

Nos. 20-4017 & 20-4019

**IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

JOHN FITISEMANU, *et al.*,

Plaintiffs-Appellees,

v.

UNITED STATES OF AMERICA, *et al.*,

Defendants-Appellants,

and

THE AMERICAN SAMOAN GOVERNMENT, and THE HON. AUMUA AMATA,

Intervenors-Defendants-Appellants.

On Appeal From The United States District Court For The District Of Utah
Honorable Clark Waddoups, No. 1:18-CV-00036-CW

SUPPLEMENTAL APPENDIX FOR PLAINTIFFS-APPELLEES

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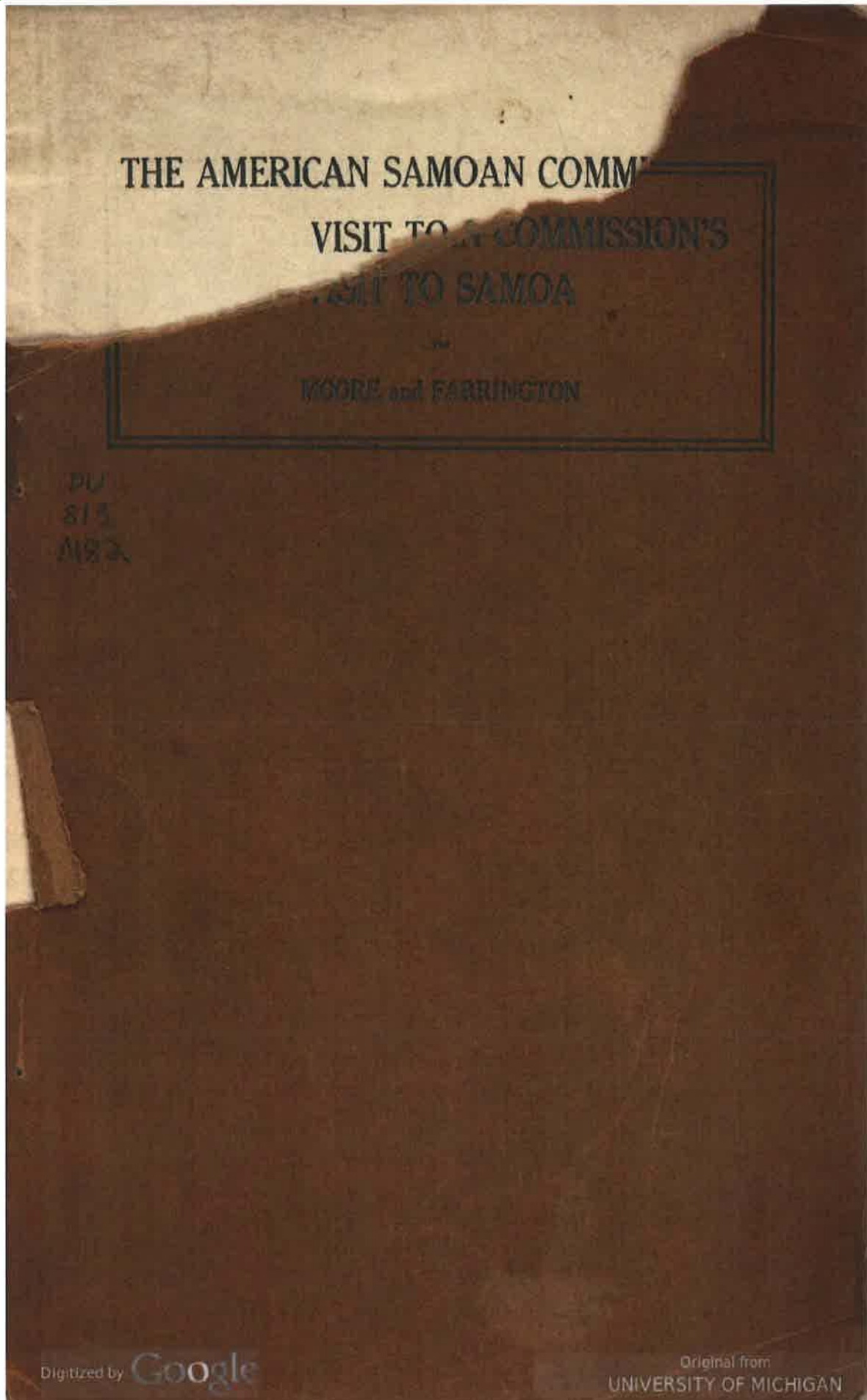
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THE AMERICAN SAMOAN COMMISSION'S VISIT TO SAMOA

SEPTEMBER-OCTOBER
1930

BY

REUEL S. MOORE and JOSEPH R. FARRINGTON

UNITED STATES
GOVERNMENT PRINTING OFFICE
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DEPOSITED BY THE
UNITED STATES OF AMERICA

PREFACE

The narrative which follows was prepared at the request of Senator Hiram Bingham, of Connecticut, chairman of the American Samoan Commission, by the two newspapermen who accompanied the commission on its trip from Honolulu to Samoa. Its purpose is not so much to record the work of the commission from the standpoint of what may have been accomplished, but to recount all the essential details of what transpired during the visit of the commission to Samoa. It is the story of how the work of the commission was conducted, and in addition to presenting the high points of the testimony given in formal hearings it recites many incidents of interest and some of importance which would not be recorded otherwise in any official document. It makes no pretense at being a history of the events which led up to the visit of the commission to Samoa. It is not a critical estimate of the work of the commission, but to whomsoever this task may fall in the future this record may be useful. The account may not be a finished piece of literary work, but it should be accurate, as it has passed through the hands of several of those who were witnesses of the events recounted herein.

REUEL S. MOORE.
JOSEPH R. FARRINGTON.

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THE VISIT OF THE AMERICAN SAMOAN COMMISSION TO SAMOA

Always in the history of American Samoa the arrival of ships of war marked events of moment. They were the powerful hand of the great white people of the north reaching far into the South Pacific, sometimes a mailed fist stretching out for the riches of the Tropics and sometimes a palm of good will extending a clasp of friendship and of helpfulness.

In 1889 the ships of three powers lay in menacing proximity in Apia Harbor of western Samoa only to be destroyed or driven away by the historic hurricane. The treaty of Berlin came in consequence of this visit, dividing the islands into the western group under the control of Germany and the eastern group under the control of the United States.

In 1900 an American warship arrived at Pago Pago and anchored in its harbor. At this time the chiefs of the island of Tutuila voluntarily ceded their diminutive domain to the United States. In 1904 the chiefs of the three tiny islands, the Manua group which lay 65 miles farther east, followed suit.

The affairs of American Samoa proceeded serenely under the administration of the United States Navy Department for two decades, but a series of unfortunate events at the close of that period brought another American warship to Pago Pago. This was in the fall of 1920.

The events which resulted in the visit of this warship were to have their echoes in the decade that followed. The reorganization of the personnel of the naval administration, the dismissals and deportations which were ordered following the arrival of this vessel were but the immediate result. More important, as subsequent events disclosed, was the swelling discontent of the native Samoans with the naval administration. It rose to a determination to have a change, which found expression in the formation of the Mau, an organization of protest, and caught the sympathetic ear of white men in Hawaii.

There were many influences at work during this period, the eventual result of them all being the arrival in Pago Pago Harbor early on the morning of Friday, September 26, 1930, of another warship, the light cruiser *Omaha*, commanded by Capt. John Downes.

The *Omaha* came in consequence of the adoption by Congress on February 20, 1929, of a resolution accepting the cession of the islands of Tutuila and Manua and creating a commission to recommend an organic act for the government of American Samoa.

Since 1900 Congress, other than appropriating the funds to the Navy Department, under which the administration of American

Samoa had been conducted, had given little thought and less attention to America's main South Sea possession.

Fifteen degrees below the Equator, more than 2,000 miles from Honolulu and 7,000 miles from the seat of government at Washington, the 10,000 Polynesian people of American Samoa had continued to gather their copra and live in primitive simplicity under the complete control of the naval administration. The islands had been governed as a naval station. In native affairs there was no appeal from the authority of the naval governor. In executive, legislative, and judicial decisions his word was absolute. The governmental life of American Samoa, so far as it concerned the Samoan people, not only began but ended within the geographical limits of the 60 square miles of jagged, densely overgrown islands which were forced above the level of the Pacific Ocean by volcanic action centuries ago.

The task of the commission was that of ascertaining the results of the administration of this isolated possession by the Navy Department, what changes the people desired, and how they could best be brought about.

Senator Hiram Bingham, of Connecticut, chairman of the Senate Committee on Territories and Insular Affairs, served as chairman of the commission.

Others on the commission were:

Senator Joseph T. Robinson, of Arkansas, Democrat, the leader of his party in the Senate.

Representative Carroll L. Beedy, of Maine, Republican, member of the Committee on Insular Affairs.

Representative Guinn Williams, of Texas, Democrat, member of the Committee on Insular Affairs.

Upon arrival in Pago Pago these four members were joined by three native chiefs who had been appointed to the commission by President Calvin Coolidge. They were:

High Chief Mauga, district governor of the eastern district of Tutuila, American Samoa, and one of the chiefs who signed the original document under which the island of Tutuila had been ceded to the United States.

High Chief Tufele, district governor of the Manua district.

Chief Magalei, from the western district, who was counted a representative of the Mau.

Congressional members of the commission began their inquiry into the Samoan problem, prior to being joined by the native chiefs, in daily meetings on the *Omaha* while en route from San Pedro to Pago Pago.

At these meetings was Capt. W. R. Furlong, chief of the office of island governments of the Navy Department. The administration of American Samoa, the Virgin Islands, and Guam falls under this office.

As the officer in charge, Captain Furlong, had at his command all available information regarding the prevailing administration of American Samoa, but his presence meant, too, that the naval point of view was constantly and efficiently represented. Thus the naval administration always had a defender.

At the same time Captain Furlong was in the position of naval aide to the commission and had been designated by the President



A ROAD ON TUTUILA AND A WALL OF NATIVE MASONRY -LIME SECURED
FROM CORAL

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**AMERICAN MEMBERS OF THE COMMISSION DECORATED WITH LEIS ON ARRIVAL
AT HONOLULU**

Representative Guion Williams; Senator Hiram Bingham, Chairman; Representative Carroll L. Beedy; and Senator Joseph T. Robinson



**COMMISSION RETURNS ON BOARD "OMAHA" AFTER CALLING ON GOVERNOR
JUDD AT HONOLULU**

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as its disbursing officer. He also served as liaison officer between the commission and the command of the ship.

For the study of the commission this officer assembled documents important in the history of American Samoa; a complete record of its government, its personnel and their functions, its costs of operation and the laws under which it was administered; recommendations sent to the President and to the Navy Department by individuals who had interested themselves in Samoan affairs; the draft of a proposed organic act drawn up by a board consisting of former governors, Henry F. Bryan and Edward S. Kellogg, and Judge H. P. Wood, the secretary of native affairs; and drafts of three other organic acts prepared individually by former Gov. Stephen V. Graham, Gov. Gatewood S. Lincoln, and by Captain Furlong.

The library of the commission also included what had been written about the Samoan people by Commodore Charles Wilkes, Robert Louis Stevenson, and in current publications by individuals interested in Samoa.

With the departure of the *Omaha* from San Pedro, on September 11, the commissioners, in meetings each morning and reading each afternoon, attempted to absorb as much information as possible.

Although some members of the commission were visited by Samoans who were residents of the Pacific coast prior to the departure of the commission from San Pedro, formal testimony was not taken until the commissioners arrived in Honolulu.

HONOLULU

At about 8 o'clock on the morning of September 17, a bright, hot day, the *Omaha* was welcomed to Honolulu with the music, flowers, and friendliness characteristic of the Hawaiians. The coming of the *Omaha* was considered an event of importance and general public interest; first, because of the lively interest in the Samoan problem of prominent men of Honolulu; second, because between 200 and 300 Samoans were residents of the community; and, third, because Senator Bingham was born in Honolulu and is affectionately referred to by the people of the territory as "Hawaii's Senator."

Besides, Honolulu's nature was to be cordial to visitors. Welcoming ships was a ceremony which the people of the city enjoyed and practiced with the same sentiment that the successful conclusion of long and arduous voyages by sailing vessels stirred a generation ago. The Royal Hawaiian Band, an organization maintained by the municipal government, extended its greeting in Hawaiian tunes as the *Omaha* was moored to the dock. As a gesture of their appreciation members of the commission later draped on the necks of the bandsmen many of the flower wreaths, called "leis" in Hawaii, which were brought to them by friends and officials who greeted them. The latter included representatives of the territorial government, civic organizations, and the Army and Navy; many friends, prominent local politicians being among them, hurried aboard the *Omaha* as soon as her gangplank was lowered to place leis about the necks of the visitors—leis of many flowers—plumaria, the sweet-scented yellow ginger, red roses, pink carnations, and others abounding in the islands.

The commission was joined in Honolulu by Albert F. Judd, an attorney of that city, who had previously been appointed legal advisor. Mr. Judd was president of the Bishop Museum and had been actively identified in the efforts to bring about a modification of the Samoan Government. He was a boyhood friend of Senator Bingham.

The first morning in Honolulu was devoted to official calls. In the afternoon the commission visited Bishop Museum and heard a talk on Samoan customs and culture by Dr. P. H. Buck, who, following extensive research in the Samoan Islands, had recently completed an important book entitled "Samoan Material Culture." Copies of this book were given members of the commission by trustees of the museum.

In March, 1929, Herbert E. Gregory, chairman of the committee on Pacific investigations of the National Research Council, invited the commission to take advantage of the facilities of the Bishop Museum, of which he was director. Ethnologists of that museum had made several trips to Samoa, and one of the objects of the hearings in Honolulu was to obtain their testimony.

On the morning of September 17 public hearings were begun in the Territorial office building in Honolulu. Between 30 and 40 persons were able to crowd into the room to hear the testimony. A large part of them were Samoans.

At noon of that day the members of the commission were guests of honor at a community luncheon on the roof garden of the Alexander Young Hotel in Honolulu. They were welcomed by Gov. Lawrence M. Judd. The program included Hawaiian songs by native girls and the Royal Hawaiian Band and talks by Senators Bingham and Robinson.

On the two succeeding mornings the commissioners heard widely varying points of view on the Samoan problem. The hearings brought before the commissioners Bruce Cartwright, associate in ethnology of the Bishop Museum, and L. A. Thurston, publisher of the Honolulu Advertiser, of Honolulu, two white men who had visited Samoa on scientific expeditions. Both men were in sympathy with natives opposing the naval administration. Their suggestions, rather than being specific, were that the commission direct its inquiry into means of providing the Samoans greater opportunities for development by modifying existing land laws under which control is communal under the heads of families and is confined exclusively to full-blooded Samoans.

Dr. E. S. Handy, ethnologist of the Bishop Museum, pointed out that the Polynesians were not properly described as a "pure race," being a mixture of Mongoloid and Caucasoid elements, and that discrimination between full-blooded and part-blooded Samoans was unsound. On the other hand, he strongly defended such steps as had been taken to preserve native customs and urged that barriers be raised against the intrusion of white traders and tourists.

Opposition to the naval administration was voiced by three Samoans, the first of whom, K. Su'a, had been a resident of Honolulu for several years. Su'a was followed by a young Samoan, Nelson Tuitele, employed by Theo. H. Davies & Co., a large firm in Hono-



TUTUILA VIEWED FROM EASTERN END



HARBOR OF PAGO PAGO SHOWING CRUISER "OMAHA" AND NAVAL STATION

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ENTRANCE TO THE HARBOR OF PAGO PAGO



NAVAL STATION AT PAGO PAGO AND SEAT OF GOVERNMENT

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lulu, as a statistician and accountant, who appeared for the Samoan Civic Club, an organization of about 30 Samoans in Honolulu.

He had drafted a plan for a civilian government for Samoa. In this he had had the assistance of Arthur Greene, a newspaper man of Honolulu who was deported from Samoa by the naval administration in 1920 following a naval inquiry into sources of opposition to the naval government. Mrs. Greene, a member of a prominent part-Samoan family, was present at the hearings. The witness included in his plans a budget covering the cost of government which led to sharp cross-examination by Senator Robinson, developing the thought that the Samoan people were paying and were able to pay only a small share of the cost of their government, the major portion being paid by the Federal Government.

Spirited criticism of certain incidents of the naval administration came from a youthful Samoan named Napoleon Samoa Tuiteleleapaga who was in Honolulu studying at the Territorial normal school and the University of Hawaii. He objected to the supreme authority of the naval governor but asked that native customs, excepting death feasts which were a heavy drain on family resources, be perpetuated.

The commission heard also of the case of a Samoan who had served in the Navy for more than 16 years and subsequently was admitted to the naval reserve but whose application for a position in the civil service was denied because he was classified as an "alien."

THE TRIP SOUTH

With these suggestions, which were to figure in the deliberations later in Samoa, the commission left Honolulu on the *Omaha* Saturday afternoon, September 20. On the trip to the south they were joined by Mr. Judd in the capacity of legal advisor; William S. Chillingworth as reporter; Reuel S. Moore, representing the United Press; and J. R. Farrington, managing editor of the *Star-Bulletin* of Honolulu, who represented the Associated Press. Merl LaVoy, representing the Pathé News, had joined the *Omaha* at San Pedro.

The trip south gave the commissioners further opportunity to prepare for work on Samoan soil. At 9 o'clock Sunday morning the commissioners, with Mr. Judd and Captain Furlong, went into executive session. Mr. Judd explained to the commissioners how Samoan customs operated not only in the government but in the economic and social life of the people.

On the following day the commissioners undertook a discussion of some of the problems which related directly to the future government of the Samoan people. Among the first of these was American citizenship. The hearings in Honolulu had developed some of the injustices resulting from the status of the Samoans regarding citizenship. They were neither citizens of Samoa nor citizens of the United States. There were no laws, rules, or regulations defining their status in the Nation.

The commissioners then turned to the problem of drafting a bill of rights for the Samoans. It was agreed on the basis of the information available at this point that to extend all the provisions of the Constitution to American Samoa would upset customs which had been in practice for years. Notable among these was the right

of trial by jury. The Samoan practice for generations had been to bring offenders to trial before chiefs. To adopt the American system in the face of this custom and in the absence of any experience or conception of the American system of trial by jury appeared to be extremely unwise.

The commissioners, however, reserved all decisions until being joined by the Samoan members in Pago Pago. Nevertheless, it was subsequently found that they were correct in this conclusion. Of all the many witnesses who testified in Samoa not one asked for trial by jury; those who spoke of the judicial system expressed satisfaction with "trial by chiefs," but asked that an appeal from the decisions of the highest court in Samoa be allowed.

