sense of self-discipline and could explain why Allan Timperley, the District Commissioner under whom he served in Manus, asked for him to be transferred to the Sepik when he, Timperley, was given the District Commissioner-ship. It makes the incongruity of the defence even more obvious but, as I mentioned in No. 21, the duty of a Defending Officer was to listen to his client and then to argue whatever defence his client wanted to raise. He could, of course, warn his client that what he wanted to say might be counter-productive, but he could not prevent him raising it.

Timio Sioni was a full-blood Papua New Guinean from Onei Village, Wuvulu (Maty Island) who, somehow, got himself to the British Solomon Islands Protectorate where, because of the colour of his skin (the earliest Spanish and Portuguese navigators called the Maty Islanders 'Blancos'), he was treated as a mixed-race person and employed as a clerk in the Government Office. During the war he joined the Australian forces and infiltrated back to his home island while the Japanese forces were still in occupation. He rallied his people to support the Allied forces when they arrived – a fact which Szarka raised to telling effect when, despite his efforts, it came to the question of punishment. Although admittedly of 'ordinary rank', he started exercising a sort of droit de seigneur, sending his wife out to bring in pre-puberty girls for his sexual pleasure. He was charged with unlawfully and indecently dealing with two girls under the statutory age and, after the close of the prosecution case in the Lower Court, he admitted his guilt.

He was committed for sentence but the Crown Law Officer added two more charges, those of carnal knowledge of each girl who, to his knowledge, was 'under age'. Szarka's first objection was to the fact that, whereas he and his client had come to court to answer two charges, they were now faced with four. Monte upheld the objection and dismissed these two charges saying that, although the statute allowed for the laying of whatever charge or charges the Crown Law Officer thought fit, that applied only to committals for trial and not to committals for sentence, as in this case.

Then Szarka attacked the committal for sentence because the Criminal Code Amendment Ordinance makes 'puberty' a defence (and makes 'age' irrelevant) but the Magistrate had recorded no evidence regarding puberty. Monte listened carefully to the argument and then, as was his custom, he delivered lengthy reasons why he could not agree, but to make them understandable I should interpolate and say that, whereas – as we saw in Snapshot No. 5 – European witnesses had to endure the humiliation and danger of putting on the filthy 'Court Coats' before they could enter the Courtroom, Native witnesses appeared as they would in the market-place or the village. In other words, girls and women were naked from the waist up. The Magistrate, Monte said, had had the girl before him so under the Evidence Ordinance he would have been able to make his own decision as to whether she had reached puberty. Secondly, the defence applied to the final trial, and not the committal proceedings. The point was, however, a valid one and he (Monte) should exercise his discretion to call the girl and the medical officer (Dr Alexander Sirko) who had examined her on this point. This he did and he concluded that this defence had never been available. But although this led to a conviction being entered, Szarka used the opportunity of the two being in the witness box to cross examine them as to native custom! This was brilliant because, from the very beginning, Szarka had to face the fact that his client had 'pleaded guilty' in the Lower Court. This meant that, if he failed in his various technical attacks on that committal, his whole strategy was aimed at producing favourable material during the final stage, the allocatus, when the Court is listening to everything either side wants to raise as being relevant to the question of sentence. His client made the claim that, by native custom among the Maty Islanders, he had the right to have sex with any unmarried girl, and in his final address Szarka argued forcefully that, since the Government had not stamped out the custom, it was the Government which should be blamed and not his client. Monte delivered judgment saying that:

> *The position regarding Native Custom is clearly stated in Section 10 of the Laws Repeal and Adopting Ordinance which prescribes that native custom is to be recognised unless it is contrary to the Ordinances of the Territory … and to principles of humanity. Obviously what Accused did is contrary to our laws and, in my opinion, it is also contrary to principles of humanity that girls of 12*

and 13 should submit to sexual intercourse with grown men as was made clear in India – see the Official Reports in Katherine Mayo's book, Mother India. This court will certainly not recognise such a custom.

A Nobel Prize endangered by our strict rule about Highland prisoners

Kuru was a hideous disease unique to the Fore people of the Kainantu subdistrict and research on it led to breakthroughs which solved many medical problems. So much so that the chief researcher, Dr D.C. Gajdusek of the National Institutes of Health, Washington, was awarded the Nobel Prize. His research was, however, very nearly frustrated by the strict rule that highland prisoners could only be held in highland gaols.

On two occasions when I was Chief Crown Prosecutor (ie. between 1955 and 1960), Judge Bignold telephoned and said he wanted to do a circuit to Kainantu, next week, and could I allocate a Crown Prosecutor. On the first of these when we arrived at Kainantu there were no witnesses because of the shortness of notice so I went to Dr Gajdusek's camp and was deeply impressed with his dedication and his phenomenal memory for the genealogy of every Fore person. He was like a machine-gun: you mentioned a name and, rat-a-tat-tat, out spewed the names of that person's children, father, mother, brothers, sisters, grandfathers, grandmothers etc. etc. etc.

But, after giving me a few examples, he said, almost sobbing, that no matter how he looked at it, there were three maddening gaps where people had children who were obviously not theirs and where men who should be there, did not exist. I said, 'Would those gaps have occurred in early August, 1953?' and he went berserk. 'How could you know that? I have never released that fact.' I said, 'The local people believed that the deaths you are researching were caused by a sorcerer so three of them killed one of the alleged sorcerer's clan. Not the sorcerer, of course, but an innocent man who was searching for his escaped pig. I prosecuted them for wilful murder in August 1953 and they were sent to …' He interrupted saying, 'But we searched all gaols in the Highlands. That is the first thing we did, because of the rule about prisoners from the Highlands. But there is no record of any such men!'. I said that it was not 'the Highlands' because the rule applied long before they were discovered. It was 'any person from an area of high altitude' – and the three men were at Wau gaol (3,500 ft). I have never seen anyone more relieved. His gaps were filled and his research was able to proceed!

The reason for the Highlands Rule

Obviously, the reason for the rule was that such people lack immunity to coastal diseases but there is an additional reason which explains why Monte was so adamant that the rule be obeyed. It is from the report for 1927/1928 on our administration of Former German New Guinea and reads:

> *… Mr. F.B. Phillips, at the time Stipendiary Magistrate of the Territory and now a Judge of the Central Court, was appointed, under the Commissions of Inquiry Ordinance 1927, to be a Commissioner to inquire into and report upon alleged irregularities in recruiting… The Commissioner proceeded to… Salamaua and all the villages in the Finschhafen area, where the irregularities were reported to have occurred. In all 538 witnesses, of whom 501 were Natives, were examined. The investigations occupied a period of approximately five months. The Commissioner found that a number of Natives had been illegally recruited and that certain irregularities had occurred… In some instances, Natives had been recruited against their will, and, in others, had been signed on as casual labourers contrary to the provisions of Section 51 of the Native Labour ordinance, or had been recruited from areas of high altitude without the prior permission of the Administrator (my emphasis). Food and labour had also been supplied in a number of cases by Natives without adequate payment in return. Pursuant to the recommendations of the Commissioner immediate action was taken … to compensate the Natives who had supplied food and labour without payment, to cancel the contracts of Natives who had been illegally recruited, and to make further inquiries with a view to the institution of proceedings wherever possible…*

The rule and my reaction at Wewak on 8 April 1954

In Snapshot 22 I explained how, just after I arrived back in TPNG in March 1954, I was sent to Samarai. And how, the very day I returned to Moresby from that trip, I was told I was to go with the Crown Law Officer (Wally Watkins) on an emergency trip next morning, at first light. I was not told what our destination was and, when I was put into Ma Scannell's at Wewak – something I had been guaranteed, the previous year, would never happen again – I was sure that we were only overnighting there on our way to Manus! Because of those movements – and because of preoccupation with unusual problems while on leave – I was totally unaware of what had been happening in regard to the Telefomin Massacres. The last I had heard was (quoting the South Pacific Post of 20 January 1954): 'Telefomin killers … were holed up in mountainous forest country … and it would be many months yet before they could be captured.'

My first notice of what was to become my greatest worry came when, the day after reaching Wewak, I was sent to Telefomin. My pilot was Bishop Arkfeld of the Catholic Mission, Wewak and he told me that his back load would be local food because the authorities in Wewak were worried about the health of the Telefomin prisoners they were holding. I was surprised to hear that there were Telefomin prisoners in Wewak because it was obvious their area was 'of high altitude' but I assumed that they were few in number and the occasional aircraft-load of local food would solve the problem. Two or three days after I returned to Wewak the wonderful Senior Nurse, in whose honour the blind war hero Yauwiga and other Sepik leaders built and named a new hospital, also told me that her greatest worry was the health of the Telfomin prisoners. Even this did not get through to me because, by then, I had been working with 'the Telefomins' (not knowing that they were only part of the total there) and they appeared to be not only healthy but they were clearly enjoying the battle of wits which was going on because they knew we did not even know their names, let alone what they had individually done. And I was very much engaged in a dispute with the Crown Law Officer (CLO) about whether he should be commencing, at that stage, the Preliminary Hearings – which, I should explain, are the formal examination and cross-examination of witnesses in Open Court (i.e. so that the general public can listen and the press can report) so that the magistrate can decide whether the evidence which has been collected is sufficient to require him to 'commit' each prisoner for trial before the Supreme Court. Nevertheless, I did tell the CLO about the worries expressed to me because there could be adverse publicity if Highland prisoners died of coastal diseases. Then, after he had supervised the Preliminary Hearings for three days, the CLO returned to Moresby, leaving me in charge of the whole Telefomin operation. Things became clearer and I was informed that it was Canberra which had directed that the Telefomins be held in Wewak. In my first letter to the CLO (28 April) I advised that one defendant in the Harris case was very ill and unable to attend the hearing, and no other cases could be heard as, due to illness, none had a full complement of charged Natives available.

