

R. J. N. D. Ings,

Assistant Treasury Solicitor,

The Treasury Solicitor

Matthew Parker Street

LONDON, SW1H 9NN

England.

Dear Mr Ings,

Ocean Island Phosphate

I am in receipt of your memorandum T&M 71/948/ND1 of the 5th June in which you request my comments on certain points in ^{the} evidence given by Mr Peter Tiso on behalf of the plaintiffs in an action brought by himself and other representatives of the Bavelan community against the British Phosphate Commissioners and Her Majesty's Attorney-General (for the Crown).

2. I gather from para. 3 of your letter that the comments required relate to the following references contained in the transcript of Mr Tiso's evidence:-

- (a) the ~~use~~ ^{appropriateness} of the terms 'freed' and 'conceal', on page 16;
- (b) alleged fallacies of interpretation and lack of advice, on page 17;
- (c) discussions with Mr P. D. Macdonald and myself, on page 17;
- (d) allegations that the Bavelans are being 'frightened', on page 18; and
- (e) points contained on pages 12-14; and
- (f) Mr Le Querrier's cross-examination on pages 5-9.

(d) I advised the Governor in 'The Future of the Bascom Population of Ocean Island; with special reference to their lands and funds', and two final the principal source of British assistance in their affairs since its submission;

3. I have interpreted these terms of reference in a broad sense and, as requested by you, have enclosed therewith a signed statement which is attached hereto.

~~4. At the same time I should like to point out that the Treasury Secretary's refusal to accept my proposed offer to fly to London to give evidence inevitably results in ^{other} evidence being adduced without it being estimated, since for many of the events at issue I am the only person still alive with a knowledge of what actually took place.~~

4. As you will no doubt be aware from a letter which was forwarded to you from the United Kingdom High Commission in London I have been in contact with Bascom affairs from 1929 to the present day and, in

particular:-

- (a) I acted as one of the 1931 as Lands Commission settling their land disputes;
- (b) I was in charge of their affairs in a number of instances prior to World War II;
- (c) I instigated and negotiated the purchase of Rabi Island for them;
- (d) I initiated the arrangements for their transportation here after the war;
- (e) I negotiated with the Fijian Government (and initially Ratu Sir Lala Sukuna and the Governor) for their settlement ~~there~~ on Rabi Island;
- (f) I drafted and discussed the 'Statute of Rabi' which, after a great deal of delay, they signed as the basis of their autonomy;

particular in matters connected with their
historical and cultural development.

(2) I ^{intended to urge for} ~~was~~ the free return to Green Island of those
who were elected; and

(i) I have sustained contact with them ever since; in
brief, there is ~~nothing~~ no other European child with my knowledge
of the Barkans and their affairs; ~~and~~ ^{as to their anger with each}

①

6. You will no doubt ^{in this connection,} be aware that I declined, ^{for good reason,} to give
evidence in behalf of the Barkan plaintiffs in this action, but stated
at the same time that: 'if the British Government wish me to
give evidence they will no doubt, if solicited, indicate in such
of a simple request to that effect.' A consideration of the
^{but I offered for this in the first instance,}
^{convince you that,} ~~my~~
^{under} ~~own~~ ^{hand} could ~~be~~ ^{be} ~~necessarily~~ ^{necessarily} ~~be~~ ^{be} ~~led~~ ^{led} to contradict it in so many
instances that I should formally ~~be~~ ^{be} ~~led~~ ^{led} to be declared a
person hostile to the plaintiffs.

7. I subsequently offered to fly to London to give evidence if
required by the British Government but was informed that it was not
^{and would appear to be ~~not~~ ~~required~~ ~~in~~ ~~any~~ ~~way~~ ~~by~~ ~~at~~ ~~least~~ ~~one~~ ~~of~~ ~~the~~ ~~plaintiffs~~}
required, ^{the} ~~my~~ ~~evidence~~ ~~being~~ ~~addressed~~ ~~without~~ ~~all~~ ~~the~~ ~~necessary~~
arrangements for its ^{at least} ~~conclusion~~ ^{for me} ~~of~~ ~~the~~ ~~facts~~ ~~at~~ ~~issue~~ ~~I~~ ~~am~~ ~~the~~ ~~only~~
person still alive with a knowledge of what actually took place.