Consideration of a bill of rights was continued on the following day. The commissioners took the first eight amendments to the Constitution and studied them with relation to the possibility of incorporating them in a bill of rights for the Samoans. A tentative draft of a bill of rights was brought up for discussion.

"We shall reach no conclusion now," Senator Bingham announced. "We shall ask the Samoan members of the commission for their suggestions first. Then we will offer ours. We are not going to Samoa with a platform in our pockets with orders to sign."

On this point of view Senator Robinson, who brought a highly trained legal mind to the commission, was especially insistent. This was his first visit to Samoa. Of the congressional party only Senator Bingham had visited the islands before. Senator Robinson wanted to hear from the Samoans themselves before reaching conclusions. His searching cross-examinations on many occasions vexed more than one witness but adroitly unfolded information and points of view valuable to the commission.

As the *Omaha* approached the Equator that afternoon the commissioners, together with members of the crew, surrendered their interest in Samoa to pay homage to King Neptune in ceremonies which continued until noon the next day.

On the day following the commissioners turned once more to their study of the Samoan problem. In executive session on Thursday morning they directed their inquiry into some of the charges against the naval administration of Samoa, brought by people on the mainland in letters to officials of the Navy Department, to the commission, and in magazine articles. Many of them showed only the most remote conception of the Samoan problem and many contained misstatements, such as the allegation that the Samoans were deprived of the benefit of wharf and harbor fees. Senator Bingham announced that records showed all funds received from these sources and customs revenues were used directly for the Samoan people.

Senator Bingham announced at this point that inquiry had convinced him there was no truth to the charges that the Navy was destroying Samoan customs. On the contrary, he said, the Navy had set up rigid barriers against "ambitious white men" by restricting ownership of land to the natives, limiting leases to 40 years, and prohibiting white traders from extending credit to natives beyond \$25 under penalty of cancellation of debts where they exceeded this amount.



HARBOR OF PAGO PAGO



VILLAGES ON A BAY OF TUTUILA

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THE SAMOAN AND AMERICAN MEMBERS OF COMMISSION ON BOARD THE
"OMAHA"



POYER SCHOOL, PAGO PAGO, WHERE MOST OF THE HEARINGS WERE HELD
BY THE COMMISSION

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Thus, a wide field had already been covered by the congressional members of the commission prior to the morning of September 26 when the islands of American Samoa appeared to those on the *Omaha* through a drizzling rain. The commissioners had read all the recent reports of the naval government; studied the costs of the naval administration; read the proceedings of several meetings of the fono, the council of chiefs; heard authorities talk on the customs of the Samoan people; and inquired into charges against the existing system of government.

The program for 11 days in Samoa was complete. Arrangements had been made to hold hearings in all important villages. Close to 75 people, most of them Samoan chiefs, had responded to the general invitation to appear before the commission to offer their suggestions for the future government and to voice any grievances that they might have against the naval administration.

PAGO PAGO

By 8 o'clock the *Omaha* had come to anchor in the deep, quiet waters of Pago Pago Harbor. The prevailing wind, a light south-east trade, was from the narrow mouth of the bay. High on the east side of the entrance was the towering bulk of "the rainmaker," whose wide, level top broke the low clouds carrying moisture from the south. The gathering of clouds about this peak foretold frequent showers.

From this point the ridge dropped to lower levels, then rose again to a steep protecting barrier which extended irregularly for several miles to the north, then turned sharply to the south to surround the bay on three sides. On the promontory at the west side of the entrance, facing the winds of the south, was the residence of the governor.

Dense, dark green foliage covered the landscape, made hazy by the morning showers. From the ridge surrounding the bay the land dropped sharply from the clouds to a narrow, level stretch of ground, in some places only wide enough for a road and a few houses at the water's edge.

On the western side of the bay, close to the entrance, was the naval station, the colorless wharf, warehouses, radio towers, oil storage tanks of western civilization, and the well-kept yards of officers' homes, all of uniform frame construction. On the east side Poyer School, a low, concrete structure, once almost white, stood out plainly.

Where were the native homes? Set beneath the coconut trees that rose along the shore line and bravely pushed their tops above the tropical luxuriance, at some points almost halfway up the steep cliffs, were many Samoan houses. Of dried sugarcane leaves, the brown of which blended into dominating green of the picture, they could scarcely be seen. Only here and there a clearing revealed a native habitation. Many others, hemmed in by the dense growth of hot, damp tropical days, were invisible.

The natural restrictions of isolation and limited stretches of arable land were manifest, but from the standpoint of shipping, the bay was one of the most protected against hurricanes in the South Pacific.

Throughout their stay in Samoa the congressional members of the commission made their home on the *Omaha*.

Appearance of the *Omaha* in the harbor brought many native boats alongside carrying the brown people of Samoa, all of them friendly and curious. Some came in dugouts less than 10 feet long and others in long rowboats which carried as many as 24 oars, 12 on each side, and half again as many occupants, men, women, and children. They came with baskets and bundles of native products, tapa cloths, kava bowls, grass skirts, mats, war clubs, model war canoes, and a multitude of other trinkets for trading purposes. Within less than an hour between 25 and 30 of these small craft were gathered about the stern of the *Omaha*, where the exchange of their wares for the white man's clothes continued almost without interruption during the entire visit of the *Omaha*.

The *Omaha*, however, was bent on a more serious mission. At the naval station in the distance the commissioners caught their first glimpse of the Fita Fita guard as it approached the governor's landing on the western side of the bay, marching in quick step behind its band.

The Fita Fita guard is a company of Samoans, the men of which are selected for their physical fitness, and maintained as a regular part of the naval establishment to perform the duties of marines. Its costume is unique in the Navy, consisting of a brimless cap of red cloth about 3 inches high, a Navy regulation undershirt, and a lava lava of black broadcloth around the bottom of which are from two to four red stripes, the number of stripes depending upon service or rank. The feet and legs are bare, according to the wise prevailing custom of the country.

At the foot of the governor's landing the guard came to a halt. Strains of the Star-Spangled Banner resounded across the bay and members of the commission, interested spectators on the bridge deck of the *Omaha*, came to attention.

Shortly afterwards the Samoan chiefs, Mauga (pronounced Maung-a), Tufele, and Magalei (pronounced Mang-alay), came aboard the *Omaha* with two interpreters, George Peters and Crossfield Hunkin. The three chiefs appeared on the main deck of the *Omaha* wearing white linen coats, cotton skirts ("lava lavas"), and barefooted, to join the other members of the commission. Each carried a cane. Only Magalei wore a hat, his headpiece being a large, white pith helmet common in the Tropics.

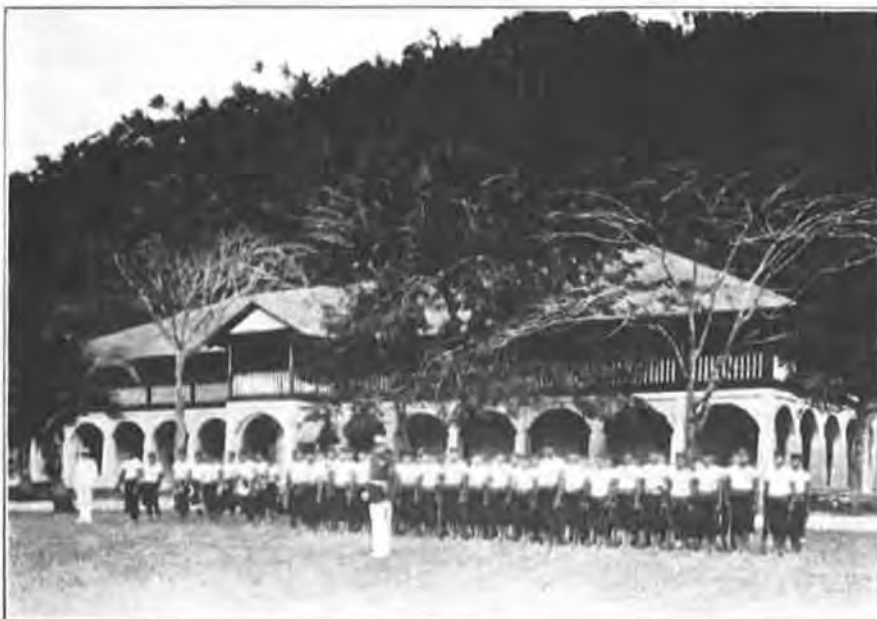
Mauga and Magalei were elderly men of wrinkled countenances, spare of body, solemn and dignified in manner. Tufele was heavy set, young, and vigorous.

Their costume was the accepted dress of the natives. The skirt, or lava lava, was a wide piece of cloth swung about the waist and extending just below the knees. With some variations it is worn by most men, women, and children of the islands. The men at work and in their homes often leave the upper portions of their bodies bare. Occasionally they wear undershirts but rarely hats and shoes, the absence of both shirts and shoes being more suitable to their warm, rainy climate.

The Samoan chiefs were ushered into the admiral's quarters where other members of the commission awaited them. Magalei presented the visiting commissioners with a kava root, an expression of friendship common in the islands.



**SAMOAN WOMEN BRINGING GIFTS OF FINE MATS AND TAPAS TO THE COM-
MISSION**



FITA FITA GUARD

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16 COMMISSION AT THE GUEST HOUSE OF HIGH CHIEF MAUGA

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With a thought to the significance which the Samoans attached to this event, the organization of the commission was attended with considerable ceremony. Senator Bingham presented each member with an appropriate medal, struck off in the United States mint. His suggestion that it be worn whenever the commission was on duty was faithfully followed. Each commissioner received also, as an additional badge of his position, a Malacca cane on which was a silver band bearing the words "American Samoan Commission, 1930." In Samoa it is the custom for nearly all chiefs to carry canes.

Mr. Judd read the act of Congress approved February 20, 1929, which accepted the cession of the islands and authorized the appointment of the commission. Senator Bingham carefully explained the work of the congressional members of the commission up to that point. He then, declaring that all decisions had been reserved for final action by the full commission, asked for the approval of the appointment of Mr. Judd as legal advisor.

Chiefs Tufele and Magalei assented but Mauga objected. He said that Mr. Judd had been in correspondence with the Mau and in a low, quiet voice expressed the opinion that a legal adviser was unnecessary.

"The Lord in heaven will be the advisor for the commission," he said, but added that in as far as the other two chiefs agreed to the appointment, he, too, would agree. He expressed the hope that Mr. Judd would perform his duty without partiality.

Rising "to a point of personal privilege," Mr. Judd denied that he had been in correspondence with the Mau, with whose activities Mauga was not in sympathy.

Magalei, a member of the Mau, responded that this was true and that no correspondence had passed between Mr. Judd and the Mau.

Senator Bingham then undertook to explain in detail the reasons for the selection of Mr. Judd. He said that his grandfather and Mr. Judd's grandfather had lived near each other and had been among the first missionaries to Hawaii; that their fathers were friends, his father going to the Gilbert Islands as a missionary and Mr. Judd's father becoming chief justice of Hawaii, and that Mr. Judd's interest in seeing that justice be done the Samoans had been so great and his insistence that steps be taken so strong that he, Senator Bingham, had introduced in the Senate the resolution creating the commission then in Samoa.

As Mr. Judd's grandfather had been legal advisor to the Hawaiians, Senator Bingham said, it was appropriate that the present Mr. Judd should act in a similar capacity to the Samoan commission.

Old Mauga's wrinkled face brightened. He said that he knew then that Mr. Judd was his friend and was perfectly satisfied with the appointment.

With the exception of Tufele, a heavy-set, powerful man of 33 years, who had received his education in the Hilo Boarding School of Hilo, Hawaii, the chiefs did not speak English. The conversation and proceedings, therefore, had to be conducted through the medium of the Samoan language. Three interpreters, George Peters, Alex T. Willis, and George Reid, subsequently sat with the commission at its public hearings, alternately interpreting the testimony and occasionally disputing among themselves the proper translation.

Willis and Reid were both part Samoans who had received their education in other countries, while Peters was a full-blooded Samoan who had been educated in British Samoa. They had been selected as representing different factions to eliminate any charges of partiality or inaccuracy as to their translations.

The Samoan chiefs, having approved the work of the commission thus far, left the "admiral's cabin," each wearing his medal and carrying his cane. Senator Bingham had explained the precedence that was to be followed; the chairman first, then Senator Robinson, Congressman Beedy, Congressman Williams, Mauga, Tufele, and Magalei, and this order was observed throughout the visit to Samoa.

It was the commission's first duty to call on Governor Lincoln. As it left the *Omaha* a salute of 17 guns reverberated through Pago Pago Harbor. The commissioners went ashore in the captain's gig and after being formally received were escorted to the island administration building. A second salute was fired as the commission called on the governor at his office.

With the formalities completed the commission returned to the *Omaha*, where it received a return call from Governor Lincoln and Judge H. P. Wood, secretary of native affairs, who were invited to stay for lunch at noon.

HEARINGS AT POYER SCHOOL

That afternoon the formal hearings were begun at Poyer School, located across the bay from the naval station. Poyer School was named after Commander John M. Poyer, U. S. Navy, who served in Samoa as Governor from 1915 to 1919. It is a small, single-storied structure of concrete, set back about 100 feet from the water's edge and above the road which encircles the bay. It is surrounded by an open veranda and, in addition to the main room, which is about 75 feet in width and 50 feet in depth, has small classrooms on both sides.

On a raised platform at the back of the assembly room and looking out on Pago Pago Bay a long table was arranged with chairs for the seven members of the commission. Senator Bingham sat in the center. Above a blackboard back of Senator Bingham an American flag had been drawn in crayon colors on the white wall and at some distance on either side were pictures of Washington and Lincoln, standard portraits in half tones. High on the left wall was the familiar engraving showing the signing of the Declaration of Independence. On the left wall hung a picture of Woodrow Wilson.

It was here that most of the testimony was heard. The first hearing was attended by about 50 natives, most of them chiefs. The title of chief is not uncommon in American Samoa, but there are degrees in rank. With few exceptions those who testified were at least matais. A matai is the head of a family group, some of which contain as few as 17 and others more than 100 persons, judging from statements of witnesses. In addition to matais were village chiefs, county chiefs, and "talking chiefs."

Of the talking chiefs the commission heard many. Each high chief had his talking chief. They were their spokesmen and literally lived up to their unique titles by doing the talking for their chiefs.

THE COMMISSION'S VISIT TO SAMOA

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Captain Furlong, short of stature, was less of a problem and straddled the back of a Samoan who thrust an arm under each of the captain's legs and carried him onto the beach while the captain held on to his bearer's neck. Each member of the party was carried ashore by one or two Samoans, depending upon the size and weight of the burden.

The village of Tau, really made up of twin villages, was the realm of Tufele. Tau reposed in a grove of palms which stretched for hundreds of yards along the coral beach. A hard path was terraced off near the water, wide enough for a road. There were, however, no vehicles on Tau. A similar roadway was marked off by a curbing of rocks in rear of the houses. At intervals were holes in the ground in rear of the village where rubbish was burned. Everything was orderly and clean.

Hundreds of men, women, and children greeted the commissioners. The men were bare to the hips, around which were wrapped tapa lava lavas. Many wore strings of seeds, flowers, and shells around their necks. Most of the women, too, were bedecked in their tapacloth garments which covered their bodies from their necks to their knees. Their arms and lower legs were bare, as were their feet. Children ran about with lava lavas of cloth around their waists, while smaller tots appeared with nothing on at all.

The primitive, brown throng wandered about under tall, green palms. Above was a blue sky sprinkled contrastingly with fleecy clouds while beyond a bluer sea swished gently along the sandy beach in a shimmering silver surf. Picturesque fales stood on every side. Children played in the shallow water on the reef. Here was a real life picture more enchanting than ever painted by authors' words or artists' brush, too magnificent to be reproduced in any other medium save reality.

Tufele, district governor, walked proudly erect at the head of his people. His leadership and the toil of his own hands had made this village what it was. He had extended the coconut palms further up the mountain side. He was striving to increase his people's property and bring them wealth from bigger copra crops.

The chiefs assembled in a fale for the hearings. Mats were spread over the coral floor, where all sat cross-legged except the commissioners, who were given the courtesy of chairs.

In Tau the people were pretty well satisfied with the naval government. The first witness, a high chief, told the commission that the Samoans understood first that annexation by the United States meant the people would receive American citizenship. Since the people had learned through the commission that this had not yet been granted he asked that the commission recommend to Congress that Samoans be given this status.

Three others reiterated this desire and asked likewise for a representative government, saying they spoke for the entire Manua group.

Another chief brought up the question of old Samoan titles. He asked that Samoans be permitted to retain old chieftain names, mentioning specifically the title of Tuimanua. In 1924 the people of Tau named High Chief Chris T. Young, of Laloaloa, a quarter-white Samoan, Tuimanua, or "King of Manua." Governor Kellogg ordered that Young should not hold this title because under

the American flag there could be no kings. Three days later, to avoid conflict between different factions for the title, Mr. Young was ordered banished from Manua to Pago Pago, where he was obliged to remain in exile until early in 1930, when Governor Lincoln raised the banishment and informed Young he would consider his request for the title if he understood that it would mean nothing in governmental matters, which was agreeable to Young and his people.

Then, in accordance with the Samoan law, Young filed for his title with the secretary of native affairs. However, Tufele and his followers contested the claim, making it necessary to carry the title case to court for trial.

Mr. Young himself appeared to tell his story, but the commissioners refused to hear this testimony since it involved a dispute already in court.

Despite the rivalry between Mr. Young, who was already selected for the title by his followers, and Tufele, who contested it, Mr. Young visited Tufele's house after the hearings and participated in the feast. The two treated each other, apparently, with cordiality. Other Samoans explained it was the custom to forget such controversies when visiting at one another's homes.

The afternoon was spent witnessing a series of dances and entertainments. School children sang and drilled.

Some two dozen boys staged a siva siva which lasted about 30 minutes, during which time their arms, legs, bodies, and heads were constantly active in rhythmic motion. The movements of the entire group were in unison and executed with a staccato characteristic of the Samoan dance.

Pretty girls, clad in skirts of fine mats, with garlands around their necks and in their hair, some of them bare from the waist up, danced in the old Samoan style. Sword dancers provided a variety. One lad kept his knife whirling for 10 minutes, seemingly with the rapidity of an airplane propeller. Not once during that time, in which he executed all the tricks of a skilled drum major with a baton, did the boy drop his knife.

At one time he purposely whirled the blade under Senator Bingham's nose, but so skillful had been his performance that the Senator had full confidence and never blinked an eye.

In the meantime the *Omaha* had been steaming about off shore between Tau Island and the twin islands of Ofu and Olosega, which loomed, mountainous and rugged, across a channel some 8 miles wide.

