Nos. 20-4017 and 20-4019

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

-

UNITED STATES OF AMERICA; U.S. DEPARTMENT OF STATE; MICHAEL R. POMPEO, in his official capacity as U.S. Secretary of State; and CARL C. RISCH, in his official capacity as U.S. Assistant Secretary of State for Consular Affairs, Defendants-Appellants,

and

THE AMERICAN SAMOA GOVERNMENT and THE HONORABLE AUMUA AMATA,
Intervenor Defendants-Appellants,

V.

JOHN FITISEMANU, PALE TULI, ROSAVITA TULI, and SOUTHERN UTAH PACIFIC ISLANDER COALITION,

Plaintiffs-Appellees.

On Appeal from the District of Utah, No. 1:18-cv-00036-CW

EXHIBITS 13 THROUGH 27 TO BRIEF OF AMICUS CURIAE SAMOAN FEDERATION OF AMERICA, INC. IN SUPPORT OF PLAINTIFFS-APPELLEES AND TO AFFIRM (Volume 2 of 2)

David A. Perez PERKINS COIE LLP 1201 Third Avenue, Suite 4900 Seattle, WA 98101-3099 206.359.8000 DPerez@perkinscoie.com Aaron J. Ver PERKINS COIE LLP 505 Howard Street, Suite 1000 San Francisco, CA 94105-3204 415.344.7000 AVer@perkinscoie.com

Attorneys for Samoan Federation of America, Inc.

AMICI CURIAE SAMOAN FEDERATION OF AMERICA, INC. BRIEF IN SUPPORT OF PLAINTIFFS-APPELLEES AND TO AFFIRM

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Konolulu Star-Bulletin

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Big Four Breakdown Seen as Stalin Rejects Marshall Plan



Racing Lobby In Utah Is Beaten; Experiences of 20 Years Ago Remembered

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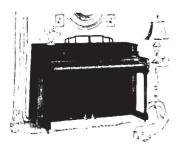
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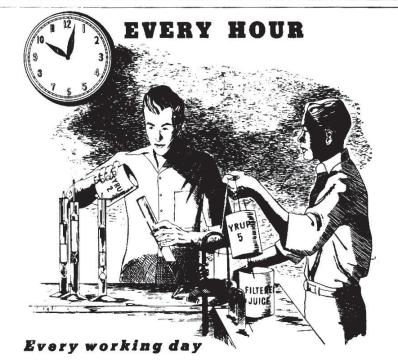
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MAN TO MAN By Harold L. Ickes

Navy Withholds Samoan and Guam Petitions From Congress

WASHINGTON, D. C., April 16—The Guam congress, on January 4, unanimously passed a resolution that asked both for United States citi-senship and an organic law. This was forwarded by way of the "Honorable Governor of Guam" (a navy brass hat) to the congress of the United States and to certain high federal officials.

It is not known what "the Honorable Governor of Guam" has done with this joint resolution but it has not reached the congress of the United States.

To restal letter, Mr. Poulson said:

"... Mr. Forrestal states that a petition for citizenship and an erganic act . . . is in the possession

The neglect to forward this peti-tion through Secretary Forcestal to the congress of the United States is an arhitrary demial of a funda-mental political right pessessed by the Guamanians.

Rep. Norris Poulson, of California, is a member of the public lands committee of the house. Reeently, he accompanied Secretary
ed the Interior Krug on the trip
that he took, in a government
plane, to Guam and Samoa on his
way to far-off Tokyo. Upon his return to Washington, Mr. Poulson
addressed his fellow-congressmen
as follows:

PETITION WITHHELD

"In Guam, which is ruled by a "In Guam, which is ruled by a United States naval governor. I was told by certain of the people of the island—not by the naval governor—that they had petitioned the congress of the United States for full efficientable and the enactment of an organic act... I have in my possession a copy of that petition has revieur of that petition has a deliberately withheld from congress by the navy departit, James V. Forrestal, presid-

form of government . . . At this moment, I have in my possession a true copy of an enactment of the 1945 General Fono of all the leading chiefs of American Samoa in ing chiefs of American Samoa in which they proposed to the congress of the United States a form of organic act for . . . Samoa. That petition from the duly elected chiefs of 16,000 loyal Americans has not to my knowledge been presented to this congress . . . Knowledge of that request has also been deliberately withheld from the Congress of the United States by the navy department — James V. Forrestal presiding." Porresial presiding.

The echo of Mr. Poulson's charges had scarcely died down when Under Secretary of the Navy Sullivan hurried to Capitol Hill. He sought out friends in both the bourse and the senate to stigme. house and the senate to stigma-tize Mr. Poulson's remarks as one

Forrestal letter, Mr. Poulson said:

"... Mr. Forrestal states that a for petition for citizenship and as or loganic act ... is in the pessession of his naval subordinates and gives assurance that it will now reach the congress. Ele also act knowledges the adopting by the General Fense of American Samoa by ... of a repolution requesting file American citizenship and an or American citizenship a n d an organic act a n d gives assurances that the resolution will also reach the congress." the congress . . .