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explicit contemporary documentation relating to these matters (one of which, it would
appear, may not have been brought to your notice).

In view of these facts, together with the consideration that I had given ^{a lifetime of} loyal
service to the British Government, I had envisaged ~~it might have been expected~~
~~presented~~ that I should not only have been requested to give expert evidence
on matters within my personal cognizance but also that I should have been
invited to assist with advice on the nature and location of documentation
which might be of ^{help} assistance to the Court in elucidating the truth, at the time
when it was being collected.

may not be so bright to your notice

8. as it cannot ^{therefore} be ^{alleged} ~~concluded~~ that my knowledge of events was not sufficiently comprehensive, either in time or depth, one can but conjecture that I was not regarded as sufficiently ~~reliable~~ ^{reliable}. I was therefore ~~not~~ ^{not} disposed to receive your request, what I have, nevertheless, endeavored to comply with to the best of my ability.

Yours sincerely,

H. E. Zander

Interpretation of 'Kairoroa'.

1. (a) It is true that the verb 'Kairoroa' can be translated in modern usage as 'to force' in the sense of 'to use persuasion', but I should have thought 'coerce' was too strong a word in so much as it implies a notion of compulsion. ~~My~~ Mr Peter is a man of my generation and I suggest would have used the word in its ordinary dictionary meaning of 'to urge' or 'to press'. I note that Mr Tofoya, who is not a Maori, is the stipulator; when I worked with him he could not have been aware of all the nuances of

2. In any case, regardless of the precise meaning intended by Mr Peter, the request for resuscitation of the 1940 offer to negotiate the land transfer, which was prolonged by the agreement referred to in your para 2, and for the ^(see Bundle 38, page 52) Barlow and not the British Phosphate Commissioners and were conducted in a spirit of unshakable thought. This is apparent from a perusal of the minutes of the various meetings antecedent to the signing, and from a conversation which I had with Mr Maynard, the representative of the Commission and a personal friend of mine for 40 years, shortly before his ^{untimely} death, when he particularly remarked on this fact. Incidentally the word 'Gannaxa' at A or F 16 should read 'Gonnaxa', and the generic term for 'vote' at D-F or F 19 would probably be 'kaoti rano'.

3. It should be emphasized that Mr Maynard, like Mr Tofoya, was a Maori, and Mr Elliot, who generally attended to the Barlow and their best interests and while a legal negotiator for the Commission, would never have employed methods involving coercion or force. In any case, when dealing with the Barlow Commission of my kind would have been counter-productive.

4. The only instance of coercion alluded to by Mr Peter is the alleged demand (at D) of certain Old Men that they would lose Rakia Island unless they signed the Agreement. Apart from the likelihood of either the

Government & the Commission, ^{let of} when we announced that the Bankers would make their final bid on Piki with the Bankers getting off their nose to state their price by returning them to the latter island, my only fear could have been laid at rest by a simple enquiry to Roger Holland, who would have received them himself or obtained an immediate and categorical message by telegram from the Chief Commissioner.

5. (c) Roller of initiative and lack of advice. Mr. Poter (Page 16, 4) was in Tahiti at the time of the signing of the agreement on the 10th April, 1947, the initiative being Mr. Tehei Aukubo and Mr. Ben Come. Mr. Poter's memory is evidently failing in his statement at 17 on p. 17 since Ocean Island was no longer being administered, Mr. Gale had long returned, ^{and} Mr. McDonald was Colonial Secretary, Fiji, at Suva. However I do recollect receiving a letter from him concerning the agreement, ~~to which~~ I replied informing him to whom he should write on the matter, but not, unless I am mistaken, until one year later when I was on the staff of the South Pacific Commission. I cannot find a copy in Roger Holland's rather capricious files (which he left to me on his death).