Two airplanes, piloted by Lieutenant Allison and Lieut. P. H. Tuzo, were catapulted from the deck of the *Omaha* and after circling the islands departed for Pago Pago Harbor, some 60 miles away. They covered the distance in 35 minutes and were believed to have been the first to make the flight.

The natives, most of whom had never seen an airplane before watched with keen interest as the airplanes disappeared high in the blue sky.

The procession of the morning was repeated as the commission and its party proceeded to the landing.

In the meantime the rising tide and wind had created a high surf which broke over the reef. Experienced eyes surveyed the situation and it was decided a boat could safely embark.

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me I introduced a resolution which passed the Congress in 1929 which did for Samoa what the original acceptance of the cession of Hawaii did for Hawaii. The words were very much the same.

We accepted the cession of these islands by the chiefs of Tutuila and Manua. We set aside any public lands that may be in Tutuila and Manua for the sake of education in American Samoa. We did not grant American citizenship, but we authorized a commission to come here and study the situation and to recommend to the Congress the necessary laws to establish a permanent government in American Samoa. The Congress passed this resolution and the President signed it. In accordance with that law and by direction of the President we have come here to investigate and to recommend to Congress the necessary organic law for a government, just as the commission appointed under the Hawaiian acceptance of cession had similar duties to perform.

The Mau appeared well organized and presented testimony through three spokesmen. Their testimony was coherent and constructive and stood out as representing apparently the only organized effort before the commission.

Chief Fanene, a heavy-set man, strikingly handsome, was the first speaker. He spoke with deep emotion as he said that he represented 6,000 Samoans. The Stars and Stripes had proved a blessing to the Samoan people, he said.

"We have achieved one of our objectives in annexation, and now we desire citizenship," he declared.

Chief Lui, of Vaitogi, was next on the witness stand.

The people of Samoa were happy, Lui said, until Lieut. Commander C. H. Boucher, United States Navy, came about a decade before and told them that American Samoa was not annexed to the United States and that they were not American citizens. After the American flag was raised in 1900 the people thought they were American citizens.

The statements of Boucher and others were enlightening, he said, and the Mau was formed to obtain annexation, citizenship, and a representative government. Since the President of the United States had appointed the commission the Mau was satisfied, Lui said.

Chief Galeai, one of the two chairmen of the Mau, Magalei being the other, then appeared to describe the wishes of the Mau.

The Mau, he said, wanted citizenship. It desired that part Samoans of 25 per cent or more Samoan blood be given the right to buy lands and that persons with any percentage of Samoan blood be given the right to inherit lands.

At this point the commission produced a document submitted by the Mau stating that the organization was in favor of a law limiting inheritance of land to persons of at least 25 per cent Samoan blood, offering a slight discrepancy with Galeai's testimony.

The document referred to was written by Sam Ripley, of Richmond, Calif., and signed by many chiefs. Galeai testified that the Mau sent Ripley \$1,776 from 1925 to 1928 for use in advancing the cause of the Samoans, and later sent another \$800 to Ripley in 1928 to pay the expenses of himself and Mrs. Ripley, his wife, to Samoa so they might testify before the commission.

It was brought out that the discrepancy was due to the round-about way in which the paper had been drawn up for the commission. Samoans wrote a number of letters to Ripley, all of which outlined their desires, and Ripley then drew up the document which was submitted to the commission. A copy was sent to the Mau.

A translation was made in Samoan for the benefit of persons signing the document.

Galeai told how each committeeman was responsible for the signatures in his respective village and that Samoans signing the document were supposed to have first read the translation.

The paper also stated that the Mau was in favor of a law limiting the amount of money which persons might pay churches to 10 per cent of their incomes.

The commission questioned Galeai, who said that this was the belief of the Mau. Senator Bingham said that in American Government it was not the custom to limit a person in his contribution to such causes. He asked Galeai whether he knew the story from the Bible of the widow's mite. She gave her all and was blessed, Bingham recalled.

"Yes," replied Galeai, "But she gave of her own free will."

"The Samoan," he continued, "seeks to outgive his neighbor, with the result that the poor man pays more than he is able."

Again there was the Samoan feast for the commissioners, followed by entertainment.

The feature of this was a singing contest between four groups of about 30 voices each. The singers were dressed in tapa lava lavas. The Samoans, naturally musical, were at their best, and each group performed so well that Senator Bingham, who was to award prizes to the winner, decided to call it a draw all around. As a result, each group was given \$10 by the commission.

In the Samoan custom gifts of tapa cloth, fine mats, coconuts, and beads were presented to the members of the commission.

A group of Boy Scouts staged a drill, after which one boy recited the scout law and another the scout oath.

Chief Tuitele, district governor of the western district, told an allegorical story of how first the Samoans were fed by the gods of the sea. Then, when they needed more food, they were fed by the gods of the land, who gave them fruits and vegetables.

The comparison, as drawn by this chief, showed how, first the Navy government of the United States came like the gods of the sea. The time was at hand, Tuitele continued, when Samoans needed a new government—civilian government.

Senator Bingham replied, thanking the chief for his remarks, and stating that he, personally, would do all in his power to persuade Congress to grant American Samoans American citizenship.

It was the first definite pronouncement from the commission, indicating the trend of the members' thoughts, and was received with gratification by the chiefs.

HEARINGS CLOSE

Saturday, October 4, the commission moved back to Poyer School at Pago Pago to complete their hearings.

Mr. Willis, the interpreter whose remarks were previously interrupted because of lack of time, continued. He said that chiefs working under government pay always tried to please the governor so they would not be discharged, and that often the governor was not informed of the real wishes of the people.

EXHIBIT 5

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AMERICAN SAMOA
HEARINGS
BEFORE
THE COMMISSION APPOINTED BY THE
PRESIDENT OF THE UNITED STATES
IN ACCORDANCE WITH
PUBLIC RESOLUTION No. 89, 70th CONGRESS
AND
PUBLIC RESOLUTION No. 3, 71st CONGRESS
1930

UNIVERSITY OF MICHIGAN

U.S. American Samoa Commission

AMERICAN SAMOA

HEARINGS

BEFORE

THE COMMISSION APPOINTED BY THE PRESIDENT OF THE UNITED STATES

IN ACCORDANCE WITH

PUBLIC RESOLUTION No. 89, 70th CONGRESS

A resolution accepting the cession of certain islands of the Samoan
group and providing for a commission to recommend to
Congress legislation concerning those islands

AND PUBLIC RESOLUTION No. 3, 71st CONGRESS

SEPTEMBER 18, 19, 20, 1930—AT HONOLULU

SEPTEMBER 26, 27, 29, 30, OCTOBER 1, 2, 3, 4, 1930—IN AMERICAN SAMOA



GOVERNMENT PRINTING OFFICE

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AMERICAN SAMOAN COMMISSION

HIRAM BINGHAM, Senator, Connecticut, *Chairman*.
JOE T. ROBINSON, Senator, Arkansas.
CARROLL L. BEEDY, Representative, Maine.
GUINN WILLIAMS, Representative, Texas.
HIGH CHIEF MAUGA, District Governor, Eastern District, American Samoa.
HIGH CHIEF TUFELE, District Governor, Manua District, American Samoa.
CHIEF MAGALEI, Tutuila, American Samoa.

II

UNIVERSITY OF MICHIGAN

DEPOSITED BY THE
UNITED STATES OF AMERICA
6-21-42

AMERICAN SAMOA

FOREWORD

The American Samoan Commission created by act of Congress, Public Resolution No. 89, Seventieth Congress, approved by the President on February 20, 1929, as amended by act of Congress, Public Resolution No. 3, Seventy-first Congress, approved by the President May 22, 1929, embarked on the U. S. S. *Omaha* at San Pedro, Calif., September 11, 1930.

The U. S. S. *Omaha* arrived at Honolulu, Hawaii, September 17, 1930. Public hearings were held in Honolulu on September 18, 19, and 20. The *Omaha* left Honolulu for Pago Pago, Tutuila, American Samoa, on the afternoon of September 20, 1930.

The *Omaha* arrived at Pago Pago, Tutuila, American Samoa, on the morning of September 26, 1930.

Public hearings in American Samoa were held at Poyer School, Pago Pago, Tutuila, on September 26, 27, and 30 and October 1 and 4; at Leone, Tutuila, on September 29; at Tau, Manua, on October 2; and at Nu'u'uli, Tutuila, on October 3.

The *Omaha* left Pago Pago, Samoa, on October 7 and arrived at Honolulu, Hawaii, on October 13 and departed on October 14.

The *Omaha* arrived at San Pedro, Calif., on October 19, when the commission disembarked.

THURSDAY, SEPTEMBER 18, 1930

AMERICAN SAMOAN COMMISSION,
Honolulu, Hawaii.

Chairman BINGHAM. Pursuant to an act of Congress, the President appointed a commission, consisting of four Members of Congress and three Samoan chiefs, to investigate conditions in Samoa and to make recommendations for legislation to be passed by the Congress of the United States.

It is the desire of the commission to hear all persons who have constructive suggestions to make, as well as those who have fault to find with the present government.

The act establishing the commission to expedite the annexation of the islands was passed nearly two years ago and was due in part to the great interest in conditions in Samoa shown by three citizens of Honolulu—Mr. Albert F. Judd, Mr. Lorrin A. Thurston, and Mr. Bruce Cartwright—who corresponded with various Members of Congress in regard to the necessity of this legislation.

The commission has appointed Mr. Albert F. Judd its legal advisor, and he will accompany us to Samoa.

The commission has extended cordial invitations to Mr. Thurston and to Mr. Cartwright to present their views to the commission this morning. I understand that Mr. Thurston is not well and is unable to be present; accordingly, the first witness to be called is Mr. Bruce Cartwright.

STATEMENT OF BRUCE CARTWRIGHT

Chairman BINGHAM. Is there any statement you would like to make to the commission, further than the letters and documents which you have sent us?

Mr. CARTWRIGHT. No, sir.

Chairman BINGHAM. One of the most difficult problems with which we are confronted is the question of land laws. There has been a considerable degree of complaint regarding the present situation in regard to the ownership of land. According to the laws at present, the residents of Samoa who are of pure Samoan blood are on a different status from those residents of Samoa who are of part Samoan blood. From your knowledge of conditions in Samoa and of the people, what would you advise the commission in regard to any change to be made in the land laws?

Mr. CARTWRIGHT. Mr. Chairman, I do not believe that fee-simple title should be given to the residents of Samoa. I think the land laws should remain practically the same as they are under the naval government. The Polynesian does not look at land the same as private land. The reason for that is the territory is not very extensive and if private ownership was given to Polynesians, there wouldn't have been enough land to live on. They now look upon

with that. Another governor comes and issues an order not to allow them to marry Samoan girls. The people of Samoa are glad of that. Why don't the Navy governor issue an order, which, I think, was brought up in another meeting—that a sailor should not be allowed to marry unless he writes a written statement swearing before the court that after the marriage, "at the expiration of my time I will take her to the States." The people of Samoa want the governor to take up that matter, but the governor seems to ignore the Samoan people.

Another thing—one of the most displeasing things the Navy governor did was back in 1921, and I think the people, if they have power and receive a vote, they will do it. They were so enraged with the thing the governor did. This thing here I wouldn't say it if I didn't know it. I was stenographer of the court, and I was keeping the testimony and I seen the things. The chiefs were brought before the court. They didn't do anything at all.

Chairman BINGHAM. The chiefs or matais?

Mr. TUITELELEAPAGA. High chiefs. These high chiefs they didn't do anything, they didn't commit any crime but just part of the Mau, people in favor of civil government. The governor tried them before the court and they were put in jail without consulting with the Fono. One of the chiefs who is "Lewalewa" was tried for the same cause and when this chief heard the verdict of the court he stood up and said "Nobody in this world will take my title away from me. The governor has no power to take my title." He didn't do anything to the government. The judge turned to me and said "issue a bench warrant. I am going to try him for contempt of court." I issued the bench warrant and he was tried. The sentence was three extra years just for that.

Chairman BINGHAM. Three extra years in jail?

Mr. TUITELELEAPAGA. Yes. After the trial of the case the young men who were related to this chief they were so mad, if they could do anything to the government they would rush in and fight.

Senator ROBINSON. What was the total sentence?

Mr. TUITELELEAPAGA. Senator Robinson, I don't want to tell you something I am not sure of but I think the chiefs were sent to jail for 15 to 20 years and then this chief was sent to jail for 3 years extra.

Senator ROBINSON. Who was the governor then?

Mr. TUITELELEAPAGA. In 1921?

Senator ROBINSON. Governor Evans?

Mr. TUITELELEAPAGA. Governor Evans—that was the governor. About the tendency of the naval government toward the Samoan people, the commission would please understand the Samoan people. We will always appreciate all the good things the Government gave us down there, such as dispensaries and facilitating travel between the islands; the helpful attitude of the Navy government to the people to go to the shows free; allowing the children to get education and other evidences of good government which the American people has shown to the Samoans. I worked with the Government for three years and I know the governor down there was doing his best for the Samoan people and other people. The cashier of the bank, the superintendent of public works and these other different department heads were trying their best, travelling around the place and helping the Samoan people. I don't want to depreciate what the Navy has

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done for the people. But I have stated what I have seen with my own eyes and I think the people were greatly offended with such practices by the Navy government.

About this question that was brought up by the commission many times about the half-caste. From the other Samoan people I consulted with in Samoa and the other half-castes which I have talked to, I have come to the conclusion that it would be very foolish practice to have any difference between the half-caste and the Samoan because there are some half-castes in my own place and lots of them near Leone. They render service to the chiefs. They do everything in their utmost power to help their people. I never heard any half-caste say "we don't want to mix with the Samoan people." I never heard of a remark like that in my life. I noticed with my own eyes that they tried to help the Samoan people. They know that they have Samoan blood in them and I think that is a very poor practice in trying to have any distinction between Samoan people and half-castes. Of course, in other ways there are some half-castes in Samoa whose fathers are real white people but the mothers are not full-blooded Samoan—half white and half Samoan. Those kind of people the Samoan people don't look on them as Samoans because of their white-clored mother,—not full-blooded Samoan. But the other half-caste Samoans who have full-blooded mothers, they are considered Samoans. Some of them are on the council of the village. Ned Ripley is one of the most powerful men in the village of Leone. They go to him and ask his opinion. They know, regardless of his white blood, that he is a Samoan. He would do anything that the Samoan people do. He goes to work—he does everything the full-blooded Samoans do. That made me come to the conclusion that the commission should try to get the people of Samoa to get the idea out of their heads the distinction between the Samoan people and the half-castes. Some of the half-castes are in Honolulu here now. They look upon the Samoan, even though they have half-blood Samoan, they look upon the Samoan as low class. Whether they want to be Samoan of higher class I don't know. They don't want to talk to us. On this kind of a point I have no opinion against them. They are either ignorant or they don't realize the social affairs of the old Samoa. If they act like that in Samoa, the people will do their best to exclude them from Samoan affairs. So, I say there should be no distinction between half-castes and Samoans.

About lands—transferring of lands between Samoans and half-castes and white people: As I was keeping the records of all transfers of lands when I was working in the office of the registrar of titles, I know practically everything about land affairs in American Samoa. I think the best thing for the commission to do is to try to enact a law forbidding or not allowing the white people to own land or to buy lands of the Samoan people. Of my suggestion I'll tell you why. The Samoan people sometimes they got no education. They don't realize things and they get into trouble. They need money every time. In the time of trouble they want some money. If a white man step in and say, "Mister, I know you are in trouble; will you sell me your land for \$500 or \$600," those Samoans, not knowing of acres or anything, will say, "I'll sell it to you for \$600," and those Samoans as soon as they receive the money will spend it in two weeks and at the end of the time they are sorry—they lost

their money and their land. The family says, "What you do that for?" and they say, "We know very well you are hiding—why didn't you consult us? Why didn't you consult us? But no, you do this and that." That's the trouble with Samoans. The chiefs, thinking they are selling, realize they don't consult with the members of the family. Only two years ago the secretary of native affairs enforce them and told them they can't dispose of family lands unless he consults with the members of his family and writes to the governor of American Samoa stating that all the members give their consent to those affairs then he can go out and do it.

It is very poor practice to allow these white men to buy land from the Samoan people. If they do that, in 10 years time we will own no more lands. For instance, I am not ashamed to tell this: My own father tried to sell one of our lands for \$150 just last month because I sent a letter to him to try and give me some money to help my education. He went to the people and offered to sell this big piece of land of ours for \$150. When he sent me a letter what he was doing, I said "regardless of your financial condition, don't try and do it because later you will repent." So I request the commission to arrange something to prohibit the Samoans from selling the lands to the white people. On the other hand, they can lease those lands to the white people, say, depending on the kind of business, for 10 years or 20 years or 30 years. If the people do that, they won't lose control of their land but the Samoan people still own the land. They earn money from leasing the land and in American Samoa a lot of leaseholders are there now. That is my conclusion about their lands. Regarding ownership by the half-castes: This man I referred to, Mr. Ned Ripley, he owns lots of lands. He owns many lands because he is regarded as a Samoan. I never heard Samoans in Samoa mention Ned Ripley as a half-caste. He is a half-caste; but on the other hand there is another half-caste in Samoa, Frank Pritchard. This man in 1929 came into the office of the secretary of native affairs requesting the purchase of a piece of land from a special Samoan which the secretary of native affairs smartly refused. He said: "We can't do that unless your wife is full-blooded Samoan and we can register the land under her name and not under yours." The land was purchased and after a decision between Mr. Pritchard and another man the land is now registered under the name of his wife. To help the commission, I'll mention the name of Sau—Mrs. Sau Pritchard under whose name the land is registered, because she is a full-blooded Samoan.

One thing which I found out from experience and study that insulted the Samoan people greatly is the titles, the Matai names. The Governor of American Samoa is trying and is now settling all the Matai name cases. I'll say a few words to make it a little brighter to you. Say for instance, if Mr. Judd and I are brothers and the last holder of the name is Mr. Johnson. He died without a will. My brother, Mr. Judd, will go in immediately to the office of the secretary of native affairs and orders to register the land under his own name, put in an application. I myself, even though he is my brother, I apply for a register title to the same land; the other members of the family would do the same thing and then the court would set a special date for the trial of the case. When the case comes up for trial they will hear Mr. Judd first. He will tell

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his family story, tracing back to great grandfathers. Whether he is telling a lie or not, I don't know. I step in, regardless of whether he is telling the truth or not and try to tell the court a lie and others of the family do the same thing. At the end of the case, which I did myself in transcribing the cases, handed it in to the judge. No jury settles the case—just him and two associate judges decide the case. If I am not mistaken, there is a paragraph in the codification of the rules and regulations of American Samoa, in case of disagreement in the opinion of the three judges, the will of the American judge must be preserved. What's the use of the two district judges? Even though they know more than the American judge about the Samoan affairs, why don't they preserve their judgment because they know more than this man. They hear the testimony of the witnesses in their own language and the American judge gets the testimony through the interpreters. After that, regardless of what they say, thinking he has more education, they send it to the governor and the governor will sign it. The decision will be read and the court finds out that "Mr. Judd has more right to the name and we are going to award the name to him."