We will return to this question of illness in a later Snapshot but I am happy to relate that, if my memory is correct, only one Telefomin actually died and he was infirm long before he was arrested.

My task as assistant to John Grainger, OiC police, Wewak

It may sound odd that I, a lawyer who had prosecuted a record number of cases before the Supreme Court and defended over forty there, should say that I was 'assistant to' a provincial policeman. But I knew Jack Grainger well and I not only liked him, I respected him greatly. Jack was in urgent need of help because, although it was the kiaps who had done everything up until that point, Jack had now been given the job of conducting the Preliminary Hearings. And he not only had to conduct them now, but he had to do so under Wally Watkins' watchful gaze for the first three days! In addition, there was the lesser fact that I had been installed in the District Commissioner's residence and the whole town had been told that, as far as the Telefomin operations were concerned, I was there to rescue what I could from the mess.

In saying this I am not, in any way, casting aspersions on the kiaps who had been flown in, with a few police, with orders to scour the mountainous terrain and round up all the culprits. Since search parties

must travel light, they did not take typewriters and other equipment for the taking of a formal Record of Interview of each person arrested but sent them off by first available aircraft to some place where that task could be performed properly. They did a magnificent job and, since it became clear, quite early, that practically everyone could have been arrested, because everyone was involved, they deserve special praise for their decision to arrest only the most culpable. If those with power could exercise a similar restraint in various parts of the world today, it would be a far better place!

The law accepts that arrests must sometimes be made instantly but, even then, there must always be time and facilities for the collection and weighing of evidence. In the Telefomin cases, there had been an interference with procedures and, instead of there being time for the collection of evidence, the public hearings – the Preliminary Hearings – were commenced. It was for this reason – and for this reason alone – that everything was in a mess and I was there to do what I could to prevent mass acquittals. But what could I do? I might be good in Court but I could not really speak pidgin!

Jack Grainger solved this by saying that, since they were his men, he had had to do quite a lot of 'counselling' of the police who had survived the massacres. And he therefore knew that, although the kiaps believed that Suni, the Station Interpreter, was reliable, the surviving police suspected him of complicity! This was because, when he was supposed to be on the Government station, he was seen skulking around in the bushes close to the scene of the Szarka massacre! This, Jack said, was something he could not investigate himself because he was 'involved' but, since the police bugler spoke excellent English, having studied at a seminary to become a Catholic priest, I could do it if I used him as interpreter. This I did but, since I sat in on the Preliminary Hearings (and on the separate meetings, each day, searching for potential witnesses), my investigations had to be at night and passers-by dropped in to listen. On the first night, I noticed a young Native boy, in the background, who I had noticed at the other 'hearings' and, on the second night he took a front position. On the third he came up to me and, in a mixture of languages which made sense to me, he said that if I wanted to talk to the Telefomin witnesses he would be my interpreter! His name was Tindangin but he preferred Tom, and he was a Telefomin! You can have no idea how thrilled I was: there were only two interpreters available and one was a possible enemy! I made enquiries and discovered that Tom was an orphan who hitchhiked in to Wewak with a batch of prisoners and, once there, he attached himself to the matriarchs of the Married Police Compound. He was highly intelligent and universally liked and, after I passed my pidgin exam, I took him up on his offer and he interpreted for me well into the midnight hours most nights, week after week, for months. It was not until Counsel for the Defence arrived, towards the end of my stay, and gave me a bundle of papers which the Crown Law Office had given him as 'background material' – but which they never gave me! – that I discovered that Suni, the Interpreter I was investigating, was precisely like Tom when the first Whites arrived in 1936! Those Europeans treated him the same way I had treated Tom, with results we will notice in No. 46.

It was during those interviews with the police that I discovered that there were more than fifty Telefomins in Wewak gaol after being arrested when the attacks on the Mission, etc., had been frustrated by the landing aircraft. This event was described in Snapshot No. 32, Sept. 2001, page 43, part of which reads:

> *On Sunday 3 November 1953 the Masters of the Tambaran House discovered that the whites would be in three widely scattered areas and their foreign Native helpers would be in five such scattered areas. This was the perfect opportunity. Instructions went out and the plan – in which the entire population, irrespective of inter-village hatreds and warfare, was involved – was implemented. The plan was absolutely comprehensive and superbly conceived. Attacks on all fronts were to take place without warning at an hour after daybreak on Friday. By a miracle an unscheduled aircraft landed at Telefomin station at that time and the attacks on that station and on the Mission did not take place at the planned time and, because those at those places became suspicious, they never occurred. Had the attacks succeeded – and only the inconceivable stopped them – the entire body of non-Telefomins in the area would have been annihilated and it would, conservatively estimated, have taken months and many lives of paratroops – the plan called for the demolition of the airstrip and the arming of a home-guard – before we could have got back into the area.*

The Telefomins in Wewak gaol had been convicted of 'riotous behaviour' but, since they had not murdered anyone, they were never included in statistics of persons arrested! Equally important was the fact that the police who had arrested those non-murderers were not amongst those I was interviewing. They were scattered and when found – which took some time – the whole situation changed. Before we look at that change, however, I should return to my letter to the Crown Law Officer, written in my second week at Wewak.

The early results of our investigations

I mentioned in No. 42 that I wrote a lengthy letter to the Crown Law Officer at the end of my second week on this assignment and these passages become important now:

> *9. Over the Easter and Anzac Day holidays we, Mr Grainger and myself, …(worked at) the rather enervating and unnerving job of questioning the Telefomins and a fairly settled picture is beginning to emerge (the letter then goes on to detail that picture in 26 sub-paragraphs).*
>
> *13. We have had … (several "break-through" experiences). We also have had a witness explain his withholding of evidence by saying "Femsep told me to hide it".*
>
> *14. This latter witness and his explanation led to the opening of interesting new leads… There is now a definite possibility – but no evidence has "come out" yet – that the Harris attack was … triggered off … by Femsep of Terapdavip…*
>
> *15. This is, of course, new territory and it may take time to open it up. … At the moment Femsep is free and at his village. It is better that he remains there … until something concrete either way is known. …*

In the decades which have passed since that was written, several people stationed at Telefomin have written to me saying that it would appear that we did not discover Femsep's involvement. We did not miss it. The trouble was that we could not prove it. Whenever it appeared that we were getting close, the potential witness would collapse in a faint and, on recovery, he would recant, blathering with fear.

Wonderful action of Police Lance Corporal Sauweni

It was not until after Jack Grainger and I had become very interested in Femsep that we located the most important of the police who had brought in the Telefomins convicted of riotous behaviour. He was Lance Corporal Sauweni and whoever trained him, and those who allowed him to blossom, did a wonderful job! The most highly paid General in the world could not have handled the tragic situation better! When Szarka and Harris departed on their patrols Sauweni was left in charge of the station so he spoke to the Telefomin wives of his police and asked them to report anything unusual.

Several reported that strangers (Telefomins) had asked about who had been left at the station now that the Europeans had gone and Yendabari's wife reported that Edubomsep, the headman of Telefolip, had warned her that there was going to be an attack. Sauweni therefore posted lookouts at various points and advised the local Baptist missionary, Reverend Norman Draper, that there was a possibility of danger. Just after daybreak on the day of the killings in the other valleys, large numbers of armed men were seen in the bushes close to the station and the Mission – and other strategic points – but, when the unscheduled aircraft landed, they disappeared.

Sauweni felt that an attack was imminent so he went to the Mission, where he knew Femsep's young son was a student, and he asked him (Femsep's son) to accompany him to the station. The boy went with him and, when they got there, he (Sauweni) dropped all pretence and held him as a hostage because, he said, he believed (as Grainger and I believed) that Femsep was the brains behind it all. The unloading of the aircraft took time and, after it departed (around 10am), the armed men began returning. Unnoticed amongst them was Tigori, Harris's haus cook who did not usually wear traditional garb but he had been

instructed by the survivors of the Harris party to wear it now and go and get help. He told Sauweni what had happened and Sauweni immediately sent a message to Rev. Draper asking him to radio Wewak and tell them of the attack on Harris and request assistance. He then ordered Suni, the Station Interpreter to put on his penis gourd and go to the far valley as a spy to see if the Szarka party was safe. He also sent Constables Yandabari and Lego, with four rifles and ammunition, to relieve the Harris party.

The messenger sent to Rev. Draper returned and reported that, on his way back, he had seen Femsep hiding in the bushes so Sauweni called for Femsep to come. Femsep did and Sauweni arrested him as a hostage. He then arrested the fifty or so armed men referred to in No. 43, telling them that the attack on the Harris and Szarka parties had been a total failure and he was waiting for the kiap to return and gaol them all. Since he should not have known that attacks were contemplated, his bluff succeeded and they surrendered quietly. At 12.30 an aircraft arrived, in response to Rev. Draper's call, bringing ADO George Wearne (who joined the Field Staff 7 January 1947) and Wewak's Senior Medical Officer, European Medical Assistant Rhys Healey, to assess the situation. They told Sauweni that the District Commissioner was personally touring all stations collecting policemen to join a large relief party but Sauweni expressed the view that, although that might be good in one way, it did not allow him to go to the rescue of his friends.