6. I suggest that if Mr. Poter really did have something concerning the ^{terms of the} 1949 Agreement with the British Phosphate Commission he would have brought them up at the subsequent series of meetings between Mr. Raymond and the Bankers which took place on the 5th - 11th August, 1947.

1947. The record of proceedings (which ^{or may not be} I think ~~that you have not got~~) does not indicate that he did so, although several other matters relating to landhold rents, freehold lands, sale of Basrah buildings in Ocean Island and sale of land, were discussed and agreements reached.

7. The ~~short~~ transcript of Mr. Petrus's examination in chief indicates one ~~confusion~~ in his mind (particularly in his statements on pages 17 and 18) as to events which took place at three separate meetings: with Mr. Worsham on the 13th June, 1946, mainly on matters concerning Mr. Kennedy; with Mr. Raymond on the 9th April, 1947, on the agreement regarding the transfer of phosphate mining leases; and with Mr. Macdonald and myself from the 8th to the 13th May, 1947.

8. As regards the stipulation at the last-mentioned meeting, which led to the drafting and signing of the 'Statement of Intentions', it could not have been dictated since Mr. Bruno Petrus was an Assistant Administrative Officer of great probity and ability (former of the first Chief Justice of the Gilbert and Ellice Islands Colony) and belonged in Gallatere and English. He was a member of the Board of Examiners in the Gallatere Language, of which I was Chairman and Mr. Macdonald the third member (Mr. Sood had been killed by the Japanese), and was specially flown down by me for Tarawa for the purpose of translating documents, including the Statement, ^{stipulation} and ~~at~~ the meetings of Mr. Macdonald and I see in a position to assist where necessary. I note, however, that the Court Interpreter, Mr. Takou, has confirmed ^{in oral answer} the accuracy of the stipulation with which the Statement of Intentions has been translated, on several occasions.

9. On the question of lack of advice raised at F and G on page 17, the Bachelors had, in fact, advisors in Roger Kennedy and later Roger Holland, who were resident on Rake for the purpose of helping and advising them. If they subsequently lost confidence in Roger Kennedy it should be emphasized that it was the Bachelors who had asked for his appointment (see in particular the Minutes of the General Meeting of Bachelor Ecclesia held on 26th January, 1926, in which Roger Kennedy is asked: 'If we return to Green Island, will you agree to end with us?'). They never lost confidence in Roger Holland, and replied so (see the Rev. Peter's letter, written for the Rake Island Council, to the Chief Secretary, dated the 8th March, 1948, on the occasion of Roger Holland's retirement).
10. It should be emphasized in this connection that the Bachelors could, if they had so wished, obtained such legal advice as they desired but that, in actual fact, it was not until Roger Holland's departure that they expressed their intention of doing so (see the full purport of the letter cited above). The Chief Secretary in his remarks in reply immediately concurred: 'In regard to their employing a lawyer of their own, there is no matter which needs his attention. Everybody who has legal business to transact goes to a lawyer and so objection to Bachelors doing likewise. If they want legal advice on any particular point let them by all means brief a lawyer for the purpose.' (Synopsis of Chief Secretary's address to Rake Island Council dated the 3rd January, 1949). In other words the Bachelors could at

all have obtained the advice of their Boston Advisors, but if and when they chose to employ a lawyer for further advice they did so.

The undersigned is not a lawyer and does not intend to give any legal advice.

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Very truly yours,

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(c) Discussions with Mr. Macdonald and myself and (d) allegations of being 'bribees'.

11. After reading carefully through Mr. Retan's evidence regarding what took place at the lengthy discussions which led to the signing of the Statement of Intentions (see pages 18-20 of his evidence) I have formed the opinion that he was not deliberately endeavouring to mislead the Court but was suffering again from a confused and uncoordinated thought process. Whatever the ~~the~~ reasons, however, he has conveyed a rather misleading impression as to what transpired which could have been easily refuted had it been thought fit to call me as a witness.