Immediately after that there is a fight between the family, and if Mr. Judd is going to handle all the family affairs he will leave me alone, because nobody will render service. If he says, "You go and get something," I'll tell him, "I won't do it." I won't do anything just because I hate him. Let him handle his own affairs. That happens a lot of times, just because this American judge is not fair in his decisions. He doesn't know about the Samoan trouble. So I think the matter of deciding the titles should be left to the Samoans to handle this, or appoint a jury. Appoint people who know more of Samoan affairs. It made me think of this case. The Government is putting too much power in the hands of one man. It is a 1-man government in Samoa. Too much power in one man. He can order you to jump in the sea and come out. He can do it; who can object to the orders? Nobody. The Samoans have no appeal. So I say the necessary thing is to change. All the governors, the changing of these governors—they come for 18 months—they have no time to learn the disposition or customs or affairs of the Samoan people. Just about the time he learns something the Navy changes him. And then again, they do this: I didn't see this with my own eyes there, but I heard about it—that when Governor Crose was there, when he passed by the street, everyone in the street must salute until he passes. When he learned something of the place, he ordered the people not to salute him any more. If a governor stays there for four years, that man is going to learn Samoan affairs and know them as well as the Samoans, and I think that is another key to the Samoan people. This changing around—like when one governor comes in and allows the people to do certain things and another governor comes around and says don't do this and that, causes a lot of misunderstanding among the people. They try to outdo each other. Regarding the other government affairs I wouldn't mention anything, because Su'a and Nelson Tuitele have given it to you.

I am going to tell you about the Mau trouble. This Mau trouble started in 1920. In 1920 the Mau was ordered out. That was in

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1921. The majority of the people, the high chiefs, in fact, were in this Mau people. All the people agreed together to form a kind of club to object to this Navy government. This thing continued until for four or five years and some of the chiefs died. Some of the chiefs themselves who were the head of this Mau they turned away and said "We are in favor of the Navy government." I studied the matter right there because, maybe I studied the matter because I know the matter will be investigated. I asked the chiefs in the Mau about it. I went to the chiefs who changed in favor of the Navy government and asked them "Why did you turn away from the Samoan Mau and in favor of the Navy government?" and some of them said, "Gee, if I don't stick with the Navy government I won't get any job." I mention the names of Mauga, Tuitele, and others—they were in the Samoan Mau. In 1925 or 1926 they immediately returned to the Navy government. I don't care what anybody tells me, I know from the study and experience I had, they are with the Mau themselves because I heard them talking; and because of their attitude toward this trouble and some of the members of their family are in the Mau. The only reason those chiefs are pretending to be in favor of the Navy government is because they are county chiefs, and they want to show the government they are loyal and they know if they should go with the Mau they would lose their titles and jobs. That is my conclusion. If I am wrong, the commission will please pardon me. I don't want to accuse anybody wrongfully. I know the Samoan people are in favor of civil government. I am in favor of civil government, and I will vindicate the rights of my own people if I can do anything. To finish up my statement, I appeal to the commission to give those people what they want. Give them American citizenship. Give them the privilege of other people of the United States. If they don't get it after the investigation of the commission, if the people don't get what they want, the government is going to be messed up. In fact, Washington doesn't care about us.

Here we are 10 years straight we try to do this and that and they don't hear us. So I ask the commission to give a fair decision. Please ask the opinions of different people and try your best to give us American citizenship. Let us, the young Samoans who are far away from here, let us share the privilege and the happiness of the great American people of the United States. I pray that God in his mercy give you the power to come to a just decision and that this commission in its investigations will be guided by the spirit of kindness and benevolence.

Chairman BINGHAM. What is your view as to how the question as to who the proper Matai should be decided? Do you object to having it decided by the American judge? The Samoan witness we heard yesterday, Nelson Tuitele, said that he was in favor of having it decided by a group of chiefs.

Mr. TUTTLEAPAGA. To reply to that question, I will say this: My idea as to who the holder of the title should be, it should be decided like this: Of all the families of the Samoans consisting of 50 to 200 people—the families branch out—family line and family line and go back to the descendants. They all come in. Say Mr. Judd was holding the title and he just died. Why not all the older people who have the right to his name come together and the oldest one of

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the family would say "The holder of the title just died. Let's talk this matter over before we take it up with the Governor. Who do you want to hold the title? Who do you think is capable of holding the title? As the Samoan custom is the male branch will come first, I think our branch will hold the title." The other branch will say "We are going to hold the title."

The other people are going to try to register the title in their names. Twice it happened in my own family and I decided the case myself. Just because they are jealous. They say, "No, I am going to hold the title." That takes about two or three weeks to get a decision—or about a month—and then they finally come to the conclusion "We are willing that Mr. Green is going to hold this title." As a result of that, I assure the commission that for many years they are going to be the happiest family in the world. The men hold the title by the unanimous decision of the family. If the Matai says "You go and kill a man" (of course that is not going to happen), but he says "You go and do so and so," it will be done—the service is rendered. But if the governor says to the Samoan people, "You got to do this?" who is going to take that. Having the governor settle without the members of the family and nobody is happy.

Chairman BINGHAM. You surely would be very fortunate if it were possible, at the end of the month, to persuade the family to be unanimous; but supposing the family declines to agree? Suppose they do as they did in the old days when they went to war to see who would be chief. Suppose the minority of the family objects to the choice of the majority, who is going to decide?

Mr. TUITELELEAPAGA. What I think about that case, because I mention such case to assure you this practice will be taken up. I have never seen yet a Matai name case in Samoa to take about a year or two to decide. Even though there is disagreement in the opinion of the family, they will come in in the course of time and agree with each other. For instance, one Matai name case in Samoa happened just as you say. They could not agree. They brought the matter immediately before the court. When I issued out the summons to the people to appear for trial, the people came in and the judge said "Before we proceed, I would like to ask one question: Do you want to try the case in court or will you come to a decision among yourselves?" He asked that very question and the man said, "We have come to a decision." This case was pending for about three or four years and when it came to the day of the trial the people said, "We have come to unanimous decision of the family and by these rights of the family we appoint this man to hold the title. We know that he is a kind man and straight-forward and he loves the Samoan people." That happened in Samoa. If you go to Samoa, at the time of Judge Foxall, you will find the case. Another case we tried, he talked to the people first and inside of six or seven months the people came in and said they agreed on who should hold the title. If I remember correctly, Judge Foxall tried only one case; and the majority of the cases the people decided their own case. They know what is bad and what is wrong. In the olden days no matter how strong a man is, the man who is kind and the man who knows the family traditions is the one who holds the title. Nowadays tl

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Mr. RHOADS. Yes, sir.

Chairman BINGHAM. And Wellington will eventually not have to pay any duty?

Mr. RHOADS. No.

Congressman WILLIAMS. I want to ask you a question. If I understood you correctly, you said the law was that when a party working for the Navy sold any article to the civilian community which had been imported for his own use, it was the duty of the owner to pay it?

Mr. RHOADS. To either pay for it himself or arrange to have it paid off before the completion of the sale.

Congressman WILLIAMS. Then this law does not provide that you can hold the article for duty?

Mr. RHOADS. No, sir.

Congressman WILLIAMS. How do you justify the inconvenience to Wellington by bothering him when recourse was through Frantz?

Mr. RHOADS. As I understand the collection of customs, the only way in which an article can be properly released into any community when it is dutiable is by complete settlement of the customs duty.

Congressman WILLIAMS. That doesn't answer my question, but there is no use taking up further time.

Chairman BINGHAM. The commission will be in recess for lunch.

(Recess was taken for lunch and an adjournment later, without further hearing to-day.)

(Adjourned.)

THURSDAY, OCTOBER 2, 1930

AMERICAN SAMOAN COMMISSION,
Tau, Manua, Samoa.

Chairman BINGHAM. We are assembled at Tau, Manua, but on account of illness, High Chief Mauga was excused and remained behind at the hospital at Pago Pago, where he was advised to remain by his doctor on account of his age and poor state of health. In accordance with the law and by direction of the President of the United States, acting in accordance with law, this commission has come to Tau to hear whatever you wish to present to us in the way of suggestions regarding the kind of government that you desire to have established in American Samoa. In the first place, we desire to know from those who speak to us on your behalf and on behalf of their families whether they desire any change in the present form of government. If so, what suggestion they would like to make in regard to possible changes in the form of government. In the second place, we desire to know whether they wish the commission to recommend any change in the existing laws, the codification of the regulations and orders for the government of American Samoa. If so, please state the laws to which you object, give your reason for your objections, and state what changes you would like to have made. The third place, if anyone has a grievance or thinks he has not received justice from the government of American Samoa, we would like to have him state his grievance, in order that it may be investigated later. Finally, it should be clearly understood that we have no authority in the commission to change the form of government

or change the laws; we can only recommend changes to the Congress and President. The high chiefs and chiefs of Manua made a cession of their islands—Tau, Olosega, and Ofu—to the United States in 1904. The President instructed the Navy Department to take charge of the islands and give them such government as seemed best to the governor appointed by the Secretary of the Navy.

For nearly 30 years the Navy ruled the islands under the direction of the President without the Congress of the United States, the law-making body, taking any notice of the kind offer of the chiefs. It has not been the custom or the practice of the United States to annex or secure groups of islands as has been the practice of Great Britain and Germany, and it has only been done in two or three cases. By act of Congress we annexed the Hawaiian Islands, the Philippine Islands, the Virgin Islands, and Porto Rico.

After the war with Spain we secured Guam, the Philippines, and Porto Rico as the result of that war; however, although we have possessed as a result of conquest, the Philippine Islands and annexed them for more than 30 years, we have never given to the natives of the Philippine Islands citizenship—they are not American citizens. We annexed Guam but we did not make the people of Guam, of whom there are twenty-five or twenty-six thousand, American citizens. Last year the Congress finally decided that they would accept the Islands of Samoa and they passed an act agreeing to the cession and formerly annexing the Islands of Samoa. In this act the President was authorized to continue to rule Samoa as he had done in the past, until such time as the Congress should pass an organic act. By this same act this commission was created to recommend to the Congress the necessary legislature for American Samoa. The act of Congress, however, did not change any of the laws and did not give American citizenship to any of the people. I have taken this much of the very limited time we have here in order that there may be no misunderstanding of the present situation, or why we are here.

Accordingly I will now ask those whose names have been given to the secretary and legal advisor of the commission to present themselves and give us their ideas in as brief a manner as possible:

1. As to whether they want any change in the form of government.
2. As to whether they want any change in the law.
3. As to whether they have any grievance; and to make it as brief as possible.

Mr. Judd. Mr. Chairman, I have been given to understand through County Chief Sotoa that the persons who have heretofore signified their intention to appear have agreed that three persons shall represent them, in a written communication.

Chairman BINGHAM. Will the interpreter read the communication?

The INTERPRETER. It is the unanimous decision of the tootoo (talking chiefs) that three witnesses will be sufficient as the representatives of the tootoo to appear before the commission; namely, Sotoa, Taliutafa, and Tauanuu.

High Chief TUFELE. For the commission's information, what he means is just this village and not the whole island.

Chairman BINGHAM. What do you understand to be the meaning of the communication?

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High Chief TUFELA. What he means, and he means the whole tootoos.

Senator ROBINSON. Will there be other witnesses besides these three?

High Chief TUFELA. I think so.

Chairman BINGHAM. How many witnesses, all together, do we hear to-day?

High Chief TUFELA. I do not know.

Mr. JUDD. Fifteen, all together, from the Islands of Manua.

Chairman BINGHAM. Call the first witness.

Mr. JUDD. Sotoa.

STATEMENT OF CHIEF SOTOA

Chairman BINGHAM. Your name?

Mr. SOTOA. Sotoa.

Chairman BINGHAM. Your residence?

Mr. SOTOA. Tau.

Chairman BINGHAM. Your rank?

Mr. SOTOA. Matai.

Chairman BINGHAM. How many people do you speak for here to-day?

Mr. SOTOA. I represent all the people of my village of Tau.

Chairman BINGHAM. How many is that?

Mr. SOTOA. About six or seven hundred.

Chairman BINGHAM. Have the matters that you are going to present to us been talked over by the local fono?

Mr. SOTOA. There are a special subject in which has been discussed in a Fono of the village in which he is going to testify before the commission and other things is about the government which is also the wish of the people.

Chairman BINGHAM. Very well.

Mr. SOTOA. I wish to thank the honorable commission in telling them the way in which they are going to testify in order to present their wish and testify before the commission. In regard to the well taking care of the country by the ruling of the Navy has been testified by many of the witnesses which already appeared before the commission—I agree with them. Therefore it is not necessary for me to repeat it again. I also wish to thank the Congress of the United States in taking action and passing their resolution in accepting the cession of the islands of Samoa, and that we understand in that annexation that we automatically became American citizens. In past years this country has been run under the control of the Navy until last year when Congress annexed this country and we appreciated very much. And it is requested to the honorable commission to be kindly and make recommendations for the people of American Samoa to become true American citizens.

Although we ceded our islands in past years, again we are unanimously agreed to cede it over again and give the United States the full authority again to control our islands. About a form of government for the people of Samoa, we are perfectly satisfied to leave it to you the Congress of the United States who knows best what would be the best form of government for the people of Samoa. I am going to testify now as to things which we were not satisfied

with under the administration of one governor. That was Governor Kellogg and Judge Hall, who was in Samoa during the administration of Governor Kellogg. This concerns the name or title Tuimanua. That Governor Kellogg had made a decision that the name Tuimanua should not be revived and in which it is contrary to the law. That he interferes with the title Tuimanua and the customs of his tootoos and high chiefs, and he went further and exiled a chief in which we have selected to become Tuimanua, who was Taliutafa.

High Chief TUFELE. For the information of the commission Chris Young is the English name.

Mr. SOTOA. As it was unanimously agreed between myself and the chiefs and tootoos to give him this title. The chiefs and tootoos of Tau and the village of Faleasao. That this governor has exiled Taliutafa in the Island of Tutuila for six years, or banished him for six years without supporting him in the way of food and clothes. Governor Kellogg refused also to accept food which the people over here in Tau desired to send to Taliutafa in Tutuila to support him. That is my criticism against Governor Kellogg and the judge of that time who was Hall.

Chairman BINGHAM. Any questions? If not, thank you.

Mr. JUDD. The next witness is Chris Young.

STATEMENT OF CHRIS T. YOUNG

Chairman BINGHAM. Your name?

Mr. YOUNG. Christopher Taliutafa Young.

Chairman BINGHAM. Your residence?

Mr. YOUNG. Tau.

Chairman BINGHAM. You have been asked to come before us by the people of your village?

Mr. YOUNG. Yes, sir.

Chairman BINGHAM. You are the person referred to by the last witness as laying claim to the title Tuimanua.

Mr. YOUNG. Yes, sir.

Chairman BINGHAM. Proceed. As I understand it, this case is going to be tried before Judge Wood next week?

Mr. YOUNG. Yes.

Chairman BINGHAM. Very well.

Mr. YOUNG. I wish to express in Samoan so that my people can hear me.

Chairman BINGHAM. Will you talk in Samoan first and then in English?

Mr. YOUNG. Mr. Peters can do the interpreting better.

Chairman BINGHAM. Very well.

Mr. YOUNG. That the chiefs of the island of Manua are all well satisfied with the well care of the Samoans by the Navy and also the great pleasure of the chiefs of Manua in regard to the appearance of the honorable commission in Samoa; and we wish to express our thanks to Senator Bingham, who is the chairman of this honorable commission, to his great interest in the Samoan people according to our information that he presented a resolution and urged the Congress of the United States to take steps and investigate troubles in Samoa. And we are exceedingly glad in this action in which Congress and the President of the United States has appointed this

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commission to come down here to Samoa and enable us to have an opportunity to state what we wish and our desires. And every person in American Samoa appreciated very much as to this action of the Congress and the President of the United States for this annexation of our country and earnestly request to the honorable commission to make necessary recommendations to Congress to have the people of Samoa to be a true American citizen. That is all I wish to talk before the commission in regard to that subject of the gratitude of the people of Samoa, but I will now speak about a different matters. This concerns the title Tuimanua. As your honorable commission have come down here to Samoa to investigate everything and find out the desire and criticism of the people and therefore we would like to lay this case for your information or for your consideration in order to preserve the honorable ancient customs of the Samoan people.

Chairman BINGHAM. We would be interested in the story if we had plenty of time, but in view of the fact that this matter is now before the high court, and in view of the fact that it is not the custom of a committee of Congress to hear matters that are before the Supreme Court of the United States, I think it would be more in accordance with our custom not to hear this matter. It will undoubtedly be our duty to recommend to the Congress of the United States laws regarding the establishment of the courts and the right of appeal from local courts, but that does not give us the right to try any case of that kind. It is easy to understand that you naturally believe that you have a grievance, but we are fully acquainted with the circumstances and it is not a matter within our jurisdiction, especially as the high court is about to try the case.

Mr. YOUNG. I stated that it is true that this case is now before the high court and is ready to be tried in the very near future. However, since they understand that the commission would like to hear criticism that I thought I would like to tell you the story, in order that the commission may have the full information of the matter for your consideration.

Congressman BEEDY. Will you explain to him that under our form of government the legislative branch is entirely separate and distinct from the judicial branch; when the judicial branch of the Government, which is the courts, take jurisdiction over a matter in dispute it is entirely improper for the legislative branch through a commission such as this is, an agent of the legislative branch, to interfere with that which the judicial branch has undertaken to settle.

Mr. YOUNG. I am now satisfied and thank you very much for this, and I am quite satisfied and also the people present.

Chairman BINGHAM. Any questions? Thank you very much.

Mr. JUDD. Tauanuu.

STATEMENT OF CHIEF TAUANUU

Chairman BINGHAM. Your name?

Mr. TAUANUU. Tauanuu.

Chairman BINGHAM. Your residence?

Mr. TAUANUU. Tau.

Chairman BINGHAM. Your rank or title?

Mr. TAUANUU. Maitai.

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Chairman BINGHAM. That being clear to us, I do not think it necessary to go into that case any further. The commission fully understands that the chief does not wish their customs interfered with, whatever government we put up. That is a reasonable request and we thank him for bringing it to our attention. Have you any further suggestions?

Mr. TAUANUU. No, sir.

Chairman BINGHAM. Thank you.

Mr. JUDD. At the request of Commissioner Tufele I call Nua.