Suni, a fine example of belief in the rule of law

From Sauweni's account it was clear that Suni was not only completely innocent: he had been a true hero, carrying out Sauweni's orders to go against his own people and spy out the land! The fact that honest policemen thought he was a traitor shows how easy it is for injustice to be done if we do not set out to see all sides. Once we heard Sauweni we were able to discover that Suni had trained his family to respect the Rule of Law. This then led to other discoveries which are so extraordinary they deserve to be given as Snapshots in their own right so we will leave them until the next sequence

Taking a sample — and a need for praise

It is easy for many kinds of scientists to take a sample which will show precisely what was the current state of affairs at a given moment in the past. But it is seldom that this is possible in human affairs. The Telefomin Massacres are one such occasion and the insights they give us are important because they give an unbiased picture, both of the people of Wewak in general (see No. 52) and, in particular, of the calibre of those who did the training of police, medical orderlies and interpreters in those earlier times.

We have already seen, in No. 33, that Medical Orderly Bunat of Moin, Sepik, was so well trained that, although he was under heavy fire at the time, he carefully boiled his syringes and followed proper procedures which kept his patients alive for hours beyond the point where, without him, they would have died. In No. 34 our heading was 'Two Policemen Who Showed that They had Been Well Trained' and I suggested, in No. 45, that not even an experienced General could have handled the tragic situation better than Lance Corporal Sauweni did. It makes one wonder who did the training, in each case, and readers who were personally responsible, or who know that their father or uncle was, should take a bow! And, as I said in No. 45, 'training' includes, to a very marked degree, those who allowed the trained person to blossom because, without nurturing, training of this type withers and dies!

There must be many readers who can feel proud for having helped produce that result but, unfortunately, I can name only one. Since that one is Des Clifton-Bassett, late husband of our editor, Marie, I quote this part of my final report to the Crown Law Officer with very great pleasure (the first line refers to comments in five-month-old issues of the Australian press which, at long last, were beginning to filter through to me and the 'no other place' in para 31 refers to former British, Spanish, Dutch or French colonies):

> *(28)…….Since the view has been expressed that the police detachment there was 'out of control', I would like to express my thoughts regarding them.*

(29) I was impressed both by the physique of the police and by their intelligence. I understand that Mr. Clifton-Bassett who opened the station hand-picked them.

(31)…….Without casting aspersions, I suggest that in no other place where police roam among a foreign and hostile people under arrogant headmen with whom they could hardly converse and who they had to control, would the catalogue of their misdeeds be three instances of assault only …….

In Suni's case the same comment applies but there is another level of interest because of the Supreme Court of New Guinea's attitude towards official interpreters.

The unusual position of interpreters

The mention of 'former British, Spanish, Dutch or French colonies' is an essential and recurring background theme because, as mentioned in No. 8, the first 'business' of my first day in Court in TPNG was devoted to the article on 'Dangerous Rigidity of Colonial Judiciary' in the then current issue of ASOPA's journal South Pacific. And to Monte's explanation of how lucky we were that our judges had deliberately changed much of the court's procedures so that the people who packed the courts could see that, although the new procedures were not what they were used to, they had their own peculiar value. In later times those well-intended changes were thrown out and the courts were 'Melbournised' but we should be reminded, from time to time, of how different things might have been if that jettisoning had not taken place. Two of those changes are relevant to our discussion of Telefomin: one is the rule that an experienced Defending Officer must speak with a person committed for trial at the earliest possible time, to get his side of the story, and then defend him at the trial even though, to do so, may tread on his colleagues' toes — which we shall deal with in No. 51 — the other is the attitude to official interpreters which we shall deal with now.

Papua had been a British colony for many years before she was given to Australia so it followed the British tradition of having uniformed officials at every courthouse to do the interpreting. The Supreme Court of New Guinea, on the other hand, had only one interpreter before the war. He was a white man, a Mr Noel Barry, who interpreted from German to English! In all non-German cases the rule was that anybody and everybody could expect to be hauled in to do their duty as Court Interpreter if they could speak the language of the Accused! The fact that the Highlands were not discovered until close to the war, and that the court only sat in Rabaul (although, in the later years, it also sat, very occasionally, at Wau), helped keep this curious situation alive. After the war it was the Papua judge, Judge Gore, who returned first and he took the court everywhere in New Guinea, mainly to 'show the flag' as new areas were recaptured from the Japanese, but also because that was the system, he thought was best. When Monte returned, he heartily endorsed this part of Gore's decision but, except for the newly opened Highlands, where uniformed interpreters had come in under the army, it was still a case of grabbing someone who could talk to the Accused, and there were no uniformed interpreters.

When I arrived in January 1952 Monte had adopted a policy of explaining this rule on every conceivable occasion. His method was by getting the interpreter to translate his speech about the Reichstag Fire Trial (which is dealt with in No. 3) and about the commissionaire at the Dorchester (or Savoy) Hotel in London where, although everyone is technically entitled to go in through the door of the hotel, you will find that your right is worthless unless you get into the uniformed gentleman's personal favour. I do not think that Monte himself thought that Papua New Guineans were more likely than anyone else to top up their official pay by charging people who wanted to see the kiap to lay a complaint. I think it was simply the fact that his generation grew up on stories about how, in the Indian Mutiny, the official interpreters were uniformly disloyal. And we must also remember that, in the late 40s and early 50s the newspapers were full of stories about how disloyal officials brought about the collapse of the Dutch and French empires and that, day after day, our newspapers were telling us that Maumau (which involved the same thing) was destroying British Africa. He himself had served in the Emergency Forces during the Melbourne Police Strike and the third of his 'usual lectures' was about how well dressed 'gentlemen' in top hats would come out of their clubs and

bash-in shop windows with their expensive canes simply because they knew there was nobody to arrest them! All of which makes Suni's constant maintenance of the Rule of Law so remarkable!

Suni as the trainer of Telefomin interpreters

What I am about to quote is actually the passage, in my Letter Recommending Awards and Decorations, headed Tinkukuniming, uncle of Sinoksep, the interpreter trained by Suni. I do, however, believe that Tinkukuniming did what he did because of Suni's teaching that he had discovered that the Rule of Law must be respected at all times –

Tinkukuniming, with some of his co-villagers, publicly gave active assistance throughout the entire attack (on Patrol Officer Harris' party) first making stretchers and carrying Harris on his abortive attempt to escape back to the station and then later carrying Harris and Police Constable Kombo to their various places of refuge and shouting warnings as to the nature and direction of the attacks taking place. This assistance was loyally given despite vilification and threats that they would be killed, and at a time when there was not the slightest reason for believing that the Telefomins would not be triumphant and would thus be able to carry out with impunity the threats they made with the obvious intention of later fulfilling.

What Suni taught his wife's parents

As mentioned before, the plan to kill all foreigners in the Telefomin area as soon as the signal was given, involved everyone. The concept of someone not obeying simply could not – or should not – have arisen but, in the case of Suni's wife's parents it did and we must assume that this was because of what Suni taught them. They were both very old when the killings occurred and, since Suni was an orphan, it is probable that they were 'people of no account' in an area where status was all-important. Despite these debilitating personal aspects they stepped forward, when the mob was about to hack Policeman Mulai to death – Mulai being the sole survivor of ADO Szarka's party – and, invoking what appears to have been an ancient formula for sanctuary (they grabbed an arrow from the men confronting them, they grabbed a piece of a shrub and, holding both aloft, they broke the arrow and twined the shrub around the two broken halves) they protected Mu;ai for several days until they got him back to safety. In my Letter Recommending Awards and Decorations I said:

> *When Police Constable Mulai, exhausted and a hounded outcast, had almost given up hope of reaching the Telefomin station, Biltemelip and her husband Tofipnok gave him sanctuary, food, rest and safe conduct to the station through lines of armed hostile warriors and saved Mulai's life. They did this at a time when there was no reason to believe that the Telefomins would not succeed in driving out the foreigners and therefore destroying any hope (they) might have had of future protection.*

The incredible problems faced by Syd Smith and Mert Brightwell

In No. 25, and in many other Snapshots, I named kiaps whose 'notable defences' had been recorded but the only time that I know of where a kiap had to defend a case before it went to trial was at Telefomin. I do not mean that defending at the Preliminary Hearing is unimportant: when the mixed-race Philip Guise was charged with attempted murder of a European there was a terrible newspaper campaign of the 'we'll all be massacred in our beds' variety so I had to overcome that hysteria by producing a 'newsworthy defence' at the Prelim., before I could raise the real defence at the trial; in the Harry Vincent Pierce case I would have stood no chance at the trial (since it would have to be before a prejudiced jury of four Whites) if I had not forced Norman White to defend Pierce at the Prelim … and so on. What I mean is that the rule envisaged a 'one-on-one' situation, one Accused with a story that had to be listened to and one kiap to listen. This is a great advance on having Learned Counsel coming from Australia but unable to speak to their client but it did not take account of the fact that the Telefomin Preliminary Hearings had been brought on prematurely – for what reason I never discovered – and there were an unknown number of possible Accused persons.