Ka Sa oci no

lea ex

NAVY HAD KNOWLEDGE

There can be no doubt that the navy had knowledge of the action on January 4 of the Guamanian congress. Moreover, it is difficult in to credit Secretary Forrestal's sho to credit Secretary Forrestal's statement that the peoples of American Samoa had not requested a change in their form of gov-ernment. They did so in 1945, thus repeating a request that they have been pressing for many years.

The conclusion can not be escaped that the navy knew of these petitions and was desperately anxious to keep them from reaching will the congress, at least until the studiatest, hand-picked group, headed and by Dr. Ernest M. Hopkins, sent out by the navy with whitewash buckets, could file its report defending catted the dictatorial naval rule of these ball the dictatorial naval rule of these

Rep. Poulson has introduced in- Mar

Among these are the right of trial by jury, an end to taxation without representation, universal suffrage and the abolition of the naval governor's power of absolute pici

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pre

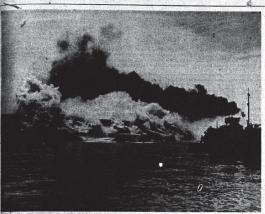
Secretaries Forrestal and Pat-terson, to say nothing of President Truman, eloquently profess their desire to maintain "democratic institutions" in Greece and Turkey, even if it costs the American people \$400,000,000 to begin with.

It is difficult to understand why such champions of democracy should continue to overlook naval despotism in Guam and American

The ocean holds 10,000,000,000 of personalities. He carried with cyclopedia Britannica, but no commercially profitable way has been restal. In commenting upon the found to extract it.

EXHIBIT 14

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Congress Can End Deadlock, Gomes Warns

Pearl Harbor Oil Fire Fought By 500 Men

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Senators See Oahu Prisoners

1 Killed, 15 Hurt

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rated Mutual Telephone Co., was explained to the territorial content of the utility of the content of the conte

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Samoans Said **Anxious For** Citizenship

"Samoans in American Samoa would like to assume the rights and responsibilities of American citizens," C. Girard David n, assistant secretary of the interior, tock dividends now touring Hawaii with Interior Secretary J. A. Krug, said Thurs-

Mr. Davidson disclosed also the Samoans desire more authority inswered that in the administration of local prob-

> The request for more civil rights and administration was made to Secretary Krug while he paused in Pago Pago a week ago while en route to other Pacific islands and Tokyo.

The plea was made by High Talking Chief Tuiasosopo of Pago Pago, according to Mr. Davidson.

American Samoa is now under naval administration.

Lack Education

While he praised the program for democratic training in Samoa, Mr. Davidson pointed out that because of inadequate educational advantages, he did not feel Samoans ready for civil administration.

He said, in his opinion, that the people of Guam are better prepared for civil administration because of more-advanced educational and political backgrounds there.

He did feel, however, that transportation and public utilities problems and other forms of commerce in Guam would be better presently handled under naval administration.

Guam Looks to TH

He said Guamanians look to Honolulu as a Pacific metropolis and are keenly interested in Hawaii's doings, particularly in its bid for statehood.

Mr. Davidson, who reflects deliberation in his conversations, was appointed assistant secretary of the interior in May, 1946. Before his present post, he was general counsel for the Bonneville Power administration.



Dillingha Capt. Ath wedding Mrs. Lest son of M kamaaina (Advertis

HVB Dr

EXHIBIT 15

COMMITTEE PRINT

STUDY MISSION TO EASTERN\[AMERICAN] SAMOA

REPORT

OF

SENATORS OREN E. LONG, OF HAWAII, AND ERNEST GRUENING, OF ALASKA

TO THE

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS UNITED STATES SENATE

PURSUANT TO

S. RES. 330, 86TH CONGRESS



Printed for the use of the Committee on Interior and Insular Affairs

U.S. GOVERNMENT PRINTING OFFICE WASHINGTON: 1961

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FOREWORD

On June 28, 1960, the Senate unanimously approved Senate Resolution 330 authorizing the Committee on Interior and Insular Affairs—

to conduct a full and complete study and investigation of conditions in American Samoa for the purpose of determining what should be done to improve economic and other conditions and to give the people of American Samoa a greater amount of self-government.

Pursuant to this authorization, Senators Oren E. Long, of Hawaii, and Ernest Gruening, of Alaska, both of whom are "Pacific Senators," volunteered to devote the necessary time to the study, and accordingly constituted a special subcommittee for the purposes of fulfilling the committee's responsibilities under Senate Resolution 330. Specialists in several areas of governmental responsibility, as authorized by the resolution, preceded the subcommittee to Samoa, and spent varying periods of time in making intensive investigations. In December, the members of the subcommittee, accompanied by appropriate staff, visited the area and, aided and guided by the specialists, made an onthe-spot personal inspection and study.