STATEMENT OF CHIEF NUA

Chairman BINGHAM. Your name?

Mr. NUA. Nua.

Chairman BINGHAM. Your residence?

Mr. NUA. Tau.

Chairman BINGHAM. Your rank?

Mr. NUA. Matai.

Chairman BINGHAM. For how many people do you speak this morning?

Mr. NUA. The people of my family and also my village.

Chairman BINGHAM. How many?

Mr. NUA. About 50.

Chairman BINGHAM. Is what you are going to give us the unanimous opinion of your family and village?

Mr. NUA. Yes, sir.

Chairman BINGHAM. Very well.

Mr. NUA. I would like to state before the commission about the opposition side and there have been some witnesses testified criticizing the governor about plantations and agriculture. According to what I know, ever since the Navy ruling this country, every governor has been always directed the people to plant plantations. The government gives out directions to the people to plant plantations and then it is up to the people of Samoa to go and plant it but not the governor. It is up to the people. I believe as to this criticism it is not true, because it is up to the people themselves to plant plantations; but the government is innocent as well of such criticism. I am well satisfied with the Navy of this particular thing that in past years water has been very difficult to obtain in Manua; that is, drinking and bathing water. At the present time all the villages of Manua now have water supply and cost the people of Manua nothing, but the expense paid by the government of American Samoa; therefore I desire that the Navy should continue to control Samoa. But that the people of American Samoa should be true American citizens; receive American citizenship, to be equal with the true American.

High Chief TUFELE. Have equal rights?

Chairman BINGHAM. Any questions? If not, thank you. Call the next witness.

Mr. JUDD. Siva.

High Chief TUFELE. This man testified in Tutuila.

Mr. JUDD. Salu.

High Chief TUFELE. This man comes under the first witness.

Mr. JUDD. Moetului; Tuga'etan [No response.] Faamausili. [No response.] Tauala.

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STATEMENT OF TAUALA

Chairman BINGHAM. Your name?

Mr. TAUALA. Tauala.

Chairman BINGHAM. Your village?

Mr. TAUALA. Tau.

Chairman BINGHAM. Your rank?

Mr. TAUALA. Matai.

Chairman BINGHAM. For how many people do you speak?

Mr. TAUALA. About 200.

Chairman BINGHAM. Are your people unanimous in this matter or is there a difference of opinion among them?

Mr. TAUALA. Unanimous.

Chairman BINGHAM. Please give us your suggestions and ideas?

The INTERPRETER. He says that as he stated he represents that number of people and what has already been testified by previous witnesses in favor of the Navy is their opinion.

Chairman BINGHAM. You and your people are in favor of the present government?

Mr. TAUALA. Yes, sir.

Chairman BINGHAM. Have you any suggestions or change to offer?

Mr. TAUALA. I would like to ask the commission to change the supreme authority of the governor as he has at the present time. I would like to thank very much to the honorable commission and Congress of the United States and President for the annexation of Samoa and therefore I request the commission to make a recommendation to Congress to take certain acts to have the people of Samoa as true American citizens.

Chairman BINGHAM. To take action?

Mr. TAUALA. Yes.

Chairman BINGHAM. Any questions? No? Thank you.

Mr. JUDD. Matoa.

STATEMENT OF CHIEF MATOA

Chairman BINGHAM. Your name?

Mr. MATOA. Matoa.

Chairman BINGHAM. Your residence?

Mr. MATOA. Tau.

Chairman BINGHAM. Your rank?

Mr. MATOA. Matai.

Chairman BINGHAM. For how many people do you speak this morning?

Mr. MATOA. The people of my family, my village, and my district. One thousand odd.

Chairman BINGHAM. Please proceed.

High Chief TUFELE. For the information of the commission, the people of Tau are over 2,000.

Chairman BINGHAM. As I understand it, he has been chosen to speak for 1,000 people, but he only gives his rank as a Matai.

High Chief TUFELE. He is a Matai, but he was picked by the district.

Chairman BINGHAM. He was selected by the district to speak for them.

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Mr. MATOA. My full desire that I wish to present before the commission that the people of Samoa should obtain true American citizenship. That the Navy should continue and control in American Samoa because I am full aware of the love of the Navy and everything that she has done for the people of Samoa. It increased the population of the people of American Samoa and it was not so in past years before the arrival of the Navy, and it is impossible for me to give out details of everything, but I understand it has already been testified before the commission. But there are certain things that I am not satisfied; that is about the two small motor boats of Mr. Steffany now running between the islands. These boats are practically the same as whale boats which we have used in past years when we travel. No accommodations or comfortable place for passengers. No lifeboats in case of anything happening. Also no provisions in case of anything happening. And, furthermore, the skipper has no certificate. But the skipper of these boats are the Samoan boys who have no certificate, and if anything should happen we would not hold responsibility.

Chairman BINGHAM. Who?

Mr. MATOA. The skipper.

Chairman BINGHAM. Repeat what you just said.

Mr. MATOA. Samoan boys hired by Steffany. These boats have swamped several times and have caused loss of our copra.

Senator ROBINSON. Do these boats carry life preservers?

Mr. MATOA. Yes. But they are worn out.

Chairman BINGHAM. Recess of five minutes.

AFTER RECESS

Chairman BINGHAM. The session is now in order.

Mr. MATOA. When I was traveling on one of these boats when she swamped and lost a good deal of copra, and at one time the other boat was also swamped and lost duplicate copra receipts and mail. The reason why these troubles often occur is on account of these boats being so small, and the loss of this copra will cause a big copra shrinkage, which will be on top of the copra of American Samoa.

Chairman BINGHAM. Just what do you mean?

Mr. MATOA. On top of copra expenses. Also the copra has been held here for six months because these small boats can not carry them all to the station.

The INTERPRETER. For your information, copra is sold by the government and a certain amount is deducted from that paid the natives for their copra as they bring it in. From this amount the expenses of handling copra and any shrinkage or unforeseen accidents, such as the loss of this copra, is deducted.

Chairman BINGHAM. How much do they charge the passengers that go from here to Pago Pago?

Mr. MATOA. \$4.

Congressman BEEDY. Is that for a round trip?

Mr. MATOA. No; one way.

Chairman BINGHAM. How much do they charge for carrying copra?

Mr. MATOA. I do not know.

High Chief TUFELE. For the information of the commission, it is \$6 the ton.

in explanation of something that I have said that he does not understand?

(After a pause, no one having asked any questions, the chairman said:)

If not, we shall proceed with the hearing, and I will ask Laloifi to call the first witness.

Mr. JUDD. Mr. Chairman, the chairman of the reception committee of this village has given me a statement containing three names, and has explained that all the witnesses heretofore selected to appear this morning have gathered together and have agreed that these three men appear here this morning to act as their representatives: Fanene, Liu, and Galeai.

Senator ROBINSON. Do we understand that these three men who have been selected are to speak for all the people here?

Chairman BINGHAM. In order to answer that question, I will ask all of the chiefs present whether they are satisfied these men are prepared to present their ideas. Is that your wish?

Interpreter WILLIS. They are all raising their hands to show their approval.

Senator ROBINSON. May I say that this seems to be a simple and intelligent way to proceed. It will be helpful to us to have you go on in this manner.

Mr. JUDD. Fanene.

STATEMENT OF CHIEF FANENE

Chairman BINGHAM. What is your name?

Mr. FANENE. Fanene.

Chairman BINGHAM. Where do you live?

Mr. FANENE. Pago Pago.

Chairman BINGHAM. Your rank?

Mr. FANENE. Matai.

Chairman BINGHAM. Are you one of the three who has been chosen to speak for all the rest?

Mr. FANENE. Yes.

Chairman BINGHAM. Very well.

Mr. FANENE. Gentlemen and ladies and all present; the honorable chairman of the commission and all gentlemen of the commission:

First, I offer thanks to God that he has protected us that are in this house this day. The day has arrived in which we have looked forward to for many, many years. All of the chiefs, talking chiefs, and all citizens present know that it is the Lord that has led the voyage of the commission safely over the dangerous seas. It is not the knowledge of the commissioners or us that are in Samoa that has brought us together but it is the will of the Lord. That is the thanks that I offer this morning. But now your honorable commissioners from America and the Samoan commissioners have joined together and has made their number seven. I am now representing the people that are in this village: Chiefs, talking chiefs, and families to the number of over 6,000 and this whole 6,000 join with me to offer their thanks to the commissioners for coming here this morning. We know the blessings that are now with us and that the Stars and Stripes that wave over us at the present time.

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Your explanations in the past are quite true and many years we have been under the American flag. We have long tried a way and means to present ourselves before the Congress of America. We have done this so that we may have a standing in our islands, that our islands may have a standing; and thus, what we have strived for we have received so far when the President signed the annexation in February last year. But we have not received the word "true American." We are not taken yet as citizens of America; but this morning I pray the commissioners that they will do what they can that we may be made citizens of the United States to serve the United States.

We are only a few people that is true, but we wish to become loyal and peaceful citizens of the United States.

I have finished what I have to say before the commissioners but there is one of our members who will explain the few things that we have and wish for.

Chairman BINGHAM. Any questions? There being none, we thank you.

STATEMENT OF CHIEF LIU

Chairman BINGHAM. What is your name?

Mr. LIU. Liu.

Chairman BINGHAM. Where do you live?

Mr. LIU. Vaitogi.

Chairman BINGHAM. What is your rank?

Mr. LIU. Matai.

Chairman BINGHAM. Are you one of the three who have been selected to present the views of all the rest?

Mr. LIU. Yes.

Chairman BINGHAM. Please proceed.

Mr. LIU. The year that the flag was hoisted by Captain Tilley on the Island of Tutuila, he made a statement to the Samoan people, thus: "This day Samoa will be taken and will be called American Samoa." As the Samoans had not been used to any form of government, this was something new to them. When the chiefs, talking chiefs, and all the people of Samoa heard those words, all of the chiefs, talking chiefs, and all the citizens were happy when they came to think that they were taken under such a powerful name as American Samoa, and we understood ourselves that we were really part of the United States. After that had passed and years followed, the Samoan people continued in happiness until a gentleman of the big Government arrived that was made captain of the yard. This gentleman was Boucher. He was the one that told us that Samoa was not annexed by the United States.

It is from that time that there were two different voices in Tutuila and Manua. That is why there is a portion in Tutuila to-day which is something new, and they are called the Mau, and the Mau were not satisfied when they came to understand that Samoa was not a part of the United States. That is why there have been statements made to the President of the United States and to the Congress of the big Government, and to-day we know that what we have been trying for has been accepted, because the President of the United States has appointed a commission to investigate to find a way for

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the Government to handle the affairs of Samoa. It is for this that we thank God that He has helped us in having the Congress of the United States and the President of the United States accept our wish, as it has been stated by the chairman of the commission that the United States has been kind enough to grant us this blessing that countries and States that are "way larger can not get from their Congress."

There is going to be a person who has been appointed by our people to state before the commission our views of what we are not satisfied with.

Although the people in favor of the Navy have made statements against this portion of Samoa, we do not wish to say anything against them, but we rejoice that we know that the islands of Tutuila and Manua have been accepted by the United States.

We lay everything before the President of the United States and the Congress to do the best for the welfare of our country; but I pray and beg the commissioners that although the Navy has taken American Samoa for 30 years and in that 30 years Samoa has not been accepted, thus I pray that civil government be established in Samoa.

I thank the commissioners and wish them the best of luck. That is all I have to say.

Chairman BINGHAM. I would like to ask him what he means by civil government.

Interpreter WILLIS. What he means is that the people of Samoa may become people of the civil government, he means citizens of the United States.

Chairman BINGHAM. Do all of the interpreters agree to that interpretation?

Interpreter PETERS. I do not.

Commissioner TUFELE. He wants the Samoans to have a civil government.

Interpreter PETERS. Civil government means the government of Samoa to be administered by civilians instead of Navy people. That's my understanding of what he says.

(Interpreter Willis speaks to witness.)

Interpreter WILLIS. I just asked him whether it was his wish that Tutuila and Manua be taken under a civilian government and he said "Yes."

Chairman BINGHAM. Then, Mr. Willis, you did not get his idea at first, did you?

Interpreter WILLIS. His first idea came out the way I interpreted it, I think.

Commissioner TUFELE. You said he wanted to be an American citizen.

Interpreter WILLIS. The way he made the statement at first, I think that was it. What I explained first—I didn't get the real meaning of this question.

Chairman BINGHAM. Has the witness anything more to offer in the way of suggestions?

Mr. LIT. No; that is all.

Chairman BINGHAM. Thank you very much.

Mr. JUDD. Mr. Chairman, the next witness is Galeai.

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STATEMENT OF HIGH CHIEF S. T. GALEAI

Chairman BINGHAM. What is your name?

Mr. GALEAI. Galeai.

Chairman BINGHAM. You have written us some letters, I think.

Mr. GALEAI. Yes.

Chairman BINGHAM. Do you generally sign your letters "S. T. aleai"?

Mr. GALEAI. Yes.

Chairman BINGHAM. For the sake of the record, will you please tell us what is meant by the "S. T."?

Mr. GALEAI. My baptismal name is Samuel—Samuel Tulele—Samuel Tulele Galeai.

Chairman BINGHAM. Where do you live?

Mr. GALEAI. Fitiuta.

Chairman BINGHAM. What is your rank?

Mr. GALEAI. Highest chief of the village.

Chairman BINGHAM. Are you one of the three chiefs who have been chosen to speak for all of the rest of your people?

Mr. GALEAI. Yes.

Chairman BINGHAM. Do you speak English?

Mr. GALEAI. No, sir.

Chairman BINGHAM. Do you write English?

Mr. GALEAI. No, sir.

Chairman BINGHAM. Very well; please proceed.

Mr. GALEAI. In the year 1929, and in the month of February, there was a notice published and scattered that Samoa had been accepted as a Territory of the United States or part of the United States.

Chairman BINGHAM. Does he not mean "part of the territory of the United States" rather than a Territory? The two words have a different meaning. Hawaii is a Territory.

Mr. GALEAI. That is what I mean—that Samoa had been taken as a part of the territory of the United States. This year when they got this news the Samoans rejoiced that this had happened. On this account we do not wish to criticize or say anything against the Navy, as I know that we are now part of the territory of the United States.

The first subject that I wish to bring before the commissioners is land—that mixed blood will have the right to purchase and own lands, but any person of full foreign blood, a white man, New Guinea or Tonga, with no Samoan blood will not be permitted to buy or own land.

Second. In regard to the governor, that is left to the appointment of the President of the United States and the Congress.

Chairman BINGHAM. Mr. Willis, did he say that he wished it to be left to the President and the Congress of the United States?

Interpreter WILLIS. He says:

We wish it to be left to the President and Congress of the United States to appoint our governor.

Third. Foreigners that come to our country: That these islands be under the act of Congress that no person can come to these islands without a pass from Congress. What he means, I think, is the immigration act—that the immigration act may apply to American Samoa, that no person of foreign blood, no foreigner, can come here without going through the immigration laws.

Chairman BINGHAM. Is that the way you understand it, Mr. Peters?

Interpreter PETERS. That is what he means.

Chairman BINGHAM. Better explain to him, Mr. Willis, that no western Samoan could come into the United States to-day under the immigration laws.

Mr. GALEAI. But it be added that our brothers in Upolu and Savaii may come in and visit us free and return to their homes not covered by this law.

Fourth. Courts: Should there be a decision made in American Samoa that is not satisfactory, that an appeal may be made to Honolulu or to the United States.

Fifth. In regard to schools: We are all in favor of education for the children of our country. Therefore I pray the President of the United States and Congress and the people of the United States to help us out with a little appropriation of money to help our schools.

Sixth. It is in regard to a letter that we have presented before the commission a few of our views if they are of any help to the commission.

Chairman BINGHAM. I didn't understand that.

Interpreter WILLIS. A few of their views have been presented to the commissioners, if it be of any help to the commissioners in that work.

Senator ROBINSON. Was that the letter presented by Hunkin?

Mr. GALEAI. We gave it to Hunkin to give to the commission.

Chairman BINGHAM. Is this the letter?

Mr. GALEAI. Yes.

Chairman BINGHAM. The letter referred to will be inserted in the record at this point.

To the American Samoan Commission, American Samoa.

GENTLEMEN: In setting forth the desires of the majority of the Samoan people, we wish to remind you that the cessions of these islands to the United States—and accepted by your Government—provide that our territory is ceded "to erect the same into a separate district to be annexed to the said Government."

In accordance with the terms of the cessions, it is our wish that a civil government with separation of executive, legislative, and judicial functions be established in American Samoa. We appreciate that the Department of the Navy will wish to control certain waters of the islands and that portion of land now called the navy yard, but it is our wish that the government of that portion of American Samoa set aside for the Department of the Navy should bear the same relation to the government of the remaining portion of the islands as is borne by the government of naval stations in the United States to the civil government there.

It is our wish that a civil governor be appointed for American Samoa by the President of the United States, by and with the consent of the Senate, and that he shall be under the State Department of the United States; that he shall have the right, but not the sole right, to propose legislation to the duly elected legislature, and that his approval shall be necessary to make its enactments law, except that, if he shall not sign any enactment, the legislature may reconsider it and may pass it by vote of two-thirds of its membership, when it shall be referred to the Secretary of State of the United States for final determination.

It is our wish that the law-making powers be vested in a legislature to be duly elected by the Samoan people and to convene annually, and that the consent of the legislature shall be necessary to confirm appointments of the governor; and that the legislature shall elect a Delegate to represent the Samoan people in Washington.

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It is our wish that the judicial department function under the Department of Justice of the United States with a judge of the court of record to be named the Attorney General of the United States; that this court of record try all cases for which the penalty is more than six months' imprisonment; that inferior courts shall try all misdemeanors and matters involving \$50 or less. It is our wish that every two years, or oftener, the Circuit Court of Appeals for Hawaii meet in American Samoa with at least two judges presiding. It is our desire that any person having a grievance against the government, or any department of it, or against any official, shall have the right to file a complaint, and that all civil rights guaranteed by the Constitution of the United States be extended to Samoans and the Federal laws of the United States be made applicable to them. It is our wish to be subject to military duty of the United States Government, but only in the waters of the Pacific and in wars of invasion or aggression against the United States.

It is our wish that each district, each county, and each village in American Samoa choose its own officers and judges of inferior courts without interference from those not residents of said district, county, or village.

It is also our request, in order to provide for a changing and developing population, that, beginning with 1935, the legislature shall present to the Congress of the United States, with the approval of the governor, every five years, recommendations for any changes deemed desirable in the governmental system adopted by the Congress for American Samoa.