Perhaps I can explain it best by quoting this part of my written advice, as Legal Officer-at-Large, to one of the Defending Officers:

> *(You) asked me whether it would not be limiting the scope of the defence at the actual trial if ……..(you advised your clients to do such and such). (i)……*
>
> *(ii)……*
>
> *(iii) (you) are dealing with eleven separate Natives ……. But you must realise that there are about 140 other Telefomin area Natives here in Wewak …… some of whom will later be your clients and they might not understand or appreciate your motives if you thwarted the knowledge-based wishes of these eleven.*

Perhaps I should have first explained that each of the Defending Officers (Syd Smith, who joined the Service 11 September 1935 and Mert Brightwell, who joined 9 June 1947 and who is referred to in Nos. 22 and 25 above) was defending a separate group of men and, since the murders occurred in two totally different valley systems, there was no possibility of intermingling. One was defending the sixty to eighty arrested for attacking Patrol Officer Harris' party and the other was defending the 140 arrested for attacking ADO Szarka's party. That makes between 200 and 220 and neither figure includes the 60 or so who were in Wewak gaol having already been convicted and sentenced in regard to the abortive attack on Telefomin station itself and the Baptist Mission. Their difficulties were enormous and it is to their eternal credit that they did so well.

The people of Wewak and their treatment of the Telefomins

The Telefomin Massacres were totally unbelievable, both when they occurred and when the perfection of the planning was discovered. They were the greatest massacre in TPNG history as well as being the most dramatic. In other words, they were, in their own clear way, Australia's equivalent of the Twin Towers in New York City and the fact that the Telefomins who were arrested were housed in the Police Transit Quarters at the bottom of Wewak Hill was, again in its own way, our equivalent of Camp X-Ray in Guantanamo Bay. There were, however, a few differences! For instance, we did not have two guards for each prisoner, nor did we have shackles or handcuffs. And there was the fact that, when the Preliminary Hearings were begun, the announced number of Telefomins was given as 83. But the search parties which had been scouring the mountains for the killers were still searching and the total quickly became 200 and kept rising!

Even when I first arrived the total number of Telefomins had already exceeded the number of Australians in Wewak and its environs. And the two communities were in constant contact with each other. I don't mean that individual Telefomins pushed their way through groups of Wewak citizens or that individual Wewak citizens shared hospital accommodation with Telefomin patients. What I am saying is that the two groups, as groups, were constantly in close contact. And there was never an untoward incident! This sounds unbelievable so let me explain! The Crown Law Officer, Wally Watkins, started the Preliminary Hearings – that is, the hearings of evidence, in Open Court, so that the magistrate can decide whether the charge of wilful murder has been sufficiently proved against each prisoner as to require him to commit him for trial before the Supreme Court – on the Monday following my arrival. Why he did this has never been explained but, as I discovered later, it was by direction from Canberra.

Since the evidence was dramatic and the courtroom was a pleasant place, open to every breeze that blew – it had been the operating theatre of an Australian army hospital and three of its four walls were flywire – the Wewak public came in and listened. More to the point, the ten or so Telefomins in the dock, and the two or three Telefomins who were to be witnesses that day, were walked up, by two unarmed policemen, from the Transit Police Quarters at the bottom of Wewak hill, where they lived, through the European houses and the town itself. And when the sittings for the day closed they went back down the hill and a batch of between twenty and fifty other Telefomins – all arrested for murder – were walked up, through

the town, to the courthouse so that we could conduct interviews to discover witnesses for the next day. And at night a third group came up and we interviewed them and, after a few hours, we sent them back, with their two police escorts, down the hill again. Why we had to do this is one of the great unanswered questions but the point is that, since it is not every day that an ordinary citizen can wander in and listen to a police investigation, people dropped in on these proceedings, also. It is mind-boggling, but it happened.

And there was more. In No. 42 I said that Bishop Arkfeld of the Wewak Catholic Mission and Matron Lynn McAlister of the Wewak Hospital both told me that they were worried at the health danger of holding Telefomin prisoners in a coastal gaol and pilots of other air companies helped to ease the Telefomins' plight by flying in local food. When Canberra sent a doctor from outside the Territory Administration to deal exclusively with the Telefomins the people of Wewak were jubilant but their happiness was quickly turned to horror when the doctor started climbing into the rafters of his house and cringing there for hours screaming about the giant spiders! Luckily, Doctor John Gunther arrived in answer to their call, diagnosed the doctor, S.C. Ryall, as a case of advanced DTs and forthwith removed him. The tolerance and humanity of the people of Wewak – especially in view of the fact that it was a time of great tragedy – is something of which we should all be proud.

First Congress of the Public Service Association (PSA), 1955 – Part One

The conference was held in Port Moresby on Saturday 26 and Sunday 27 November 1955 and it was one of the most important events in TPNG history. Since 200 copies of the transcript were distributed, researchers should have no difficulty finding a copy but, now that nearly 50 years have passed, matters which would have been understood at the time require an explanation. A good place to start is at paragraph 52 where Stan Pearsall (joined 15 May 1946 and PSA Vice-President) says that meetings were what the Association had always hoped for but 'funds would not run to this sort of expense. However, for some reason or other, the Administrator . . . agreed to pay the fares of delegates to Moresby and so made it possible'.

The background is that the PSA had, for some years, been pressing Canberra for a number of improvements but it was getting nowhere. Then, after friends put pressure on the Prime Minister, one of Australia's most highly regarded Conciliation Commissioners, a Mr Chambers, was appointed and his Report recommended practically everything the PSA had asked for. The Minister then appointed a committee consisting of Messrs Lambert and Archer of his Department and Messrs Huxley and Wilson of the Territory to consider the Chambers Report and it was rejected. This meant that the PSA had to go to arbitration and a Mr Wood was appointed. He held hearings and printed and published his Findings and set out for the airport to return to Australia.

Because it was the proper thing to do the Executive of the PSA went to farewell him and everything was very civilised until Mr Wood said that he 'supposed' they were disappointed. This opened the floodgates and they told him that he had 'found' that single officers lived in hostels on outstations despite the evidence that hostels existed at only three main centres and there were over a hundred outstations where most single officers lived. Mr Wood said he would alter his decision on that part of the claim when he got to Canberra! They explained, in detail, how several other 'findings' went completely against the evidence and, each time they did it, Mr Wood said he would alter the 'finding' when he got to Canberra. This was astonishing enough but he then went on to say something which was generally regarded as being an admission that he had taken instructions from the Opposition and this caused outrage. I was on circuit during all of this so I don't really know what his precise words were in this part of the conversation (I have summarised the transcript for the above) but, putting it at its least horrendous, it was probably this: in answer to the PSA saying he could not alter his 'findings' he said 'I can. Now that I've done what they said they wanted, they can't refuse what I'm going to ask for now.' But whatever the words, the outrage was immediate, and Territory-wide!

It became so great that there was talk of a general strike, not only of public servants but by people in private enterprise who relied, in one way or another, on Canberra's decisions being made 'without fear or

favour'. To put a stop to the wild talk the PSA Executive telegraphed all outstations asking them to nominate a resident in Moresby to speak on their behalf at a conference it would call. It was a good idea but there was one fatal flaw. And it speaks volumes about the all-embracing nature of Supreme Court circuits – and the lack of visits by other Departments – that people on many outstations did not know a Moresby resident! Ruri Brennan, the president of the PSA told me that one outstation had even nominated me to be their representative! I felt deeply honoured so I accepted. But when, some days later, he said that six other outstations had done the same – and the replies were still only a trickle but rising – it was obvious that this was not the way to go. And so, he saw the Administrator and explained that we would be making headlines throughout the world if some other solution was not found. So the Administrator said he would fund the conference but, instead of each outstation sending a rep., they would have to elect one from each District and he would pay the fares. So, I was asked if I would produce the transcript of proceedings and, when I said 'yes', I was made Observer and given the title 'future editor of the PSA Bulletin'.

Bukumbangi, a policeman with initiative

We have already asked who trained Bunat, Paheki, Muyei and others; who allowed Sauweni and others to flourish and, since it appears that – with some notable exceptions – modern-day Papua New Guineans do not automatically display the same initiative, I feel that I should point out that these were far from unique. Peter Ryan's description of Lance Corporal Kari in his Fear Drive My Feet (Melbourne Uni. Press, 1959) is well known but I would like to pay tribute to a forgotten group who are represented by this illiterate Chimbu. Although I was recruited to be a Crown Prosecutor, I also defended people. And one of these arose out of a tribal war (reported in the South Pacific Post of 11 and 25 July 1952) in which Goilala labourers at Koitaki Plantation, in the mountains behind Port Moresby, killed a Chimbu labourer. I cannot find a note of the date of the trial, or my clients' names, and I have absolutely no memory of the case itself: it was just like any other battle between two 'lines'. The aftermath of it, however, is as clear as if it happened yesterday. I got both my clients off but, that evening, when I returned to the LOQ (the Legal Officers Quarters in a big empty block in Hunter Street with wonderful views but completely open to any passer-by) a delegation of three Papua New Guineans awaited me. I said 'Good-day' and the burliest replied in a burst of pidgin and the tall, elegant one beside him said, 'I have been asked to interpret. This man is Bukumbangi, the Captain of the Chimbus and he wants to talk to you about the court case you had today.'