12. ^{offer to be made in} In the first place as the ~~arrangement~~ ~~was~~ ~~made~~ ~~concerning~~ ~~the~~ ~~purchase~~ ~~of~~ ~~you~~ ~~demonstrates~~ ~~that~~ I must explain that the Baukas had originally (before the Japanese occupation of Bevan Island) requested the High Commissioner to purchase the island of Vokaya for their funds as a second base. ^a ~~field~~ ~~was~~ ~~made~~ ~~by~~ ~~the~~ ~~Fiji~~ ~~Department~~ ~~of~~ ~~Agriculture~~ ~~and~~ ~~it~~ ~~was~~ ~~found~~ ~~to~~ ~~be~~ ~~unsuitable~~ ~~for~~ ~~the~~ ~~purpose~~, and the Baukas were ~~convinced~~ ~~and~~ ~~convinced~~.

13. Shortly afterwards ~~there~~, we were able to secure an offer from Messrs. Pacific Plantations Pty. Ltd. for the purchase of the centrally situated island of Rabi for £A.25,000. The Baukas, however, wanted on the purchase of Vokaya or nothing and Sir Harry Luke consequently decided to consider my buying Rabi.

14. I can not wholly explain that the Baukas should have made such a long term (supposedly being sold at such a low price because it was thought that the Japanese would be taking over Fiji) and, after the offer had expired, I saw Sir Harry ^{Rabi} in his private office one evening and pleaded to be allowed to buy ~~it~~ ^{Rabi} as

... ^{investigational} ^{any} ^{that} ^{cases} ^{Barlow} ^{contracts} ^{and} ^{determining} ⁱⁿ ^{value}
 ... ^{Barlow} ^{contracts} ^{and} ^{determining} ⁱⁿ ^{value}
 ... and Rabi could be sold at a considerable profit for
 the benefit of the Baolans when ^{the war} it was over. ^{after} ^{Bar} ^{conditions}
 Sir Harry said: 'Very well, Harry, you say buy Rabi as an
 investment, ^{and} ^{Wotaya} ^{as} ^a ^{line}, for the Baolans: if they agree?
 I will make my history's shot as I left his room: 'And if you are
 killed by their later, be it on your own head'.

15. The Baolans had ^{been} ^{near} ^{Rabi} but actually they agreed to the
 purchase deal of the two islands, then went by way of telegram
 just before the 3rd ^{of} ^{the} ^{month} of Ocean Island. Rabi was accordingly
 bought but the sale of Wotaya fell through, ^{after} ^{the} ^{3rd} ^{of} ^{the} ^{month}, as the price requested by
 the Betty ^{Company} was considered too high.

16. ^{would} ^{have} ^{been} at the end of the war there ^{was} ^{no} ^{difficulty} ⁱⁿ
 selling Rabi, if on demand of the Baolans, ^{and} ^{the} ^{original} ^{owners}
 had agreed to re-purchase it for £80,000 still other buyers
 would have probably paid and I see the Chief Secretary's address
 to the Baolans during his visit on the 3rd May, 1949, in which
 he stated: '£25,000 a year with £100,000. Did I?
 made look after the interests of Baolans?'

17. All this I explained to the Baolans at the discussion preceding
 the signing of the Statute of Wotaya: i.e. that if they wished to
 return to Ocean Island and did not want to keep Rabi they were

longer ready to purchase it at a price which would mean a handsome profit to the Boston community. Mr. Peten was silent to the facts at 4 on 18 but was there he refused, and should explicitly state, that I tried to persuade the Bascons to make Peter their home by saying that if they did not it would be disposed of to others.

18. These are not of instructions, and very far from thoughts and intentions, the proof being evident from paragraph (E) (14) ^{of the statement} which the Bascons were granted the right to travel freely between Peter and Ocean Island and to reside on Ocean Island. I actually hoped that they would retain Peter and live there as I much believed that it would be to their advantage to do so but I made it clear, and put it in writing, that they could live on either, or commute between the two, as they thought fit. And this is in fact what they have done? How could the Bascons be 'frustrated', when all the 'statement of Peten' did was to embody in writing their own desires, as expressed by their pen and ballot?