In order that the land and the people of American Samoa may be properly safeguarded and developed, it is our wish the departments of education, of public health, of public works, and agriculture be established and continuously developed. We request that a school system with proper thrift, vocational, commercial, and agricultural training and encouragement of native arts be devised by the United States Commissioner of Education, with the advice and assistance of the superintendence of schools of the Territory of Hawaii, and placed under competent leaders to establish and develop the same. We request that from time to time, as necessary, the United States Commissioner of Education recommend suitable heads for the educational system of the legislature.

It is our wish to have a department of public welfare with the necessary factors, nurses, and hospitalization, which will concern itself with matters of public health and sanitation and provide for regular health examinations of all inhabitants and the prevention of disease, for care of the sick and aged, making especial care for pure-water supplies, effective sanitary and quarantine regulations, and care of new-born infants as in the Western States of the United States. We ask that from time to time, as necessary, the head of the Bureau of Public Health of the United States recommend suitable heads for the department of public welfare to the legislature.

It is our wish that an experimental station of the Department of Agriculture of the United States be established in American Samoa so that we and future generations may be enabled to avoid food shortages and make the best use of the resources of our country. We ask assistance and encouragement in marketing our surplus products and handwork to our best advantage.

We desire that only persons who have been born in American Samoa and are of at least 25 per cent Samoan blood may own or inherit land in American Samoa, and that no leasing of land shall be for a period exceeding 25 years. It is also our desire that not more than 15 per cent of the land of American Samoa may be purchased for governmental purposes. We further ask that the Samoan people be guaranteed the right to develop our harbor facilities, and that all toll and dockage fees shall belong to the government of the people of American Samoa.

We request that no person be permitted to give more than 10 per cent of his income to religious organizations or institutions, and that the laws of the United States prohibiting the sale and transportation of intoxicating liquor be strictly enforced in American Samoa, and that laws forbidding gambling be likewise strictly enforced.

It is our wish that, at the request of the legislature, the department of public works shall develop and maintain roads and other construction or engineering projects, provided that no bond issue or bond issues of any kind shall be permitted to be a lien upon the property of the Samoan people. We ask that no person under 21 years of age be taxed, and that when a per capita tax is levied it shall not be greater than \$10 per capita, and that if an income tax is levied it shall not be greater than 5 per cent, and that two or more types of taxation shall not be used concurrently.

To meet the expenses of this proposed government, and for the establishment and maintenance of schools, public welfare, and public improvements, we ask that the sum of \$10,000,000 be set aside in the Treasury of the United States in return for the privileges and use of the harbor of Pago Pago and surrounding territory by the Government of the United States, and that the said sum shall be invested in bonds of the United States Government, and the income derived therefrom shall be used for the operation of our government, and the educational, public welfare, and public improvement systems of American Samoa, and that the administration of such income shall rest in the legislature, which shall consult with the governor regarding the same.

We also at the present time and until a civil government is put into effect in American Samoa, wish the right to name and select our representative or representatives to appear before the Congress of the United States without the advice, suggestion or interference of the present governor, or any other person, save and except the majority of the Samoan people; and that the Congress of the United States accept the representative or representatives so chosen by the majority of the Samoan people, as represented by their chiefs in a fono whose membership shall not be chosen by the governor but in the ancient Samoan fashion without his interference.

Very respectfully yours,

THE MAU OF AMERICAN SAMOA.

Dated in American Samoa, October 1, 1930.

The foregoing letter, attached to which is a translation in Samoan, bears the signature of P. Fanene, S. T. Galeai, and 711 others.

Chairman BINGHAM. All right, you may proceed.

Mr. GALEAI. Seven. As it has been explained to us by the chairman of the commission that the soil of Tutuila and Manua has been made a part of America but the people of Tutuila and Manua are not American citizens, that as Tutuila and Manua has been accepted as part of America, I therefore pray that the people of Tutuila and Manua may also become citizens of America.

That a council are to discuss together with the governor all matters in the making of laws in matters concerning the government, this council to consist of 3 from the eastern district, 3 from the western district, and 3 from Manua, and 3 of mixed blood or white men that would make the number of 12 together. The white citizens that I have mentioned, or the part Samoans, are people that have been citizens of Tutuila and Manua for 5 years or 10 years, have been residents of Tutuila and Manua for 5 years or 10 years.

The statement that I have now presented to you which I was appointed to present by all of these people is what we wish and we hope that we will all be friends. We look upon the commissioners as our best friends and we hope the commissioners will accept us the same.

Chairman BINGHAM. I would like to ask some questions.

You spoke about the question of immigration and passports. Are you satisfied with the present arrangement regarding the passports between Western Samoa and American Samoa?

Mr. GALEAI. Yes.

Chairman BINGHAM. Are you satisfied?

Mr. GALEAI. Yes.

Chairman BINGHAM. You mentioned a council of 12, consisting of 3 to be selected from the eastern district, 3 from the western district, and 3 white or part white residents of Samoa. What powers and duties do you desire this council to have?

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Mr. GALEAI. This council are to discuss the making of laws and matters concerning the government. When they present his before the governor and he objects to their wishes or vetoes it, it is to be returned to the council; and after discussion, and had been returned to the governor 3 times and the governor still vetoes it, it is to be forwarded to the President of the United States for decision.

Chairman BINGHAM. Would you then give to this council the entire law-making power subject to the final veto of the President?

Mr. GALEAI. That the council should discuss the making of laws, subject to the veto of the governor and approval of the President.

Chairman BINGHAM. You used the word "discuss." Is that what you mean, or that they would pass the laws subject to the veto of the governor?

Mr. GALEAI. They are to make the laws subject to the veto of the governor and the decision of the President.

Chairman BINGHAM. How would you have this council selected; that is, presuming each district chooses three? I want to find out how you would have the council selected. What would be the method of choosing this very important law-making body?

Mr. GALEAI. That should be handled by a vote of each district.

Chairman BINGHAM. Would you have them vote in the manner in which they now vote and elect delegates to go to the fono; the 10 Matais that go as delegates to the fono?

Mr. GALEAI. No; I am not satisfied with the way they choose the delegates at the present time, but I want a vote of all the people.

Chairman BINGHAM. What is the method by which delegates are now chosen, the 10 from each district? How are they selected?

Mr. GALEAI. At the present system, the county committee is made, their resolutions brought before the district meeting, or the meeting that is called the governor's meeting. They have their discussion over those resolutions and then the delegates for the main fono are selected in this district meeting. They select the delegates for the main fono at the district meeting.

Chairman BINGHAM. Why do you object to that system?

Mr. GALEAI. Well, I am satisfied to handle it that way at the present time.

Chairman BINGHAM. I don't think he understood me. He said he was not satisfied with the way in which the 10 delegates were selected from his district to the fono. He said he was not satisfied with the way in which they were selected. Will you please tell us, what it is about this method of selecting that you do not like? What are your objections to this method of selecting the delegates?

Mr. GALEAI. My reason at first, though I have changed my reason afterwards, my first reason is this: That in the selection of this 10 delegates, if there is one of the delegates that our chief doesn't like he will put him aside and get somebody else in his place.

Chairman BINGHAM. Which chief?

Mr. GALEAI. What I mean is the chiefs that are holding the official powers, district governors or county chiefs or those that have a say in the selection of the delegates; chiefs that have government positions. What it seems to me is those chiefs that hold government positions can do as they choose in the selection of the delegates for

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ay. This is the end of what I have to say before the commission and we will later on discuss, ourselves, matters that have been brought before us. There is nobody who is perfect and who does not make mistakes. May God be with us, and help us in the finishing of our work.

Chairman BINGHAM. Thank you very much.

STATEMENT OF HIGH CHIEF TUFELE

High Chief TUFELE. Mr. Chairman, I have not much to say at present because our time is short and we have another time to talk at our meetings. I think it is one of the previous witnesses stated, but I added more to it, I want to put it in the record and also want my people here to hear that we wish our request to the commission to make a request to the President to pick out a commission from the Congress to look out for our Samoan affairs, and give this commission a chance to come down and inspect our laws and conditions which I have thought that it would be suitable to them to come any time that there are things to be corrected. And we bring laws to the Congress, I request this special commission appointed by the President and Congress to come down and improve our laws once in a while. Does the chairman and the commission understand what I meant?

Chairman BINGHAM. Yes; very well, thank you.

STATEMENT OF CHIEF MAGALEI

Chief MAGALEI. I have not much to say, but I just wish to add to what Commissioner Mauga has said. I certify to all what Magua said to be true. I wish to certify that from all these troubles have caused this main trouble that the commission has come down now to settle. I thank the Congress of the United States and the President that they have taken notice and have appointed the chairman and the commissioners of Samoa to act and rectify all this trouble that is now in Samoa. I also thank the chairman and the commissioners, especially the chairman, in his good and great experience, to find a way in which friendship and happiness may continue in Samoa. Although there seems to be two different views of this at the present time, one for the continuation for the handling of the Navy and one for a purely civil government, this I leave entirely to the commissioners, to their best knowledge and ideas. Health and prosperity to the commissioners and the legal advisor of the commission and health and prosperity to all of Samoa.

Chairman BINGHAM. I desire to thank you for your kind words. On next Monday the commission will meet in executive session here in Poyer School, and only the members of the commission and interpreters will be present, to decide what recommendations we shall make to the Congress.

The hearings are closed.

DECISION OF COMMISSION

POYER SCHOOL, October 7, 1930.

Before an assembly filling the schoolroom, an assembly consisting of the Governor of Samoa and his staff, the high chiefs, the talking chiefs, and chiefs of Tutuila-Manua, all of whom had been invited to attend, the chairman rose and said:

Your excellency, commissioners, the high chiefs, talking chiefs, chiefs, and the people of Tutuila-Manua present before me, we have assembled on the shore of this beautiful bay of Pago Pago to read the preliminary report of the American Samoan commission. The commissioners have deemed it advisable and in the public interest to issue this authoritative statement so that all may know the conclusions so far arrived at by the commissioners. It is with pleasure that I tell you the fact that the seven commissioners have unanimously agreed in the findings of this report and all have signed it.

This is their decision:

We shall make a report to the Congress of the United States which will contain, among other things, the following recommendations:

1. That American Samoa be governed under an organic act.
2. That full American citizenship be granted to the inhabitants of Tutuila-Manua as of February 20, 1929, and to their children; and also to those inhabitants of Tutuila-Manua who were then residing on the mainland of the United States or in the Territory of Hawaii. This latter class of inhabitants of Tutuila-Manua shall, in order to record their citizenship, file an application in a district court of the United States to show their desire to become citizens.
3. That there be two kinds of citizenship: American citizenship and Samoan citizenship. In addition to the first recommendations, the commission will recommend that the legislative power in Tutuila-Manua, namely, the fono shall determine the qualifications necessary for Samoan citizenship, but that the fono, in exercising this power, shall not deny Samoan citizenship to any person of full or part Polynesian blood otherwise qualified.
4. That land in Tutuila-Manua may be acquired by purchase or inheritance, but only by citizens of Tutuila-Manua or by the government.
5. That the legislative power in Tutuila-Manua be the fono as it is now constituted, with an appeal to the President of the United States should the governor use the veto and the fono pass any measure by two-thirds vote over the governor's veto. The legislative power of the fono shall extend to all rightful subjects of legislation not inconsistent with the organic act of American Samoa and the laws of Congress.
6. That the governor of American Samoa be appointed by the President of the United States with the approval of the Senate. That the President be free to appoint a civilian or an active or reserve officer of the Navy or of the Army. The length of the term of office of the governor shall be determined by the President's pleasure and his satisfaction with the governor's conduct.
7. The present laws, rules, and regulations for the government of American Samoa will continue in force until the organic act is passed

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by the Congress. We recommend that except as changed by the organic act, these laws continue in force until amended or repealed by the legislative power of American Samoa or by the Congress of the United States.

8. Due to the necessity of maintaining the revenue of the island government, no recommendation will be made for the lowering or abolition of customs duties.

9. American Samoa will be described as consisting of the islands named in the cession by the chiefs of Tutuila in 1900 and by the chiefs of Manua in 1904, together with Swains Island. The island government of American Samoa will not be extended to Swains Island, for the recommendation of the commission is that Swains Island be governed as though it were a part of the naval station at Fagatoga.

10. The commission will recommend that in all important cases an appeal will lie to the United States district court for the District of Hawaii, a judge of which shall come to Samoa from time to time when necessary to hear cases.

11. The commission will recommend that a bill of rights be written into the organic act of Samoa covering substantially the following points:

No law shall be enacted respecting an establishment of religion; or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievance.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.

No person shall be deprived of life, liberty, or property without due process of law, nor shall private property be taken for public use without just compensation; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb nor shall be compelled in any criminal case to be a witness against himself. In all criminal prosecution, the accused shall have the right to a speedy and public trial, to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist in American Samoa.

The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety shall require it. No ex post facto law shall be passed.

No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

No law shall be made or enforced which shall abridge the privileges or immunities of the citizens of American Samoa.

Excessive bail shall not be required, nor excessive fines be imposed, nor cruel and unusual punishments inflicted.

HIRAM BINGHAM.
JOE T. ROBINSON.
CARROLL L. BEEDY.
GUINN WILLIAMS.
MAUGA.
TUFELE.
MAGALEI.

On board U. S. S. *Omaha*, October 7, 1930.

In conclusion, the seven commissioners charge me to say to you that these changes which I have read to you will be recommended by the commission and I am directed to say that it must be clearly understood by you within the sound of my voice and by all other inhabitants of Tutuila-Manua that none of those changes will or can take effect until they are made law for Tutuila-Manua by Congress. It is the duty of all to obey the present laws of American Samoa until those laws are changed.

The four commissioners who now will proceed to the mainland of the United States on the *Omaha* thank you again for your courteous reception and to each of you we say Tofa. Uma.

TRANSLATION IN SAMOAN OF DECISION

O lo au tatou potopoto nei i le laueleele o lenei Fagaloa matagofie o Pago Pago ina ia faitauina le ulua'i faaaliga o le faofi o le Komisi Amerika Samoa o le a tuuina atu i luma o le 'Au Faipule. Ua taofi le Komisi o se mea lenei au tataui ai one faaaliga ina ia lauiloa ai e tagata uma lenei faamatala o le i'uga ua taunu'u i ai le su'esu'ega a Alii Komisi. 'Ou te faaali atu ma le fafia ia te outou ona o le itu i nei Komisi e to'a fitu ua loto faatasi lava ma malie i ai i latou uma i mata'upu uma ua tusia i lenei faaaliga ma ua tusia ai uma o latou suafa.

O la latou i'uga lenei:—O le a matou faia se faaaliga i le 'Au Faipule o le Unaitē Setete ina ia talia mata'upu ua tusia i lenei faaaliga ma o le a aafia ai foi ma nisi mea:

1. Ona o Amerika Samoa ia puleina i lalo o se talafono faavae.
2. Ona o tagata o Tutuila ma Manu'a ia avea i latou tagata Amerika moni e pei ona faia in Fequari 20, 1929, atoa ma a latou fanau; atoa fol ma tagata o Tutuila ma Manu'a o ē sa i ai i le Unaitē Setete poo le Teritori o Hauai i na ona po. O lenei vesega o tagata o Tutuila ma Manu'a o loo faaaliga mulimuli, i le itu ina ia mafai ona faamauina le avea o i latou ma Amerika moni, ia faauluina se talosaga i le faamasinoga Itumalo o le Unaitē Setete e faauoa, ai lo latou mana'o ina ia avea ma tagata Amerika moni.
3. On ia i ai itu'aiga e lua, o le avea ma tagata Amerika moni ma le avea ma tagata Samoa moni. E faaopoopo i le mata'upu o lenel faaaliga, o le a molia e le Komisi lo latou taon ona o le pule i le faiga o Tulafono a Tutuila ma Manu'a e faasino lea i le Fono, o le a i ai i le Fono le filifiliga o itu eseese e mafai ai ona avea le tagata ma tagata Samoa moni; a'e le Foni i le faiga o lana pule, o le

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to a hurricane on January 1, 1926. For 1927 production will be between 15 per cent and 20 per cent of an average year, and this further decrease can not be entirely due to the hurricane. It is due to neglect and failure to supervise the native in production. In 1901 taxes were \$1 per head for each inhabitant (p. 61, governor's report); to-day the tax is \$9 per head. In 1901 ad valorem duty was 2 per cent on importation (p. 94, governor's report). To-day it is 15 per cent. In 1901 labor was paid 80 cents and \$1 per day, the same rate being paid to-day (labor on a recent cement building in the navy yard was paid 80 cents). Considering these figures, the fact that everything the native boys has increased in landed cost about 300 per cent and the decline in production, one is puzzled to understand just how the 58.2 per cent increase (claimed in the governor's report) exists.

On page 81 of the governor's report we find that "despite many piteous appeals" (referring to schools) the Secretary of the Navy on September 14, 1922, wrote "Government aid should be discouraged as far as possible and the people encouraged to do more for themselves." Considering that the University of Hawaii has for many years received \$50,000 per year from the Federal Government and that Hawaii ranks as one of the wealthiest communities of its size, it seems safe to state that the United States has neglected its ward.

It is true that we give the native a lot of free government, but we do not govern. A few idealists who know nothing of conditions here question whether or not education and prosperity are good for the native. The native, like all humans, is deciding for himself, and, like his white brother, is desirous of getting all he can. Whether he gets it through honest labor or otherwise will be the result of the manner in which he is governed. Children must be taught to compete and hold their own in social relations or it can safely be assumed that the number of illegitimates left behind by whites will continue to increase. It is continually maintained that the Samoan will not help himself. He does not know how. Neither does he derive the benefit of his labor. Since we have taken jurisdiction over these people and their destiny; also their harbor, which we term "The finest in the Pacific," and for which we paid nothing, the least we can do is to maintain a Government which will lead the younger generation into what the world to-day calls culture and civilization, for he must either go ahead or degenerate rapidly. Since we have assumed the wardship the native has not gone ahead, either financially, mentally, or morally.

Whether legislation places Samoa under a department other than the Navy is a matter of indifference to nearly everyone in Samoa. Most whites and half castes feel it very risky to attempt operating the Government under a civilian while a naval officer of substantial rank (and this would always be the case) acted as commandant on the naval station. However, everyone agrees that no one under the sun can hope to accomplish anything in the way of improvement unless he remains longer than 18 months, the usual period of duty of present governors. There is no fixed policy. Governors are accountable to no one in the matter of advancement and the country has remained stationary.

Unless the policy of governors becomes a fixed principle, and whoever takes jurisdiction demands production and education, and also unless Samoa is properly annexed by act of Congress, the statement that Samoa is a disgrace to the United States (so often made) will continue to be well and truly justified.

Yours very truly,

B. F. KNEUBUHL

EXHIBIT No. 37

NAVY DEPARTMENT,
 Washington, D. C., August 28, 1930.