I said, 'I have never heard of a Captain of Chimbus. What is that?' and the elegant one said, 'Where there are a large number of Sepiks or Chimbus or other people in any town there is always a policeman who has the duty to make sure that they all "sit down good together". I am a policeman and Captain of my group in Moresby and Bukumbangi, who is a policeman and a Chimbu, is responsible for the good conduct of the Chimbus here. And he is worried that, if he and you cannot agree to a certain course of conduct, the Chimbus will get out of hand and, if they do, they could kill you and this would bring great shame to him.' I said 'Oh'.

Bukumbangi then spoke and the translation was, 'He says that you will be all right at night, because his people will have to have a "pass". And he doesn't have to worry about when you are at your office or in the court. It is when the curfew is lifted and you are at home, or when you go walking, that he has to worry about what his people might do so he has devised a plan to which you must agree.'

'Must agree' was precisely what he meant but there was no arrogance in it. Certainly, no blackmail! It was a simple statement of what Bukumbangi had decided should be done and my only function was to pay a reasonable sum, each week, for his (Bukumbangi's) brother, Mondo, to be my guardian during the designated hours. I must admit that I had had some flutters of apprehension – there had, after all, been a lot of Chimbus put in hospital and at least one killed. To cut a long story short, he convinced me of the reasonableness of what he was proposing and, with the approval of Andy O'Driscoll and Joe Lynch, with whom I shared the donga, Mondo became a fixture around the LOQ when I was there and, less obvious – but close by – when I was away from the house. Then, after three weeks of my paying a very small sum,

Bukumbangi came and told me that he had convinced the Chimbus that I should not be touched, and the arrangement ceased. I kept Mondo on, on an irregular basis, to water the hedge he had grown to shield the LOQ from public view and to do other odd jobs including the repair of broken floorboards in the donga.

A year later Bukumbangi was at the LOQ again and said I was going to Sogeri for the inaugural Sogeri Show (6 September 1953) and he could not be sure that the Chimbu labourers at the various plantations in that area might not get out of control. I told him that I was not going to Sogeri but, three days later, Bruce Ireland invited me to go and Bukumbangi was on my doorstep next day to say 'I told you so!' and promising to be close at hand if I needed protection! And I did catch a glimpse of him up there.

When Sir Alan Mann arrived and was looking for a domestic servant, I told him this story and he asked if I could find Bukumbangi. I did, and Mondo became his first servant and remained with him for some years. I have asked a number of Old Timers whether this Captain system was a hang-over from German days or whether some kiap created it but although many knew of it, in certain towns, nobody has been able to tell me. But whoever kept it going did a wonderful job. My mind boggles at the thought of anyone, particularly a lowly-paid constable of police, accepting responsibility for the conduct of all the Chimbus that the various plantations saw fit to bring in. But, to Bukumbangi, it was a matter of 'shame' if he did not do the job well and, as C.J. Dennis and the Australians of his era used to say, 'I dips me lid!'

Re-statement of why I am writing these 'Snapshots'

Bob Blaikie's tribute to David Selby in the last issue of Una Voce causes me to mention that, over the years, readers have asked that I include famous trials that I was involved in and the Mataungan Trial has come in for special mention on a number of occasions. In regard to the Mataungan Trial there are two aspects: there are the parts which are matters of record and there is the lead-up to the case which has not been reported. Since the latter can remove possible imputations against those who refused to allow a lawyer access to the men arrested – and since it also includes a reference to the proposed prosecution of District Commissioner Keith McCarthy – I will report it. But, just as there are two parts to that trial, there were two distinct periods in my time in TPNG and events in the latter period do not necessarily reflect the spirit or tone of the former period. Some do, but it depends on how you look at it. The question of whether the general public – especially Papua New Guineans – turned up in large numbers to listen to cases is one test. In the 'old days' the courthouses were packed so I will report a case I was involved in where the Tolai community wanted to bring back a young man and a young woman who had broken a totemic law and hundreds attended the hearings.

In speaking of 'two periods' I do not want to suggest that those who were recruited to serve in TPNG after, say, 1960 did not do a wonderful job or that their dedication was anything less than that of those who went there before them. The difference is not in people – except for those few who used political influence to get appointed to top positions. The difference is in the system. This brings me to Bob Blaikie's tribute which contains this summary of what Judge Selby said of the earlier period (Una Voce No. 4 of 2002, page 35):

> *Judge Selby said that Australia could be proud of the way in which so many of her officials, from the Administrator downwards, were tackling problems . . . it is impossible, after living and working with these men, to fail to recognise that the spirit of real service to a cause is still very much alive.*

For present purposes I suggest that this be read with two other statements. The first is Ruri Brennan's proud boast on behalf of the Public Service Association of 1955 (paragraph 3 of the transcript mentioned in No. 54):

> *always we have striven to keep in our minds this one fact, that . . . we are Australia's representatives amongst roughly 2,000,000 Native people.*

The second is what I said in the second of these snapshots (Una Voce, No. 1 of 1999 page 34):

These snapshots will, I hope, bring back proud memories to those who served in TPNG at the time and explain to their descendants just what it was that made TPNG so different from other dependent territories.

The words 'so different from other dependent territories' are vitally important. In the books we use in schools, Australia should have featured the fact that, whereas the 'dependent' races in the British, French and Dutch colonies threw out their former masters when the Japanese invasion gave them the opportunity, Papua New Guineans by and large rallied to the aid of countless Australians who were trapped. Some day – soon I hope – these deficiencies will be righted and the Papua New Guineans of today will see that, although they might be going through a difficult period at present they did, in the past, produce men like Bukumbangi and Mulai, Sauweni and Suni and all the others. And future Australians will also see that the vast majority of Australians who served in Papua New Guinea did a pretty good job.

Religious harmony and its debt to the Japanese

When I arrived in the Territory, I was taken on a long overdue circuit but, instead of starting work as soon as we got to Rabaul, Monte took me to Vunapope to meet Bishop Scharmach. The meeting was memorable in several ways but most importantly because the bishop said that the Japanese had done one great service to the Territory. Before the invasion, he said, the adherents of the various missions used to burn down each other's churches! 'But when the Japanese came, they could not see any facial difference between a Popi and a Talatala so they put us both in prison camp and we started to see each other in a more Christian light. And we got along quite well together!'

In 1958 I had an unusual experience which proves this. I had to do a special investigation as to why some police had shot some Catholics and this involved quite a lot of travel by car. I could not use Government transport so Wesley Lutton, the Chairman of the Methodist Board of Missions, offered to be my chauffeur. One day he asked if I minded if he diverted for a while because he needed to check up on something and naturally, I said OK. We ended up in a cleared area in the bush where a frailish looking European was energetically training a Tolai choir. I had had something to do with choirs and this man was a master who was making an already excellent choir into an even better one. We listened for some time, then drove off. I said, 'That was wonderful' and Wesley said, 'Yes. The George Brown Day competition comes up soon and we have an overseas visitor we need to impress so we have brought Father Reischel in to make assurance doubly sure.' I said, 'Father Reischel! I didn't know you called your pastors Father!' Wesley chuckled and said, 'Father Reischel is the acting bishop [Catholic] of Vunapope, while the bishop is away. But he is also a world-class musician!'

Years later, when I became president of the Boroko Parish Council (Catholic), Wesley Lutton's wife became a highly respected teacher at St Joseph's International School!

The Mataungan case – A preliminary comment

In previous Snapshots I have tried to take the viewpoint of a fly on the wall – reporting what I saw and heard but playing no part in the event described. In regard to the Mataungan Case, however, I have to say what happened to me and what I said and did, and this is quite foreign to me. It also presents some other problems. These fall into two groups: 'professional' ones such as what a lawyer means by 'claim of right', 'admissible evidence' and so on (which I will include below, in the case itself) and personal ones such as 'Melchior Tomot was my student', 'John Kaputin helped me when I was setting up the Law Society' and so on. These, with one exception, must await a detailed explanation in later Snapshots. The exception arises from the fact that, for most readers who remember the Mataungan Case, it was about thugs who bashed-up people who favoured turning the Tolai Council into a multi-racial one. In later times there undoubtedly was much strife but up to the day after the first arrest (2 September 1969) I was blissfully ignorant of any anti-Council feeling at all. I certainly knew that there had been no assaults or damage to property or threats to do either (because I would be the first to know) but I was insulated from the fact that someone thought that it was necessary to send SitRep Reports to Canberra twice daily about a 'dangerous

Communist organisation' known as the Mataungan Association. Since I had been regarded as fairly switched-on, this may be difficult to understand but the fact is that, when constantly travelling on business, one is naturally receptive to what is going on, but once one becomes settled in a new place the situation changes. And, being a shy person, I always found the New Guinea Club a bit overpowering.

The fact is that the 1959 'reclassification' of the Law Department moved all 'lawyer' magistracies to the Supreme Court Registrar for 'administrative' purposes and, since the last time I had been to Rabaul was in 1958, Crown Law had no knowledge of what was going on until the Tolai Council complained, in July 1965, that the Courts were not fulfilling their function. When I arrived in 1966, I found that, before that complaint, the total of civil cases heard in the Gazelle (cases brought by ordinary people) were: 1961 – 1,261; 1962 – 1,121; 1963 – 1,212; 1964 – 1,438. In my years in Rabaul (and before the Mataungan case of 1969) the relevant figures were: 1966 – 3,354; 1967 – 5,802; 1968 – 11,721.