The subcommittee's report, together with the individual reports of the specialists, is respectfully submitted. For convenient reference, the subcommittee's own observations and recommendations are set forth as part I, and the individual findings and views of the

specialists set forth in subsequent parts.

The subcommittee generally adopts the findings and recommendations of its specialists. The economics section, part II, was prepared by Nathan Koenig, an economist in the Department of Agriculture whose services were strongly recommended to the subcommittee by Senator Clinton P. Anderson, former Secretary of Agriculture and now chairman of the Senate Committee on Interior and Insular Affairs. The political section, part III, was prepared by Dr. Norman Meller, professor of government, University of Hawaii, and the education section, part IV, by Dr. Hubert V. Everly, dean of the College of Education, University of Hawaii.

A report of the former Director of Medical Services, Dr. Lawrence H. Winter, with whom the subcommittee conferred at some length in Samoa, has been added as part V, together with the summary report on the survey by the U.S. Public Health Service on leprosy in

American Samoa.

In the appendix the subcommittee has published, for convenient reference, the constitution of American Samoa, and the very scant Federal law respecting the islands. Also set forth is a communication from Hon. Albert B. Maris, senior U.S. Circuit Judge for the Third Circuit, who made a study of the Samoan judicial establishment in 1952 for the Department of the Interior. Judge Maris' comments upon the designation of the area as "Eastern" rather than "American"

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FOREWORD

Samoa, and on the appellate procedure are regarded by the sub-committee as particularly pertinent and helpful.

In addition, the subcommittee is publishing a brief statement on the South Pacific Commission and its work. The United States is a member of the Commission, its Commissioners being Dean Knowles Ryerson, of the University of California, and Lt. Gen. (Ret.) Henry Aurand, with Dr. Arthur Osborne of the U.S. Public Health Service

as Alternate Commissioner.

Under the auspices of the Commission, the South Pacific Conference will meet in Pago Pago in July 1962. The conference consists of leaders native to the areas they represent, and the meeting in Eastern Samoa, the first ever held on American territory, gives emphasis to the fact that the United States is a South Pacific power and also gives emphasis to our political, economic, and cultural responsibilities to a group of the peoples of the South Pacific. A comment on this forthcoming conference by Curtis Cutter, Dependent Areas Officer, Department of State, who accompanied the study mission, is set forth herein on page 13.

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STUDY MISSION TO EASTERN [AMERICAN] SAMOA

PART I

SUBCOMMITTEE FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS

FINDINGS

In order that the subcommittee's findings and conclusions may be understood in realistic relationship to conditions and needs in Eastern (American) Samoa, certain background facts as to geography, the people, and history are set forth briefly.

PHYSICAL FACTS

Samoa is a group of 14 volcanic tropical islands below the Equator some 1,600 miles east and north of New Zealand, and 2,200 miles southwest of Hawaii. The six islands of this archipelago east of longitude 171° W., together with Swains Islands, constitute Eastern or American Samoa and are under the sovereignty of the United States. The islands west of the meridian are Western Samoa, and are governed

by New Zealand under a United Nations agreement.

The total area of American Samoa is but 76 square miles and most of that is mountainous. Thus, in land area, Eastern Samoa is about the size of the District of Columbia. Its population, as of April 1, 1960, was 20,051. The Eastern Samoans are American nationals, as distinct from U.S. citizens. Natural resources, other than the excellent harbor of Pago Pago, the scenic beauty of a tropical South Sea isle, and an equable tropic climate, are meager. There are no known mineral deposits; the amount of arable land is extremely limited. Because of inadequate and undeveloped storage facilities, water is sometimes in such short supply as to require use limitation, although rainfall approximates 200 inches a year.

Western Samoa has a land area of 1,133 square miles, and a population of more than 100,000. The amount of arable land is substantial. The capital of Eastern Samoa, Pago Pago, and that of Western Sa-

moa, Apia, are about 77 miles apart.

Ethnically, the population of both Samoas is Polynesian, with little mixture of other strains. They are a bronze-skinned, large-bodied, hearty people, possessed of true dignity, yet friendly and

1



hospitable. Their language is considered the oldest Polynesian tongue in existence, and is closely related to the Maori of New Zealand and the Hawaiian.

HISTORY

Relationship between Samoa and the United States goes back to 1838, when the American Navy lieutenant, Charles Wilkes, made a survey of the islands. In 1872 an agreement was concluded with the Samoan chiefs of Tutuila which gave the United States exclusive rights to the harbor of Pago Pago, one of the finest in the South Seas. For many years, Pago Pago was a highly strategic coaling station for the U.S. Navy in the South Pacific. It was the locale of Somerset Maugham's celebrated play "Rain."