Hon. HIRSH BINGHAM, U. S. S.,
 Chicago, Ill.

MY DEAR SENATOR: In compliance with your request to the Navy Department to draw up a proposed organic act for American Samoa, there are forwarded herewith a proposed organic act by Capt. W. R. Furlong, United States Navy, officer in charge of office of island governments, and a proposed organic act by the board consisting of former governors, Capt. H. F. Bryan, United States

Navy, and Capt. E. S. Kellogg, United States Navy, and a former judge of the high court of American Samoa, Harry P. Wood.

Captain Furlong, who is to accompany the commission to Samoa, will lay before the commission the comments made by the last five governors of American Samoa and the last two judges of the high court of American Samoa. He has been directed to assist the commission in making the final draft of the organic act for American Samoa.

Sincerely yours,

ERNEST LEE JAHNKE,
The Acting Secretary of the Navy.

PROPOSED ORGANIC ACT CONTAINING A BILL OF RIGHTS FOR THE GOVERNMENT OF AMERICAN SAMOA

(By Capt. H. F. Bryan, United States Navy; Capt. E. S. Kellogg, United States Navy; and Harry P. Wood, former judge of the High Court of American Samoa)

I. ISLANDS INCLUDED UNDER THE NAME AMERICAN SAMOA

The provisions of this act shall apply to the islands acquired by the United States under an act of Congress entitled "Joint resolution to provide for accepting, ratifying, and confirming the cessions of certain islands of the Samoan group to the United States, and for other purposes," approved February 20, 1929, and under an act of Congress entitled "Joint resolution extending the sovereignty of the United States over Swains Island and making the island a part of American Samoa," approved March 4, 1925, which islands shall be known as American Samoa.

II. GOVERNMENT OF AMERICAN SAMOA

A government is hereby established over the said islands with its capital at Fagatogo in the island of Tutuila.

III. BILL OF RIGHTS

The Constitution and Laws of the United States of America, in so far as they are locally applicable, and so much of the common law of England as is locally applicable and not repugnant to and inconsistent with the Constitution and Laws of the United States of America, and such laws and regulations as shall, from time to time, be promulgated by the Governor of American Samoa, subject to the provisions of this act, are hereby declared to be in full force in American Samoa.

The "Codification of Regulations and Orders for the Government of American Samoa" now in force shall continue in full force and effect, subject to such additional laws and regulations as shall be made by the Governor of American Samoa.

The customs of the Samoans, not in conflict with the laws of American Samoa and the laws of the United States concerning American Samoa, or with public morality or public decency, shall be preserved, unless otherwise requested by the representatives of the people.

The customary rights of the chiefs in their separate villages, if such rights are in accord with the laws of American Samoa and the laws of the United States of America relating to American Samoa, and if they are not obstructive to the peace of the people and to the advancement of the welfare of the people, shall be recognized, subject to the supervision and instruction of the said governments.

The individual rights of the people of American Samoa to their lands and other property shall be respected; but if the Government of the United States or the government of American Samoa shall require any land or other property for government uses the government may take the same, upon payment of a fair price to the owner or owners. In no case shall the alienation of native lands to a nonnative be permitted within the limits of American Samoa. The term "native land" shall mean and include lands owned by an aboriginal native.

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IV. CITIZENSHIP

None but aboriginal natives of American Samoa, and aboriginal natives of the other Samoan Islands who have resided in American Samoa for a period of five years prior to January 1, 1930, may be citizens of American Samoa, except that any individual who is not an aboriginal native but who was a regularly registered matai of American Samoa prior to January 1, 1930, and any descendant of such matai in the male line may be registered as a citizen upon application.

All persons entitled to citizenship must be registered within one year after the promulgation of this act in American Samoa.

None but registered citizens may hold public office in American Samoa, except such officials as are provided by the United States Government as set forth elsewhere in this act.

All other persons in American Samoa shall be class as noncitizens, and if residents they shall be registered under their true nationality. They shall have no voice in government and shall hold no public office. They shall be subject to the laws of American Samoa. They may at any time, for just cause, be required to leave the islands upon written order of the governor, but such order shall clearly state the reason or reasons for deportation. They shall be entitled to a copy of such order.

Citizens of American Samoa shall have the privilege of visiting, residing, and doing business in the United States and its Territories, and, if desirous of doing so, may become citizens of the United States by naturalization in the same manner as other aliens, in which case they shall cease to be citizens of American Samoa.

V. ADMINISTRATIVE SUPERVISION

For general administrative purposes the government of American Samoa is placed under the supervision of the Secretary of the Navy.

VI. GOVERNOR

The title of the chief executive officer shall be "The Governor of American Samoa." He shall be appointed by the President, by and with the advice and consent of the Senate. He shall be a line officer of the Navy of the United States, of or above the rank of commander. He shall hold his office until his successor is chosen and has qualified, unless sooner removed by the President. He shall reside in American Samoa during his official incumbency, and shall maintain his office at the seat of government.

He shall be responsible for the faithful execution of the laws of American Samoa, and of the laws of the United States applicable thereto.

Subject to the provisions of this act, he shall be the maker of all laws, and shall make and control all appointments not otherwise provided for.

He shall have power to levy ad valorem and specific duties on all goods imported into American Samoa from the United States or from any foreign country, subject to such provisions of the revenue acts of the Congress of the United States as may be made specifically applicable to American Samoa. The revenues therefrom shall be turned into the treasury of American Samoa for the use of the government of American Samoa.

He shall not make any important decision involving the welfare of the people of American Samoa without consulting the assembled district governors, county chiefs, and district judges.

He may grant pardons and reprieves, and remit fines and forfeitures for offenses against the laws in force in American Samoa.

In the temporary absence of the governor from the seat of government, he may appoint by written order under his hand and seal, specifically defining his powers, a vice governor. In case of the death or the sudden disability of the governor, he shall be succeeded by the line officer of the Navy of the United States next in rank to him, attached to the United States naval station, Tutuila.

He shall by proclamation call an annual advisory "fono" (general meeting) of representatives of the people of American Samoa, over which he shall preside.

Each district shall be represented by: (a) The district governor, (b) all county chiefs of the district, (c) all district judges of the district, (d) 10 registered matais as delegates to be appointed at a district meeting.

Each delegate must be a registered matai; that is, a registered head of the family or group of families. A district meeting shall be held in each district, at the time and in the place designated by the governor, at which the district delegates shall be appointed, and at which shall be formulated the questions which the people desire to have discussed at the annual fono, and also the district's tentative answer to the questions which the governor desires to have discussed.

The governor shall annually, and at such other times as may be required, make official report of the transactions of the government of American Samoa to the secretary of the Navy.

He shall take the oath prescribed by law before assuming office.

VII. DEPARTMENTS AND OFFICES

- (1) Department of native affairs.
- (2) Judicial department.
- (3) Department of public health.
- (4) Department of public works.
- (5) Department of education.
- (6) Department of customs.
- (7) Department of the treasury.
- (8) Department of communications.

1. DEPARTMENT OF NATIVE AFFAIRS

A secretary of native affairs shall be appointed by the Secretary of the Navy. The secretary of native affairs appointed by the Secretary of the Navy shall be a civilian citizen of the United States not less than 30 years of age who shall have been admitted to the practice of law in the highest court of the State or district in which he has received his certificate or license and who has been admitted to practice at least five years prior to his appointment as secretary of native affairs.

The duties of the secretary of native affairs shall be:

- (a) To have supervision over and inspect all work of the native officials.
- (b) He shall act under the instructions of the governor, and shall make regular reports on all native affairs to the Governor. He shall take the oath prescribed by law before assuming office.

Clerk to the secretary of native affairs.—A clerk to the secretary of native affairs shall be appointed by the Secretary of the Navy. He shall be a civilian citizen of the United States.

His duties shall be such as may be assigned to him (by the governor of American Samoa and) by the secretary of native affairs.

He shall take the oath prescribed by law before assuming office.

2. JUDICIAL DEPARTMENT

A chief justice shall be appointed by the Secretary of the Navy. The chief justice appointed by the Secretary of the Navy shall be a civilian citizen of the United States, not less than 30 years of age, who has been admitted to the practice of law in the highest court of the State or district from which he has received his certificate or license, and who has been admitted to practice at least five years prior to his appointment as chief justice.

The chief justice shall be:

- (a) The chief judge of the high court.
- (b) Presiding judge of the district court.
- (c) Probate judge of American Samoa.

He shall take the oath prescribed by law before assuming office.

Clerk of the high court.—A clerk of the high court shall be appointed by the Secretary of the Navy. He shall be a civilian citizen of the United States.

His duties shall be:

- (a) To act as clerk of the high, district, and probate courts.
- (b) To act as the official stenographer of the high court, district court No. 1, and probate court.
- (c) To perform such other duties as may be assigned to him by the chief justice.

He shall take the oath prescribed by law before assuming office.

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3. DEPARTMENT OF PUBLIC HEALTH

The department of public health shall have supervision over, and be directly responsible to the governor, for all matters relating to the public health.

The senior medical officer of the United States naval station, Tutuila, shall be the head of the department of public health with the title "public health officer." Such other persons attached to the medical department of the United States naval station, Tutuila, as may be found necessary, may be assigned to duty under the department of public health by the governor.

The public health officer shall perform such duties as may be assigned to him by the governor and shall make to the governor such reports as may be required.

He shall take the oath prescribed by law before assuming office.

4. DEPARTMENT OF PUBLIC WORKS

The department of public works shall have supervision over, and be directly responsible to the governor, for all matters pertaining to the construction and repair of all insular, district, county, and village public works, including roads, highways, culverts, buildings, dams, water works, and pipe lines.

The public works officer of the United States naval station, Tutuila, shall be the head of the department of public works of American Samoa. He shall perform such duties as may be assigned to him by the governor and shall make to the governor such reports as may be required.

He shall take the oath prescribed by law before assuming office.

5. DEPARTMENT OF EDUCATION

The department of education shall have supervision over, and be directly responsible to the governor, for all matters pertaining to education.

The chaplain of the United States naval station, Tutuila, or such other person as may be appointed by the governor, shall be the superintendent of education. He shall perform such duties as may be assigned to him by the governor and shall make such reports to the governor as may be required.

He shall take the oath prescribed by law before assuming office.

6. DEPARTMENT OF CUSTOMS

The department of customs shall have supervision over, and be directly responsible to the governor, for all matters pertaining to Island customs, and the collection of all revenues derived therefrom.

The chief customs officer shall be an officer of the United States naval station, Tutuila, appointed by the governor. He shall perform such duties as may be assigned to him by the governor and shall make such reports to the governor as may be required.

He shall take the oath prescribed by law before assuming office.

7. DEPARTMENT OF THE TREASURY

The department of the treasury shall have supervision over, and be directly responsible to the governor for, all matters pertaining to the custody of and the disbursements of public funds.

The treasurer shall be an officer of the Supply Corps of the Navy not below the rank of lieutenant. He shall be appointed by the Secretary of the Navy.

He shall perform such duties as may be assigned to him by the governor and shall make such reports to the governor as may be required.

He shall take the oath prescribed by law before assuming office.

8. DEPARTMENT OF COMMUNICATIONS

The department of communications shall have supervision over, and be directly responsible to the governor for, all matters pertaining to communications.

The head of the department shall be an officer of the United States naval station, Tutuila, appointed by the governor. He shall have the title of "communication officer."

He shall perform such duties as may be assigned to him by the governor and shall make such reports to the governor as may be required.

He shall take the oath prescribed by law before assuming office.

VIII. OTHER OFFICIALS

Other officials shall be an aide to the governor, an auditor, a comptroller, and a sheriff, all of whom shall be officers of the United States naval station, Tutuila, appointed by the governor.

Each of these officials shall perform such duties as may be assigned to him by the governor, and shall make such reports to the governor as may be required.

The auditor, comptroller, and sheriff shall severally take the oath prescribed by law before assuming office.

IX. TEMPORARY OFFICIALS

In the event of the absence, disability, or death of any official appointed by the Secretary of the Navy, the governor may appoint a substitute pro tempore.

X. HIGH COURT

The high court shall be composed of the chief justice, and, normally, of two associate judges who shall be native district judges.

The high court shall be held at such times and places as the governor may deem essential to the promotion of justice.

The high court shall have a seal and be a superior court of record and a court of law and equity.

The high court shall have original jurisdiction over—

(a) All civil suits concerning real property in American Samoa and all rights affecting the same.

(b) All civil suits between foreigners when the amount in dispute exceeds the sum of \$250.

(c) All crimes and offenses committed by foreigners when the penalty which may be inflicted exceeds a fine of \$250, or imprisonment with hard labor for a term exceeding six months.

(d) All charges of treason or murder.

(e) All crimes and offenses committed by native officials, in their official capacity.

(f) All judicial jurisdiction exercisable within the limits of American Samoa not hereafter provided for.

The high court shall be an appellate court for all causes appealed from the district court.

XI. APPEALS FROM THE HIGH COURTS

The judgments, decrees, and orders of the high court shall be final except that a party to an action or proceeding in which the high court has original jurisdiction, who is not satisfied with the final judgment, decree, or order of the court, may within seven days after the handing down of said judgment, decree, or order, and the service upon him of a certified copy thereof, appeal therefrom to the Governor of American Samoa.

Such appeal shall be in writing, signed by the appellant and directed to the Governor of American Samoa.

It shall state briefly the grounds of appeal.

Upon such appeal being taken, the governor shall notify the clerk of the high court of the appeal and the clerk shall promptly furnish to the governor a record of the case appealed from, including—

(a) A brief statement of the case.

(b) A copy of the pleadings, if any.

(c) A copy of the testimony.

(d) A copy of the judgment, decree, or order appealed from.

The governor shall, within a reasonable period of time, render a decision in the case, either upon the record of the high court or upon testimony of witnesses summoned by him, or both.

The governor's decision shall be in writing and shall either affirm, modify, or reverse the decision of the high court.

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XII. DISTRICT COURT

The district court shall be composed of the chief justice and a native district judge and shall be held not less than once in each month in each district.

If on the hearing of a cause, there is a difference of opinion between the chief justice and the native district judge sitting with him, the opinion of the chief justice shall prevail, but this shall not preclude an appeal to the high court.

When circumstances prevent the chief justice from sitting with a native district judge, the latter shall forward to the chief justice a complete record of the case together with his opinion, and the final decision of the chief justice shall either affirm, modify, or reverse the opinion of the native district judge.

The district court shall have jurisdiction over—

(a) All civil matters between natives and foreigners, and between natives, when the amount in dispute does not exceed the sum of \$250.

(b) All civil matters between foreigners when the amount in dispute does not exceed the sum of \$250.

(c) All crimes and offenses committed by natives except such as are under the jurisdiction of the high court.

(d) All crimes and offenses committed by foreigners when the penalty which may be inflicted does not exceed a fine of \$250 or imprisonment with hard labor for a term not exceeding six months.

(e) District Court No. 1 shall have jurisdiction of all matters within the cognizance of probate courts, and the chief justice shall be the probate judge.

The district court may cause to be apprehended and brought before it any person, within and subject to the jurisdiction of the court, and charged with having committed a crime or offense triable by the court. Where the crime is triable and is to be tried by the high court, the district court may take the preliminary examination and shall commit the accused to take his trial at the next sitting of the high court, and shall admit the accused to bail, if the charge is bailable, upon sufficient sureties being granted, or shall dismiss the accused.

The district court may at the discretion of the chief justice appoint assessors to assist the court but without voice in the decisions.

Any person dissatisfied with the judgment of the district court may appeal to the high court upon such terms as may be imposed by the district court, but he shall inform the court of his intention to appeal with 48 hours from the day of the judgment, and in criminal matters the court shall then decide whether the prisoner is to be held in custody or sent to his own village under the supervision of the police, or released on bail, to be brought up at the next sitting of the high court.

This court shall be a court of record and a court of law and equity and shall have a seal.

XIII. SALARIES

The annual salaries of the civilian officials appointed by the Secretary of the Navy shall be—

Secretary of native affairs.....	\$5,000
Chief justice.....	5,000
Clerk of the secretary of native affairs.....	2,400
Clerk of the high court.....	2,400

In addition to their salaries the secretary of native affairs and the chief justice shall each be entitled to a furnished house belonging to the Navy of the United States, with the necessary fuel and light.

The salaries of the civilian officials appointed by the Secretary of the Navy shall be paid from the revenues of the United States out of the annual appropriations for the Department of the Navy.

All civilian officials appointed by the Secretary of the Navy shall be entitled to transportation for themselves, their immediate families, and their household effects, from their homes in the United States to American Samoa on being ordered to duty, and from American Samoa to their homes in the United States, upon the completion of their duties.

No officer of the Navy of the United States shall receive compensation above or beyond his pay and allowance as an officer of the Navy for any service rendered as an official of the government of American Samoa.

COMMENTS ON PROPOSED ORGANIC ACT

1. *The title "American Samoa".*—These islands have been known officially as "American Samoa" ever since the President of the United States issued a new commission to Governor Crose as "Governor of American Samoa," dated October 24, 1912.

The joint resolution of Congress, approved February 20, 1929, accepting the cessions of the islands, uses the title "Eastern Samoa." I can see no good reason for this except that perhaps it was not thought advisable to use the title "American Samoa" in a joint resolution the purpose of which was to make the islands legally American. Congress has, however, several times, in both act and joint resolution, used the title "American Samoa."

The remainder of the Samoan group, located to the westward of American Samoa, now administered as a mandated territory of the League of Nations by New Zealand, through Great Britain, is called "Western Samoa." These islands had previously been known, since February, 1900, as "German Samoa."

The Samoan people are accustomed to the name "American Samoa," and I feel sure that they do not desire any change.

The use of the title "territory of American Samoa" would be most misleading and dangerous. The phrase "territory of the United States" brings to mind a type of government, and a point of view, which have absolutely no place in the discussion of a government for the people of American Samoa. The situation in Samoa is unique. The people are primitive, but very amiable. They become savage only when deeply aroused, and no event has taken place during our occupancy to incite any latent savage instinct. They are like grown-up, intelligent children who need kindly guidance; but who need, most of all, to be let alone. Therefore, a territorial type of government, as we understand it, would result only in disaster to both governed and governors.

2. *Government.*—In the deeds of cession, Tutuila (1900) and Manua (1904), the United States Government assumed certain very plain responsibilities toward the people of American Samoa. The cession of Manua was delayed because the beach-combers residing in Manua had killed the Tulimanua (King of Manua) with the fear that, if the islands were ceded, the natives would lose their land.

We have carefully respected the brief "bills of rights" contained in the two deeds of cession:

(1) We have preserved the customs of the Samoans which were not violations of public morality or public decency.

(2) We have recognized the rights of the chiefs in their separate villages.