From this it is clear that I was a fairly busy person! The magistrate's house was another factor. The 1959 'reclassification' meant that a fully-furnished house with fine china and all the trimmings was built in Rabaul for visiting judges. But the magistrate's house, up an isolated driveway just beyond the explosives store on the road up Namanula Hill, was allowed to become derelict and when a friend was helping my wife and me unpack, he leant against the main wall of the lounge and the whole wall fell out into the 'garden' (also derelict), nearly killing him! Since Soph was pregnant I hastened home each evening to keep her company during the unpacking and the rebuilding of the house around us. Then our four children were born in quick succession and student magistrates started arriving and I had to train them, so for two or three days each week I was doing Rabaul cases each morning and then, in the afternoons, I was travelling the Gazelle Peninsular with the Tolai magistrates, hearing cases in the villages and arriving back in Rabaul towards sunset. So, I went straight home. The fact that I spent so much time with those magistrates is important because two were former Council Clerks and all had unlimited loyalties to the new Multi-racial Council so, without intending to do so, they insulated me from the anti-Council feeling which had suddenly come into being now that the Tolai Cocoa Project had paid off the last of its multimillion-dollar loan.

The Mataungan case – The case itself

In late August 1969 and early September my wife's parents were staying with us because our third child had just been born and because there was a possibility that we would soon be leaving Rabaul and this was their last chance to be there. I say 'possibility' because Canberra was considering the appointment of a new Secretary for Law and I had not only held that position a number of times before (I conducted the Ceremonial Welcome to Chief Justice Mann in that capacity and, again in that capacity – but years apart – I did the same for Justices Minogue and Frost who each became Chief Justice) but there was the added fact that several Canberra friends had rung to say that the contest was between me and their Mr Ballard, and the betting was strongly on me. And, to be honest, there was the fact that I had conducted more than 700 trials in the Supreme Court, for both prosecution and defence, and I had built up the various 'branches' (Registrar General, Land Titles, Public Curator, Public Solicitor, etc.) enormously in my five years as Assistant Secretary for Law (Executive). In other words, it was a very happy time and, on 2 September 1969, it was made even happier by the arrival of the Soochow with friends of my in-laws on board. These were the Attorney-General of New South Wales and his wife and we invited them to dinner. I should mention that my wife's father was at that time Attorney-General for Victoria. We were having pre-dinner drinks on the lawn when a vehicle screamed up the drive and John Kaputin jumped out and ran towards us calling out, 'The cops have arrested Melchior Tomot for stealing the keys of the Council House and they won't let the PubSol see him!' (We had a resident Public Solicitor in Rabaul.) I said, 'But the cops here would never do that!' I should also point out that, although I had not seen John Kaputin for some years, he had helped me greatly in the early days of magistrate training and when I was setting up the Law Society of PNG, so we spoke on a colloquial basis.

He said – and the two Attorneys-General were fascinated by this – 'They have locked Melchior in a cell and they now say they can't find the keys to the building so nobody can talk to him, not even through the door.

I'm racing around the Gazelle because if he can't see a solicitor there'll be bloodshed and I want to stop it'. I said I'd do what I could and I rang the home of the Rabaul Public Solicitor who confirmed what Kaputin had said. I then rang the OiC Police who apologised and said that he had no option but to obey the clear and specific order from Canberra. I said, 'Canberra? How the bloody hell can Canberra come into this?' and he simply repeated what he had said. I then rang Wally Watkins, the Secretary for Law in Port Moresby. He said he had nothing to do with it because someone in Canberra was orchestrating everything but he knew that the police were not to blame for pretending they had lost the key to the Police Station. They had been instructed to say that! I said, 'But even Canberra must know that any cop pulling that sort of stunt will be sacked next day! Heads will roll if we can't get the solicitor in tonight and I can't allow that because they're all good men!' And I then asked, 'What is this all about, anyway?' He said that there were SitRep Reports every day about the Mataungan Association. I said, 'What's that?' He said, 'It's a dangerous Communist organisation. They object to Jack Chipper and the Multi-racial Council taking over the Tolai Cocoa Project'. He ended by saying, 'So they have closed the Council down and you will have to decide their claim-of-right. You'll love that!'

He emphasised the 'you' and I did not know how to take his remark so I said, 'I think you had better ring whoever it is in Canberra and tell him that I have four house guests, the Attorneys-General of Victoria and New South Wales, and their wives, and they are very curious to know what is preventing us from going in to dinner. You can also tell him that, as soon as I put this phone down, I am going to ring the OiC Police, here in Rabaul, to say that I will be making a 'surprise inspection' within the hour, as Visiting Justice, of the cells of the Rabaul Police Station and I will be taking the Attorney-General for New South Wales and the Attorney-General for Victoria with me as honoured guests so that they can make press statements, when they get back to Australia, about the way things are handled here'. Wally said, 'I see!' and less than half an hour later the police rang and thanked me for getting them new instructions. They also said that they had rung the Public Solicitor and told him that he had unlimited access to Melchior, and that he had said he was on his way down to see his client. At 9.15 that night the Court sat and Tomot was released to attend trial eight days later.

Next day the police brought two other Tolais, Damien Tokereku and Daniel Rumet, before me, charged with 'obstructing the Council'. In addition, Tokereku was charged with stealing the keys to the Council House while the stealing charge on which Tomot had been arrested was replaced by one of being 'found in possession of a key ring containing 27 keys reasonably suspected of having been stolen or unlawfully obtained'. They pleaded Not Guilty on all charges and were released to attend, with Tomot, on the 10th. In those few days, however, the media was filled with talk about the defendants being part of a despicable organisation and that X, Y and Z also belonged to it – by 'despicable' I mean that Watkins had described it as 'Communist', others alleged that it was anti-European, others that it was an unruly mob of young thugs and, as mentioned at page 36 of the roneoed judgements, that it was a 'criminal association devoted to extorting money'. Among the persons named was John Kaputin so, when the cases came on for hearing, I announced to Counsel (Norris Pratt, Deputy Crown Solicitor, for the Prosecution and Dr Ikenna Nwokolo for the Defence) that John Kaputin had approached me at my home on the night that the defendant Tomot had been arrested and that, as all the lawyers in Port Moresby would know, he had rendered me great assistance when I was setting up the Law Society of Papua New Guinea. For this reason, I said, I would understand it if Counsel wanted me to stand down. But they said they wanted me to hear the cases and they wanted them heard together. I told them that Melchior Tomot had been a student of mine when I was setting up magistrate training so they might like me to stand down for that reason and they said No. I then announced that though I was not on record as being involved, I had had a 'watching brief' in a rather famous case 15 or so years earlier which arose out of antagonism to the Council. And I repeated my offer to stand down but they said they wanted me to hear the cases. (I should mention that the 15-year-old case did crop up during the trial when – as mentioned at page 56 of the roneoed series – a non-Mataungan was cross-examined on the basis that he 'with two others, beat up Mr McCarthy who . . . was District Commissioner here when the Raluana Incident occurred').

That is the background to the case, apart from the fact that when Judge Minogue visited, I had to complain that the publicity about 'unruly thugs', etc., was making the climate of the trial 'unpropitious'. A further background fact is that, as I mentioned earlier, certain professionally binding rules applied. These are best indicated by referring to the classic case (described in Snapshot 37) where Scottish Nationalists burglarised Westminster Abbey, hacked the Stone of Scone out of the Coronation Chair, and took it away. It was hard to imagine anything worse: burglarising Westminster Abbey was a sacrilege, hacking into the Coronation Chair was an offence against heritage laws and taking something from the chair was … well, something for which the culprits should be punished. Despite all this however, the authorities refused to prosecute! Their reason (as I explained in No. 38) was that the evidence which the court would be compelled to listen to – with the world's media listening in and reporting on a daily basis – would have little or nothing to do with the ancient abbey or last week's wilful damage to a priceless historic Chair. It would all be about a 'claim of right' based on events which took place hundreds of years ago but which, the Scottish Nationalists claimed, entitled them to Self-Government! And the authorities wanted to prevent that claim of right being aired! To come to our own case, and to put it simply, everyone involved knew that the case was governed by section 22 of The Criminal Code which says '. . . a person is not criminally responsible, as for an offence relating to property, for an act done . . . in the exercise of an honest claim of right and without intention to defraud' (my emphasis).

As I said in Snapshot No. 37 – and in my Handbook for Crown Prosecutors which was circulated in 1954 and 1958 – this meant that 'the facts' were only part of the equation; . . . 'the real issue was . . . (the claim of right)' because the 'stealing' charge on which both Melchior Tomot and Damien Tokereku had been arrested, and the new charge of being found in 'possession of a key ring reasonably suspected of being stolen or unlawfully obtained', both required the Court to hear evidence which would not normally be admissible on an 'obstructing' charge. That evidence came from prosecution witnesses and, by the end of the very first day of a very lengthy trial, it was clear that the motivating factor was that the defendants felt that the conversion of the Tolai Council into a Multi-racial one had been done without the full implications being properly discussed – specifically, that Europeans and other non-Tolais would become the bosses of the Tolai Cocoa Project which (as I said at page 55 of the roneoed series) was created with solely Tolai money and which had 'more than $1 million worth of assets and which controlled at least 50% of the industry processing and exporting $9,000,000 worth of cocoa per year'.