19. In further proof of the ^{insubstantiality} ~~allegations~~ of Mr. Peten's ~~disapprobation~~ ^{disapproval} would suffice that the "statement of Peten" was dismissed by the Bascons for three days and that it was only after 'unwisely' had had their say and only unavailing argument had been repeated that the Bascons and I agreed to ~~conduct~~ hold a secret ballot. Fifty-eight people voted

for returning to Ocean Island and ~~providing~~ ^{to be held free of charge} ~~with my family to return~~
then I immediately reaffirmed the Government's ^{to be held free of charge} ~~franchise~~ ^{to return them if}
they would let me know their names (it was a secret ballot so I could
not know who they were); ^{and that I would wait} ~~drafted~~ ^{for two days} ~~for~~ ^{for} ~~them~~ ^{for} ~~them~~
to be forward; ^{to the east} ~~but~~ ^{not} ~~we~~ ^{came}. All ^{the} ~~the~~ ^{Barlows} knew that they
had only to call to me to be returned free of charge to Ocean Island.
How then can Mr. Peter ~~insure~~ (on page 22 of his evidence) that the
Barlows were ^{prevented} ~~prevented~~ ^{there}, or at any time, from returning to Ocean Island?

20. Mr. Peter ^{offered to suggest} ~~insured~~ ^{that} the 'Statute of Victoria' was put to the
Barlows or a like it a lease it basis. That this is contrary to
the truth is shown by the High Commissioner's despatch no. 41 of the
12th September, 1947, to the Secretary of State, where he explains that
Kangaroo (B) (1) in particular, affording the Barlow rights to their lands on
Ocean Island, was put in at their express desire.

21. (d) Points contained in pages 12-14 of Mr. Peter's evidence. Naturally I could
assist on most of this evidence, both for factual recollection and demonstration in my
possession, but little of it appears to be any bearing on the main points
^{at} ~~of~~ ^{issue} and if my evidence was desired on matters of detail my offer to
give such evidence would ~~be~~ ^{have} ~~no~~ ^{been} ~~doubt~~ ^{accepted}.

If any and that had been made and was a matter of concern to the B. action committee, or any other of it, it could have been easily brought to my notice during my official and unofficial conversations with them when they were in Tarawa with me for the 30th March to the 14th December, 1945. I was being Resident Commissioner of the Colony at the time and they were Moravian sisters of Baramba in Tarawa atoll, since I spoke with them both as a good and substantially, and went on board the S.S. 'Tuna' to forward them and send them all good fortune in Rabi.

22. As regards D on page 12 one should be taken not to suggest that Mr Peter was in any sense a Japanese collaborator, and from further evidence in my possession this was not the case. In fact he was badly treated by the Japanese for his aid ^{given} to the ^{other} Baramba.

23. Re G and H on page 13 and A and B on page 14. Major Kennedy's report on proceedings between the 23rd October, 1945, and the 28th January, 1946, states, inter alia, that: 'In all cases, the essential details of the nature were carefully explained and the people were asked whether they were prepared to proceed to Rabi with the writer for a period of two years with the offer of monthly settling there. They were informed that their transport, the cost of establishing their temporary camp at Rabi and their returning home within after their arrival at Rabi would be a charge on Gullet and it their Volada (Glory) Rehabilitation and not on Baramba Funds. They were assured that if, at the end of the period of two years, any or all of them should wish to return to Ocean Island, suitable transport would be arranged and that the expense of their return would also be borne by Government. They usually asked whether the sale to Rabi would prejudice their receiving financial interests in Ocean Island and were informed that it would not. They were further assured that their privileges with respect to the Royalty Trust Fund, the Prudential Fund and Land-owners Investment Funds would remain the same.'

24. Regarding C on page 14 I cannot, of course, assert that Mr Kennedy did not make this statement, but it would have been contrary to his intentions and is not retained in his detailed report of proceedings (inter alia).