At the same time, however, Britain and Germany were obtaining commercial concessions in the Samoan islands and the rights and privileges asserted by the three nations there became the subject of misunderstandings and controversies. In 1899, the three nations resolved their differences by treaty under which the signatories recognized the claims of the United States to the islands east of the 171st meridian, while Germany's claims were recognized in the islands

west of the meridian.

In 1900 and in 1904, the Samoan chiefs voluntarily ceded the islands of Eastern Samoa to the United States. Nearly three decades elapsed before Congress took cognizance of this cession. In February 1929, the 70th Congress adopted a resolution accepting the islands as of the time they were ceded. Of especial interest is the section of this public law which states:

(c) Until Congress shall provide for the government of such islands, all civil, judicial, and military powers shall be vested in such person or persons and shall be exercised in such manner as the President of the United States shall direct; and the President shall have power to remove said officers and fill the vacancies so occasioned. [Act of Feb. 20, 1929; 455 Stat. 1253.]

More than another three decades have elapsed since this law was written, but Congress has as yet made no provision for the government of Eastern Samoa, other than to appropriate Federal funds for disbursement to the island government by the Department of the Navy and the Department of the Interior.

SOCIAL SYSTEM AND LAND TENURE

No understanding of the particular needs of American Samoa is possible without knowledge of the unique social and land tenure system which is a basic part of Samoan life. The entire social structure is based on an intricate, far-reaching system of traditional family relationships, often referred to as the "matai" system. Strictly speaking, matais are family chieftains of varying degrees of power and prestige.

Almost all the land throughout American Samoa is owned, communally, by these family units. It can neither be bought nor sold, foreclosed upon, nor made subject to legal process for collection of debts. A few tracts, limited in size and number, are owned by eleemosynary institutions originated by foreigners, but by and large, from the very beginning the doctrine has been and is, "Samoan lands

for the Samoans.



This policy has been founded on the concept that the basis for the integrity of Samoan life rests in the ownership and control of their lands by the Samoans themselves. The plight of the native Hawaiians, who in large measure lost their lands to outsiders, has been cited as a clear-cut example of the social undesirability of a contrary policy.

However, the matai system is far more than a means of communal landholding. It is a social pattern extending into virtually every phase of Samoan life, controlling the economic as well as the social relationships of the Samoans. For example, we were informed that, theoretically at least, the girl who works in the privately operated fish cannery for the excellent, relatively, wage of 75 cents an hour, must bring her pay envelope home and turn it over intact to the matai or chief to use for the benefit of the whole family, whether its other members work or not.

Apropos to the matai system as we found it in 1960, the observations in 1931 of the first Senate group to visit the Samoan islands officially is significant. This was the American Samoan Commission, appointed by President Hoover pursuant to subsection (d) of Public Resolution 89, the 70th Congress, to "recommend to Congress such legislation concerning the islands of Eastern Samoa as they shall deem necessary or proper." The Commission consisted of Senators Hiram Bingham and Joseph T. Robinson, Representatives Carroll L. Beedy and Guinn Williams, and three Eastern Samoan Chiefs, Tufele, Mauga, and Magalei.

The Commission's report, set forth in Senate Report No. 195, 72d Congress, to accompany S. 417, a bill to provide a government for American Samoa, states with respect to the matai system:

The Samoan social organization was the chieftain system. Each family group elected or selected its own head. His title was that of "matai" and he ruled the family so long as he furnished it efficient leadership. When he became inefficient he was deposed. He held the power of life and death over the group. The semblance of the office remains, although shorn of this arbitrary power: Today the family group discusses matters led by the matai. No votes are taken. Conclusions are reached after much deliberation and when once arrived at the matai speaks for the family group. Originally the family lands were worked by the family and practically everything was owned in common, as it were, used and consumed by those who required it. There was under this system no incentive to effort on the part of the individual. Thrift brought no reward. However, 30 years of contact with American civilization have weakened this communal organization. The idea of personal property owned by the individual has infiltrated deeply. There are complaints from those not matais that the leadership of old is lacking and that it is not practical now to depose a matai. The schools have hastened the new ideas. The children are oriented away from the old culture. The thinkers among the chiefs wish the best for their children, but admit that the changes have come and that sooner or later much of the old order will go. They look at these changes regretfully, but turn with hope and confidence to the possibilities of the future.

It is to be noted that this 1931 report to the Senate of the 72d Congress uses the past tense in describing the matai system. Your subcommittee in 1960 did not find this hierarchy of family chieftains nearly as much a thing of the past as the report of 30 years ago indicates; rather the system is still in the process of dynamic transition.

The vitality of the matai system is recognized in the official policy statement regarding American Samoa issued by the Secretary of the Interior in 1956. This document asserts "* * Protection of