Additional facts, as set out in District Commissioner Harry West's evidence (quoted at page 33 of the roneoed series) were that the Defendants:

> *"had closed the Council (on 2 September) . . . because they wanted to arrange a meeting as soon as possible, preferably 3rd September, between the (members – number not given – of the) Gazelle Council, 22 members of the Mataungan Association and the 4 local Members of the House of Assembly . . . the Council offices and chambers (to) remain closed except for essential services such as the Market, Schools, Aid-posts and that type of thing" (my words in brackets).*

As the trial progressed, from day to day, it became a truly surreal experience. There was never any suggestion of violence or threats of violence by the Mataungans and yet the media, in both Australia and in Port Moresby, was filled with anti-Mataungan publicity which, as I have said, caused me to complain to Judge Minogue! The courtroom was packed each day with Tolais and the occasional Australian or two, all paying the closest attention to what was being said. Justice Leckie, of Australia, called on me one evening and said that, having arrived two days early, he had sat in court that day and he was so impressed that he offered to hold his Supreme Court Sittings in another building. But the media did not even know we existed! Things became so difficult that when, on 3rd October – and long after all the evidence I have just related was on the record – the prosecutor 'sought leave to withdraw' the stealing and 'goods in possession' charges, I said, 'I will give a written decision on what is happening!' Before roneoing my decision on reserved question of charges of stealing and possession of Council keys, I sent a copy of it to the Secretary for Law with a note saying:

"I think a very dangerous situation is being created by powers outside the court and I draw your attention to paragraphs 15-17 of a decision which I am about to deliver, as soon as I can get it roneoed. There is a grave danger that this case has, from its very beginning, been nothing but a callous, cruel charade. And since this can do untold damage, I think that you, as Secretary for Law, have a duty to either apply for a Prerogative Writ to prevent me going on, or to tell the person you said was orchestrating all this from Canberra, to abide by the Rule of Law."

The paragraphs 15-17 to which I referred read:

"15 . . . the first act of the authorities was to charge one of the Defendants with an offence which, beyond the slightest shadow of doubt, made admissible any bona fide claim of right which that Defendant might have had.

16. It is also clear that, from the very beginning, the two other Defendants were asserting some sort of a bona fide claim of right.

17. And, at the very beginning of the trial, the learned Prosecutor moved that all charges be heard jointly, thus making admissible in the general trial the defence which the authorities had clearly made available to the Defendant Tokereku."

I also sent a copy of that to Judge Minogue, drawing attention to paras 15-17 in case he felt he should ring the Secretary for Law to stop the charade – as Judge Bignold had done in Snapshot No. 14 and as Monte Phillips had also done in several cases. I did this because I had already spoken to him when he visited and also because Chief Justice Mann was still away, in hospital, and his deputy was on leave but I expected them both to return soon and I knew that each of them would fight valiantly for the Rule of Law.

But, of course, no Order of Prohibition came. Instead, things became much worse and the radio started giving reports on matters which were in evidence, but the reports were the exact opposite of what the evidence was! The explanation was that Canberra had got the House of Assembly to appoint an Australian QC to conduct an enquiry whose terms of reference overlapped the 'claim of right' which I was forced to hear and adjudicate on! I phoned the QC and we had an amicable meeting and, as recorded in my tribute to him at page 35 of the roneoed series, these reports ceased.

On 10 October I delivered the decision containing paras 15-17 quoted above and copies went to Canberra and to a host of other people so that there could be no surprise at what would happen if the authorities did not apply for a Prohibition Order. Since no application had been made to date, the trial continued, and on 4 November 1969 I dealt with the claim of right and dismissed the charges. On 11 December 1969, the new Secretary for Law, Mr Curtis, called on me in Rabaul and said that he was there to transfer me to Madang where my duties would be to hear all cases at all Stations in the Highlands and the Sepik for three weeks each and every month, and to report to him from each Station as soon as I arrived. I said, 'That is grossly improper! It would also make an interesting headline, especially since I have three very young children! Perhaps you might like to repeat it to the lawyers who are outside, waiting for the Court to open?' Then, since I seemed to have the advantage, I asked him if Wally's statement to me was true and he said 'yes', it was he who had been in charge of the whole anti-Mataungan operation from the very beginning.

I then made some remarks about the people who, living in conditions of great privation, had worked so hard to create the Rule of Law in TPNG and how he had done so much to destroy it. We then discussed a number of issues and before he left, he said that he had reconsidered what he had said at the beginning and I would not be transferred.

When the next judge arrived – again it was Minogue J. – I told him, in detail, what Mr Curtis had said and he astonished me by saying that he (Curtis) had been lobbying 'all the judges' against me and that he, Minogue J., had been alone in insisting that what I had done was what the prosecution had forced me to do! Then on 16 January 1970 I issued a formal Statement from the Bench in defence of my Kiap colleague. At page 4 of that Statement, I said:

"during all of the political troubles of . . . 1969 there was no sign of any lessening of the appreciation and respect accorded the Courts as they sat in (Rabaul and in) the 80 or so villages they visit six times each year . . . (but) this happy and necessary situation has changed in the past two months and the Gazelle Peninsular is in danger of degenerating . . . some of the reason must lie in the fact a recent 'final adjudication' had an effect which is far from final and this without benefit of an appeal being lodged" (my emphasis).

Religious harmony, Part 2 – The debt owed to Rev. Percy Chatterton LMS

Those who were in Port Moresby fifty years ago would remember the wonderful celebrations of the coronation. Villages along the Papua coast had prepared for a whole year – some hiring outside help – and, starting with the arrival of three long-boats, each rowed by fifty men in neck-to-ankle uniforms, the first boat all in red, the second all in white and the third, to complete the national colours, all in blue, they put on a truly memorable show. Less well remembered are the efforts of a small community of French Carmelite nuns on Yule Island to create a work of art and, on an entirely different plane, those of Reverend Percy Chatterton of the London Missionary Society to prevent a bloody outbreak of inter-tribal war. Before explaining these last two I must explain three other things. The first is that to celebrate Mass, Catholic priests wear robes ('vestments') which are often highly ornamented – so much so that many which were created for special occasions have, over the centuries, become priceless museum pieces. And the Carmelite nuns of Yule Island embroidered special vestments for this occasion. The second concerns this word 'Carmelite'. Since 1452 – earlier for men – it has signified an 'enclosed order' of nuns who isolate themselves from the things of the world to devote themselves to prayer and to doing such work as will provide food. It is not all work and prayer however; they insist on having 'recreation time' each day and this includes the use of a library of non-religious books. Unfortunately – as was the case in this instance – the books are often out-of-date.

The third thing I must explain is that, whereas the bishops of Samarai (who were all Australians) often stayed in Port Moresby, the bishops of Yule Island (who were all Frenchmen) never caused a ripple there. This explains why, when it was announced that Bishop Sorin would lead the Moresby celebrations on behalf of the Catholic community, many Moresbyites (including non-Catholics) were outraged. Their antics meant (in addition to the results we shall see in a later Snapshot), that instead of the Special Vestments being noticed only by those attending Mass, they became a cause celebre. That was unfortunate because they were not only special, they were spectacular because, instead of restricting themselves to European decorations, as everyone had done for centuries, the nuns had decided to add a few Mekeo emblems because ('luckily', they thought) they had an ancient scholarly book in their convent library which had authentic sketches of such emblems. I put the word 'luckily' in inverted commas because the motifs they added were not Mekeo at all; they were actually the cultural inheritance of the Percy Chatterton's LMS adherents – Congregationalists, believers in 'the priesthood of all believers'. People who, by definition, are against men being specially elevated as priests – especially when they desecrate their sacred emblems!

The book the nuns had was a report, from the 1880s, of a scientific survey of the western coastline of British New Guinea and the drawings they had copied were clearly marked 'Mekeo'. Unfortunately, however – as Percy himself makes clear at pages 38 and 39 of his Papua, Day That I Have Loved (Pacific Publications 1974) – there had been population changes in that area between 1870 and 1890 and the area where the Delena Mission now is had, by 1900, become occupied by the much more widespread Motu people. This means that inter-tribal warfare could break out over a vast area so Native Affairs advised the Administrator that preventative action must be taken before word of the desecration spread. And, to cut a long story short, I was ordered to go to Delena and ask Percy to use his influence to restore harmony. I don't know why I was chosen but I cursed because, although I had never met Percy, my colleagues hated and feared him. To them he was an ogre who wrote to the Minister – or to Buckingham Palace – if anyone had a complaint and such letters always brought a harsh letter from the Minister.

I spoke to Bishop Sorin and he said that, although he had known that the nuns were working on something special, they had not given the vestments to him until he was about to leave for Moresby and he had not inspected them. And he arranged for me to be given the book which the nuns had relied on so, with great trepidation, I boarded the Government Trawler for Delena. Imagine my surprise when, after looking at the book the nuns had provided, Percy was all sweetness and light! Possibly it was because, marking the relevant page of sketches, the nuns had placed a dignified letter expressing their mortification that pain had been caused by what had been done with the intention of giving pleasure to all lovers of Papua. Nobody loved Papua as much as did Percy! Whatever the cause, Percy said he would explain everything to his people and he was sure that they would understand. It appeared his word must have spread quickly because strife was averted. Although he did not cease his letters to the minister, I am happy to say that, from that day on, Percy and I became firm friends. Indeed, when Percy had difficulties with Administration officials at a Missions Conference (as he did at two meetings when the Education Department wanted village Sunday Schools included as 'registered schools' so that they could control the qualifications of teachers) he moved a motion to appoint me Legal Adviser to the Missions Conference and I had to attend!