25. Re D-9 on p. 14 Mr Kennedy reported: 'The s.s. "Tuna" arrived at Rabi on the evening of the 24th December and the immigrants disembarked at Rakua on the following day. The camp already prepared for them proved adequate for their accommodation. The settlers remained firm for several weeks and families were able to procure individual cooking facilities, an arrangement which suited them better than having their food prepared by camp cooks.' I had particularly requested Major Kennedy to verify any possible inadequacies in their accommodation, food ^{or} other requirements by direct action through the Government of Fiji, and these ~~are~~ ^{have} ~~been~~ understood to be ample and in any case ample equipment available in Fiji at the time.

26. On the other hand Major Kennedy reported by letter dated the 26th January that: 'A slight depression of spirits among the older people has been noticeable during the last two weeks. This is probably due to the state of the weather. Alternate damp heat waves and dull damp winds are responsible for a considerable number of pulmonary illnesses while a plague of flies and sand-flies adds to the general discomfort.' In my view actualization factors rather than inadequate accommodation was responsible for the initial discomfort felt by the Bandana after their landing at Rabi.

27. (6) Mr Le Querens' cross-examination. One aspect it would seem to me as a layman that the best way of refuting any ~~erroneous~~ misconceptions which came to light as a result of Mr Potan's cross-examination would be to examine me in court, and I take it that as you declined my offer to give evidence you do not require me that the most general observations.

28. In brief, therefore, I consider that too much courtesy should not be expected from Mr Rotan's evidence, since his age very acute and would often to be determined with age. I have been here for nearly half a century and suggest that during that period he has earned almost a fortune of agreement after discussion followed at a later date by a claim that this was obtained by misunderstanding a verbal answer. To illustrate that his disagreements were not confined to relations with the Government or the British phosphate Commission I would quote the following:-

(i) Extract from notes on meeting of Board Committee: 5th October, 1939.
 'Rotan expressed his intention of resigning himself, for today, for the Board Committee. He is taking no further part in the committee or in any other community activity.'

(ii) Extract from notes on meeting of Board Committee: 19th October, 1939.
 'Rotan wishes it to be recorded that from this day he is no longer to be regarded as a member of the Board Committee in any way at all.'

In that connection the Board Welfare Officer was advised by Rotan that he renounced 'that his notice excludes him from any participation in social services and other benefits available to Board members as members of the Board community' (Board Welfare Officer to City Society to Government, G & EIC, 11th October, 1939).

29. To confine myself, however, to the two points which you have referred to me, Mr Rotan ^{has} not only alleged that the 1947 agreement with Mr Dargard was made under some form of pressure but also, though not stated in his evidence, he alleged, at a meeting of the Rabi Island Council on the 20th October, 1948, that 'Hauke and Woodward had carried through the statement of Rotan's hastily as a trap to bind the necks of the Board members'.

Holland was included in the allegation. ^{W. Peter} He subsequently denied using the phrase 'as a trap' but acknowledged the remainder. (See ^{also for} Holland to Chief Secretary, W.P.H.C. of the 20th October, 1948). While he withdrew and apologized for his expression, 'after one attempt at expurgation', at an interview with the Chief Secretary the following January it nevertheless illustrates my point that statements made by him cannot necessarily be taken at their face value.

30. An analysis of Mr Peter's evidence in the present issue will show, in my submission, that his mind is dwelling on various facets of a single anxiety: that the Ganslows will be prevented from living on Ocean Island. That they ^{in the past} have ^{not} been so prevented, or not, of course, difficult to refute by reference to the 'Statement of Intention' and their own free access ^{in the future} ~~will~~ then; but their fear that they will be so prevented ^{in the future} stems from certain unfortunate statements (two in particular) made in the Gilbert and Ellice Islands Colony House of Assembly during recent months. I am assured by the Colony Government that there is a misunderstanding in this point but until it is resolved one must expect the restriction of statements such as at para. 22 to con. p. 23 of Mr Peter's examination in chief, which ostensibly copied his own counsel as well as Mr le Grosse and the learned Judge, but are quite explicable to anyone knowing the background.

12th June, 1975. H. E. Danks