

The Editor  
Melanesian Law Journal  
Faculty of Law  
University of Papua New Guinea  
P.O. Box 4817  
UNIVERSITY

Dear Sir,

In the April 1975 issue of the *Melanesian Law Journal* a group of Four Customary Law Cases were included as an important indication of the development of the study of customary law in the education of law students. It was noted that the cases were gathered by law students in their University holidays and it is clear that collection of such cases will be an important element in the future.

One difficulty which arises in the publication of customary law cases is that the cases occur in a variety of community situations and are often (for example, in the case entitled "An Unfaithful Wife and Her Lover") recorded some time after the event from interviews with informants who have knowledge of what took place. Unlike the formal legal system which was imported, there is no procedure established regarding publication of cases, use of evidence or testimony, or compliance with regulations which aim at protecting the rights of individuals to their name and to protection from unnecessary publicity.

While I fully support the use of case material to help develop the understanding of customary law in Papua New Guinea, I am concerned that the rights of families and communities should also be fully respected. Customary laws which involve public meetings in a village situation where wrongs are aired and village elders reach a decision regarding punishment, compensation, and future relationships, etc., do not anticipate that these matters will be written down and discussed outside the community. The matter may be known to the clan or community, or even to the ethnic group as a whole, but it may be deeply resented that the particular case including the name of the village and names of the various parties involved would be widely circulated and used in situations where they could be known to others.

For these reasons, I propose that attention should be paid to disguising identifying material and noting at the beginning of each case that this has been done to protect families, clans or communities involved.

The use of pseudonyms when discussing situations as that of the "Unfaithful Wife and Her Lover" would still permit the particular case to be used for teaching purposes. Where case material is gathered after the event and relies upon a number of eye-witness informants it is particularly important to protect those involved from identification as distortions of fact are more likely to occur. Even when those gathering the case material are present at the time it is important that those involved (village elders, witnesses, etc.) should be aware that what takes place has now become "public" in a very different sense to that of customary law procedures in the past. In the introduced legal system the publication of law reports, the use of previous cases as precedents or for educational purposes, and even the more sensational publicity in the mass media are widely known to take place. This is not so in customary procedures (up to the present at least), and this should be taken into account when presenting cases.

I am concerned that the vital task of deepening respect for, and understanding of, customary law should not involve a corresponding lessening of respect for the human rights and dignity of families, clans, or communities throughout Papua New Guinea. It is clear that this question is a complex one and is not related only to the *Melanesian Law Journal* or the particular case which I mention in this letter.

However, I would appreciate hearing from you as to the editorial policy of your journal regarding the use of pseudonyms and other changes in details in reporting customary cases to protect the innocent or to avoid unanticipated additional punishment to offenders.

Yours sincerely,

Dr Maev O'Collins,  
Senior Lecturer in Social  
Work.

\* *This letter raises issues on which the editors would appreciate views and comments.*