'Ma Scannell's Place', 'The Bomb Boy's House' and an explanation

I feel that I should explain a previous reference to 'Ma Scannell's Place' (Snapshot 42) because I do not want anyone to think I was disparaging the lady. On 6 November 1952 I was sent to Wewak to conduct a prosecution in the District Court. Police usually did this but mine was a very special mission because, while I was busily engaged cleaning up the backlog of cases in the New Guinea Islands, the PNG police on a remote out-station on the mainland complained that all the Europeans in their area – the Kiap (John Pearce Cahill), the Medical Assistant (William Mervyn Creighton) and George Gilbert (whose occupation I forget) – were 'out of control'. The complaint was immediately investigated and, as a result, all three were charged with multiple rapes. In those days rape and murder charges against Europeans had to be heard by an all-White jury despite the complaints by the judges – and the Crown Law Office – that such trials brought the administration of justice into disrepute, as we shall see in a later Snapshot. Despite the fact that Andy O'Driscoll produced overwhelming evidence, Cahill and Gilbert were acquitted but Creighton, the weaker of the three, was convicted and safely moved to gaol in Australia.

The fact that the two stronger characters were free to go wherever they liked was seen as presenting a grave danger so I was sent to Wewak to see if I could get Cahill and Gilbert convicted of 'common assault'. If I could do that – and there was an abundance of evidence available – they could be immediately deported under the Expulsion of Undesirable Persons Ordinance. There was, however, a very clear danger for me, too, because unpleasant undercurrents had been reported right, left and centre and I was glad that, as at every other place I had gone, I would be billeted in a private house because nobody would seek to harm me in somebody's home.

When I arrived at Wewak, however, I was met by the District Commissioner who, personally, took me to Ma Scannell's Place, explaining that he had received strict instructions from Moresby that I was not to be billeted in any Administation Officer's home during my stay. He added that both Cahill and Gilbert were spending a lot of time at the Sepik Club so I should avoid it. There was nothing I could do but go where I was put but I resented it. My first reaction was based purely on the fact that I find it almost impossible to barge in and talk to people, even those with whom I have been friendly for years. If there is a 'duty' to do so, however, shyness does not apply so the fact that I had always been billeted had been sheer bliss. Being deprived of this was hurtful and, as I thought about it, I felt that it was an 'interference'. Then, as I stewed waiting for the evening meal, I began to ask why such an instruction would be given. Was it because Moresby was afraid, I might soft-pedal the prosecution; that my host, being a Kiap, might suborn me! This really riled me, not so much because it was offensive to me but because it was a blanket insult to men and women, I had generally found to be good, decent people. So, I seethed with rage! But there was more to come!

After the evening meal, two of my fellow guests introduced themselves as professional crocodile shooters 'in for a week' to join a friend (for whom they had brought an extra gun, which they showed me) so that the three could go on a croc shoot that evening. But the friend suddenly could not make it and they wondered if I would like to take his place. Realizing that sitting lonesome and wallowing deeper and deeper into resentment would not be good for the clear mind I would need in the morning, I said 'Yes' and off we went to the swamps at the bottom of Wewak Hill. After a time, however, I got separated from them. It was very scary, just me in the middle of a tree-filled crocodile-infested swamp but, luckily, a Vanimo policeman named MOI had seen me go off with the two shooters and had followed me. Quietly he led me out to safety and then he let forth a tirade of pidgin. An hour earlier I would have said that I did not understand a word of pidgin but I understood him perfectly and my resentment at Moresby's instruction grew.

The combined weight of my woes became such that, instead of being gracious when, on my return to Moresby, I was being congratulated for getting Gilbert and Cahill deported I expressed pungent views on the interfering 'instruction' and I pointed out that I had come to the Territory to prevent the news of the scandalous backlog of unheard cases leaking out. Also, if there was ever a repetition of the instruction which put me in Ma Scannell's Place I would pack my bags and catch the next plane back to Australia. I was given an absolute assurance that it would never happen again! That is why, in No. 42, I said: 'when I was put into Ma Scannell's at Wewak – something I had been guaranteed the previous year would never happen again – I was sure that we were only overnighting there on our way to Manus'.

There are two other matters I should mention here. The first is that 'Sepik Robbie' was waiting for me when the court rose on the first day. He said he had heard what had happened to me the previous night so I should know about 'the secret centre of life in Wewak'. He took me to the Bomb Boys House which was a wonderful institution created over the years by four or five Bomb Disposal Experts of the Australian Regular Army in their own home. I inhabited it, with a wide variety of other Europeans, when not working in court. The job of these men was the locating, and removing, of the dangerous explosives which were an essential 'fact of life' in that area. When the Catholics were building their giant cathedral their first task was not the drawing up of the plans but the clearing of the adjoining ground on which thousands of people would congregate for the Opening Ceremony. Architect's plans could be got anywhere but the adjoining area was completely overgrown and, since everyone knew that bombs were a basic fact of life, the first priority was putting the area on the list for the Bomb Boys to deal with. The spirit of these men who diced with death every day was wonderful and I would like to pay tribute to them.

The second fact is that, three months after the events I have described, the South Pacific Post reported (13 February 1953) that an appeal by Williams Mervyn Creighton against his conviction for rape had been upheld by the High Court in Australia. I have not read the judgment but, since it was a jury trial, I assume that the appeal was on a procedural matter and not on the facts.

The First Congress of the Public Service Association (PSA), 1955: Part two – Roll-call of participants

I said, in No. 53, that this was 'one of the most important events in TPNG history' and, since there are several reasons why this is so, priority must be given to the listing of those who flew in and spent the whole of Saturday 26 and Sunday 27 November 1955 attending it. They were:

NAME	REPRESENTING	NAME	REPRESENTING
Mrs J Sutherland	New Britain	Dr H White	Health
Mr H Evans	New Ireland	Mr CW Thomas	Health
Mr M Ford	Eastern Papua	Mr A Tronson	Treasury
Mr C Day	Western Papua	Mr J Palmer	Police
Mr R Lansdowne	Sepik	Mr W Jones	Lands
Mr A Clarke	Madang	Mr V Bloink	Printing Office
Mr JS Womersley	Lae-Finschhafen	Mr J Finn	Forests

Mr H McKenzie	Wau-Bulolo	Mr K Tracy	Forests
Mr F Reitano	Manus	Mr H Triggs	Customs and Marine
Mr V Poole	Bougainville	Mrs E Anderson	Agriculture Stock and Fisheries
Mr E Neilsen	Highlands	Mr W Conroy	Agriculture Stock and Fisheries
Mr G Toogood	Native Affairs	Mr H Croft	Public Commissioner's Office
Mr D Owner	Education	Mr L Mutch	Public Commissioner's Office
Mr WA Lalor	Law		

Also, in attendance for the whole Congress were, naturally, the Members of the Executive:

Mr Ruri B Brannan President
Mr S Pearsall Vice President
Mr W Briskey Vice President
Mr R Thomson Secretary
Mr CJ Lynch Treasurer
Mr P Quinlivan 'Observer' and Editor

Coroners in TPNG – Part one – Complaints to the Minister

I have been reading Paul Hasluck's "*A Time for Building"* (Melbourne University Press, 1976) and, for reasons which I will give in a later Snapshot, I am concerned that he says, on page 185: 'Another subject that attracted my attention in this period was the casualness about the holding of inquests into the death of any native'. He relies, firstly, on statements made to him by various Kiaps in 'outlying districts' in the early 50s – and I hope that those Kiaps have put the record straight. He then gives an instance where several natives were killed in an explosion causing him to send a 'sharp minute' dated 20 January 1955 (see page 185).

I can speak about the 'explosive' case because the Assistant Administrator, Rupert Wentworth Wilson (who was appointed in 1954 from Canberra), wrote scathingly about the Coroner, Syd Elliott-Smith (in whose home I stayed for much of the four or five months of the Telefomin Investigations) and Syd wrote to me for advice. Parenthetically, I was touched by the very pleasing comment at page 32 of the last issue of Una Voce that I was 'the Kiaps' counsel and champion'. I replied by quoting the following from an English case 're Prince (1884) 12 QBD 247 at 248': 'It would be intolerable if he (the coroner) had power to intrude without adequate cause upon the privacy of a family in distress'.

The facts of the Sepik case were that a group of teenagers in the middle of the area being cleared by 'The Bomb Boys' caught some fish and decided to eat them. Scouting around for something to hold up the container in which the fish were to be cooked they found a bomb and built a fire around it. The bomb exploded, killing two of them. The incident was fully investigated and there was no disputing the facts. A deputation of relatives of the boys called on Elliott-Smith and explained that they were suffering 'great shame' because 'everybody' knew that you do not touch anything metal for fear it might explode, and building a fire around what was clearly a bomb was pure madness! They pleaded with him not to increase their 'shame' by holding a public inquiry.

Since he had only been in the area a short time Elliott-Smith then had inquiries made as to whether 'everyone' did, in fact, know what the relatives said they knew, and he satisfied himself that what they said was true. So, he decided that the holding of a public inquest would only impose additional 'shame' on the relatives. In other words, so far from showing 'casualness', as the Minister claims, the case is a classic example of great care and attention.