(3) We have respected and protected the individual rights of the people to their lands and other property. We have forbidden the alienation of native lands to nonnatives.

It is perfectly safe to say that in carrying out the conditions made by the chiefs in the cessions of the islands we have been more thorough than the Samoans themselves would have been. The Samoans are easily misled, and there is no stability in their views on any subject.

The motto of the government of American Samoa has always been: American Samoa for the American Samoans. We have refused to permit the people to be exploited by the whites and half castes. The same policy exists in Western Samoa, where it has been publicly proclaimed, with the approval of the Government of New Zealand, that, when the interests of the natives and of the whites are in conflict, the whites must yield, as they are in such a small minority.

The small number of malcontents who now compose the "Mau," or "Union," are little more than mouthpieces for outsiders, whose sole desire is not to help the Samoan people but to exploit them to their own profit.

If the principle be accepted that Samoa is for the Samoans, then the United States Government has built a monument of good works in American Samoa. The living conditions and the health of the people have been improved; the population is increasing; the country is, in the main, more than satisfied, and is prosperous. The natives of the Fiji Islands are dying out, to the joy of the rulers who are exploiting them in favor of the East Indians. The Marquesans, whom Robert Louis Stevenson called "certainly the most beautiful of human races," have been enfeebled by epidemic disease. Western Samoa shows an increase in population and an improvement in the quality of the Samoans, and the policy of Western Samoa is now: Samoa for the Samoans.

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The land question presents the most serious problem in American Samoa, a problem which goes hand in hand with that of citizenship. If half-castes and whites are permitted to own land, it will not be long before the aboriginal people of American Samoa will be deprived of their land, after which their extinction will be only a matter of time.

In my opinion, the Samoans are the happiest people in the world. Nature has been good to them, or, as they themselves say, "God is good to Samoa." They are so far from the turmoil of so-called civilization that they seem to live in a carefree world of their own. Their islands are small and very mountainous—almost on end—so that there is little cultivable land. Outsiders could gain little by exploiting the natives, but the natives would lose their all.

I firmly believe that the Samoans have the best possible government. The small minority composing the "Mau," or "Union," say that they want civil government, but they can not really tell just what they want, or why they want it. It is plain that in addition to being the mouthpieces of self-seeking outsiders, they hope that, with civil government (?), they will get more from the United States than they are now getting. With the bars let down, the outsiders expect to hold the offices and own the land. The people of American Samoa have now the best possible government because they are governing themselves. The first naval commandant, in 1900, was wise enough to accept the then existing conditions, which he gradually embodied into law. Changes have come almost entirely from the Samoans themselves. They now have civil government; that is, self-rule, under the Navy Department. They govern; the Navy Department merely administers.

3. *Citizenship.*—Citizenship and the land question are intimately bound together. Aboriginal natives alone are to be citizens because the government of the islands must be kept solely in their hands if they are to survive.

The people of American Samoa are, at present, not at all prepared to become citizens of the United States; and have given the subject little or no thought. Authority by law to live permanently in the United States, if they so choose, will pave the way to American citizenship for those so minded.

4. *Governor.*—Some of the agitators shriek that the Governor of American Samoa is a despot, and that no man is good enough to be his brother's keeper. The governor is not an absolute despot, because he is responsible to the Secretary of the Navy and to the President of the United States. His monthly and annual reports keep the Navy Department fully informed of all events and of all changes in the law. He makes the laws, but he must obey them as long as they are laws. An examination of the "Codification of the Regulations and Orders for the Government of American Samoa" will prove that the changes made since 1900 have been largely administrative, due to the gradually improved organization of the government, and that the traditional customs of the people have been hardly touched except at the request of the Samoans themselves, and also when it was necessary to suppress wanton customary destruction of property, and indecency. No better proof could be given that their customs have been protected, and that their rights, individual and collective, have been respected and protected.

Any weakening of the power of the governor would be disastrous. The unfortunate unrest which has existed in Western Samoa for more than three years is due to the attempt on the part of the three elected members (one half-caste and two whites) of the legislative council, and their supporters, to exploit the Samoans for their own selfish ends, while, of course, claiming to be working for the general good. It shows what a legislative council can do, not for, but to Samoans. Somewhat over two years ago, one white and one half-caste member of the legislative council and another white agitator were banished for periods of 2, 5, and 3 years, respectively. At the end of last December, the white member who had been banished for two years returned to western Samoa, his period of exile having expired. The "Mau" held a great parade in celebration of his return. Certain Samoans, wanted by police, took part in the parade, though they had been warned by the police not to do so. The police attempted to arrest them. In the ensuing riot a white constable was killed and also seven natives, among whom was Tamasese, the bearer of a royal name, who had recently returned from imprisonment in New Zealand.

When I was governor of American Samoa, the administrator of Western Samoa informed me in person that his difficulties were due to lack of power. He was an appointee of the Governor General of New Zealand, to whom he was responsible; he was also responsible to the Secretary of Exterior Affairs, New Zealand, and to the League of Nations to which he had to make an annual

report in reply to definite questions. The administrator said to me, in a tone of envy and regret: "If I had your power I could straighten things out immediately."

An executive council (except as a merely advisory body) and an elected legislative assembly, would be worse than absurd in American Samoa. Governor Moore (1905-1908) tried to institute elections; he abandoned the effort as hopeless. The influence of the chiefs is so great, even now, that a voter would be a voter in name only; the chief would decide.

No vice governor is provided for. None is needed. If a permanent vice governor were to be appointed he would be the captain of the yard of the naval station, who is the line officer next in rank to the governor. He would take permanent precedence over the secretary of native affairs, who is the intermediary between the governor and the people of American Samoa. Normally, the captain of the yard has no official relations, off the naval station, with the people of American Samoa; his appointment as vice governor would lessen the prestige of the secretary of naval affairs with the people of American Samoa. It would serve no useful purpose. In 1924 and 1925, two captains of the yard demanded that they be given this precedence in island government affairs. In 1925 the question was settled by the Navy Department in favor of the existing custom of having the secretary of native affairs follow the governor in precedence in all matters connected with island government affairs.

H. F. BRYAN,

Governor of American Samoa from March 18, 1925 to September 9, 1927

Approved February 24, 1930.

E. S. KELLOGG,

Captain United States Navy, Retired.

HARRY P. WOOD.

REMARKS ON AMERICAN SAMOA IN CONNECTION WITH PROPOSED ORGANIC ACT

American Samoa is a problem quite different from that of any of our other island possessions. This is due primarily to the fact that the islands were not obtained by purchase or conquest but were ceded to the United States by the aboriginal native population for the purpose of obtaining protection. The population is almost entirely made up of aboriginal natives and the nonnative element is too small to be entitled to much influence upon the situation.

Our civilization has obtained very little hold upon American Samoa and it should not be forced upon it. The population is racially, and the country geographically, topographically, and climatically unsuited to our civilization; while on the other hand the native civilization and general communistic system, a development of hundreds of years, is admirably suited to the existing conditions and the very limited natural resources of the country and should be fostered.

The total working population does not exceed 3,000 men, approximately 1,000 to each of the three districts into which the country is divided. This force provides food, gathers the copra crop (which has never exceeded 1,800 tons), does a small amount of work on the naval station, including the loading and unloading of all cargoes, builds the native houses and native boats, and does all the work of building and maintaining the roads. It is not capable of doing much more.

The area of land suitable for cultivation is very small; not much more than sufficient to maintain the present population.

Further economic development must be along the lines of increasing production to meet the needs of the rapidly increasing population, but should not be along the lines of exploitation.

Exploitation could not possibly be carried on profitably without the importation of alien labor; and it is most probable that any attempt at exploitation of American Samoa is doomed to failure even with imported labor because of the extremely small scale upon which such operations would have to be conducted. Furthermore, by the time this fact has been established to the satisfaction of those engaging in exploitation, the aboriginal native population will, without question, have been exterminated.

The population, except for a very small group, is contented, happy, and satisfied with existing conditions and the manner in which the government has been conducted for the past 30 years.

The discontented group is but the mouthpiece of a group of nonnatives living in Samoa, Honolulu, and the United States whose main objective is the exploitation of American Samoa at the expense of the aboriginal natives.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
NORTHERN DIVISION

In re:)	
)	
JOHN FITISEMANU, PALE)	
TULI, ROSAVITA TULI,)	
SOUTHERN UTAH PACIFIC)	
ISLANDERS COALITION,)	
)	
Plaintiffs,)	
)	
vs.)	Case No.
UNITED STATES OF)	1:18-CV-00036
AMERICA, US)	
DEPARTMENT OF STATE,)	
et al.,)	
)	
Defendants.)	
-----)	

BEFORE THE HONORABLE CLARK WADDOUPS

November 14, 2018

Motion for Summary Judgment
Motion to Dismiss
Motion to Dismiss for Failure to
State a Claim

Appearances of Counsel:

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1 **Salt Lake City, Utah November 14, 2018**

2 **(3:00 p.m.)**

3 THE COURT: Good afternoon. We are here in
4 the matter of *Fitisemanu versus the United States*,
00:14:10 5 case 1:18-CV-36. Will counsel please state their
6 appearance.

7 MR. SPENCER: Jacob Spencer for the
8 plaintiffs.

9 THE COURT: Thank you.

00:14:25 10 MR. MCGILL: Matthew McGill of Gibson Dunn and
11 Crutcher for the plaintiffs, Your Honor.

12 THE COURT: Thank you.

13 MR. CHRISTIANSEN: Jeremy Christiansen with
14 Gibson Dunn and Crutcher for the plaintiffs, Your
00:14:32 15 Honor.

16 MR. WEARE: Neil Weare for Equal American for
17 the plaintiffs.

18 THE COURT: Thank you.

19 MR. PEZZI: Good afternoon, Your Honor,
00:14:41 20 Stephen Pezzi from the Department of justice on
21 behalf of the United States.

22 THE COURT: Thank you.

23 MR. WILLIAMS: Good afternoon, Your Honor,
24 Mike Williams from Kirkland and Ellis on behalf of
00:14:49 25 the American Samoa Government and Congresswoman

1 Amata.

2 THE COURT: Thank you.

3 MS. LEWIS: Britney Lewis from Kirkland Ellis
4 also on behalf of the American Samoa Government.

00:15:00

5 MR. KRANNICH: And good afternoon, Your Honor,
6 Jess Krannich on behalf of the American Samoan
7 Government and the Congresswoman.

00:15:11

8 THE COURT: We're here on cross motions for
9 summary judgment and motions to dismiss. I have
10 reviewed the parties submissions and many of the
11 supporting materials although not all of them. Let
12 me just as an initial matter make an observation. We

00:15:29

13 have had a request, an inquiry, about whether it
14 would be appropriate to record these proceedings. I
15 just want to remind everyone that the official
16 transcript of this proceeding is only by the court
17 reporter and recording the audio version of this is
18 prohibited by the court's rules. Although if you're

00:15:45

19 a part of the recognized press corp you may use your
20 digital devices for purpose of taking notes but not
21 recording. I assume that all of you probably already
22 understand that.

23 Let's proceed with the plaintiffs' argument.

00:16:16

24 MR. SPENCER: Good afternoon, Your Honor. May
25 it please the court, Jacob -- my name is Jacob

1 Spencer from Gibson Dunn and Crutcher. I'm here on
2 behalf of the plaintiffs.

3 Your Honor, this case involves a single
4 question of constitutional law. The government does
00:16:30 5 not dispute that American Samoa is subject to the
6 jurisdiction of the United States so the sole
7 question in this case is whether American Samoa is in
8 the United States as that phrase was used by the
9 Fourteenth Amendment of the United States -- of the
00:16:45 10 U.S. Constitution. If so, then the individual
11 plaintiffs are entitled to birthright citizenship and
12 defendants refusal to recognize their citizenship is
13 unconstitutional.

14 American Samoa is in the United States, we
00:17:01 15 know, as of 1868 when the Fourteenth Amendment was
16 ratified that the United States as used in the
17 Fourteenth Amendment included the District of
18 Columbia and we also know that it included
19 territories. We have gone through in our briefs the
00:17:16 20 extensive historical evidence from the text, the
21 structure, historical understanding, the legislative
22 history to show that it included territories when the
23 Fourteenth Amendment was ratified, and included
24 territories both that the U.S. had in 1868 when over
00:17:33 25 50 percent of the land mass of the United States was

1 in the form of territories. And we also -- there is
2 little dispute that it included territories that the
3 U.S. would acquire after 1868. But the government
4 asks this court to carve out from the United States a
5 single category of so-called unincorporated
6 territories, these outlying islands acquired by the
7 U.S. at the end of the 19th Century and the early
8 20th Century. But there is no textual reason for
9 carving out unincorporated territories from the
10 United States.

11 THE COURT: What is an unincorporated
12 territory?

13 MR. SPENCER: I think the phrase, as I
14 understand it, an unincorporated territory the court
15 said in *Boumediene* is a territory that was not surely
16 -- that is not surely destined for --

17 THE COURT: What is the legal determination?
18 What makes the territory incorporated versus not
19 incorporated?

20 MR. SPENCER: I'm not sure of the answer to
21 that, Your Honor.

22 THE COURT: Isn't that something that just
23 came up in the *Insular* cases basically carved out of
24 whole clothe?

25 MR. SPENCER: Certainly as a legal term that

1 is exactly correct. It was developed by the
2 political and judicial branches over 40 years after
3 the Fourteenth Amendment was ratified.

00:18:44

4 THE COURT: Is there any kind of a procedure
5 to determine when a territory is incorporated versus
6 unincorporated?

7 MR. SPENCER: I'm not sure the answer to that
8 question, Your Honor.

00:18:52

9 THE COURT: Do we have any determination as to
10 whether American Samoa is incorporated or
11 unincorporated?

12 MR. SPENCER: The government says that it is
13 an unincorporated territory.

14 THE COURT: Which government?

00:18:59

15 MR. SPENCER: The government of the United
16 States says it is unincorporated on the theory that
17 is not surely destined for statehood.

18 THE COURT: And what is the vehicle by which
19 they make that pronouncement?

00:19:08

20 MR. SPENCER: They would say, I think, this
21 would obviously be a question for my colleague, but I
22 think they would say that by statute congress has not
23 -- has not incorporated American Samoa.

00:19:21

24 THE COURT: Is there a statute that says
25 they're unincorporated?

1 MR. SPENCER: Not to my knowledge.

2 THE COURT: I'll ask the United States to
3 address that further.

4 MR. SPENCER: So I think there is no
00:19:30 5 historical evidence that there was this category of
6 unincorporated territories carved out of the
7 Fourteenth Amendment as 1868. And it is moreover
8 would be flatly inconsistent with what the Supreme
9 Court said at the end of the 19th Century in *Wong Kim*
00:19:47 10 *Ark* where in a learned and scholarly opinion the
11 United States Supreme Court said that the purpose of
12 the Fourteenth Amendment was to constitutionalize and
13 reaffirm what it called the fundamental and ancient
14 principle of birth of -- citizenship by birth within
00:20:00 15 the territories so that there would be no question
16 that someone who was born, as they had said in the
17 *Slaughter-House* cases, that someone who was born in
18 the territories or in the District of Columbia would
19 be a citizen of the United States no less than
00:20:12 20 somebody who was born in one of the states.

21 So the government's case ultimately relies,
22 and they turn to this over and over again, on the
23 *Insular* cases and specifically one of the *Insular*
24 cases *Downes against Bidwell*. To be clear about what
00:20:28 25 it would mean to adopt *Downes against Bidwell's*

1 definition and carve out unincorporated territories
2 from the United States, there are millions of
3 Americans living in Puerto Rico, in the Virgin
4 Islands, in the Northern Mariana Islands and in Guam
5 who are American citizens. But on the government's
6 theory, they are American citizens not because of
7 their birthright, but solely because of an act of
8 legislative grace. So to adopt the United States'
9 theory would mean that congress could withdraw that
10 grant of citizenship at any time. And even the D.C.
11 Circuit in the *Tuaua* case was unwilling to take that
12 step because it recognized that *Downes against*
13 *Bidwell* is not controlling of the question in front
14 of this court for several reasons. *Downes* was a
15 fractured opinion with no single opinion garnering a
16 majority of the court. *Downes* discussed the separate
17 clause, the Tax Uniformity Clause, and *Downes*
18 discussed Puerto Rico in 1901 not citizenship in
19 American Samoa in 2018.

20 And we know if there were any doubt that
21 *Downes* does not resolve questions of citizenship
22 because the Supreme Court was confronted with those
23 questions just a few years later in the *Gonzales* case
24 where there was active briefing from both sides about
25 *Wong Kim Ark* and about whether at that point someone

1 who had been born in Puerto Rico before it became a
2 part of the United States acquired U.S. citizenship
3 and the Supreme Court declined to resolve that
4 question. If the government were correct that *Downes*
5 *against Bidwell* resolved the question, then it would
6 have been easy for the Supreme Court to say in
7 *Gonzales* that Puerto Rico is not -- that those who
8 became part of the United States in -- through the
9 annexation were not U.S. citizens but it didn't take
10 that step and so the D.C. Circuit appropriately
11 recognized that *Downes* does not control there. But I
12 think what is even more important is that *Downes*
13 *against Bidwell* should simply not be not be extended
14 as many justices of the Supreme Court have noted. It
15 is an eerie parallel I think in many ways to *Dred*
16 *Scott*. Before the Fourteenth Amendment there was one
17 exception to citizenship by birth within the
18 territory of the United States and that was the *Dred*
19 *Scott* case where the Supreme Court carved out
20 African-Americans and said that they could not be
21 citizens. If *Downes versus Bidwell* extends to
22 citizenship, then there would be a new exception
23 carved out for unincorporated territories or
24 so-called unincorporated territories where congress
25 could switch citizenship on and off at will. And the

1 rhetoric, the reasoning I should say of *Downes* is --
2 was wrong when it was uttered, there is dicta about
3 citizenship saying that those who are savages or
4 absolutely unfit to receive citizenship should not
5 have it extended to them automatically. That is
6 dicta, as I say. It was dicta that was wrong when it
7 was uttered and it should not be extended. And I
8 think if you look at the *Boumediene* case, which the
9 government relies on as supposedly reaffirming the
10 core principles of the *Insular* cases, what *Boumediene*
11 says is that at the time of the *Insular* cases the
12 Supreme Court was confronted with the question of
13 whether the Constitution extends to the newly
14 acquired territories of its own force, or whether it
15 requires congress to extend it. And the court's
16 answer was it extends to the territories of its own
17 force. Now there were some practical difficulties
18 *Boumediene* says that were involved at the turn of the
19 20th century with some of the provisions of the
20 Constitution, but none of them involved citizenship
21 and none of them of the same practical difficulties
22 would be practical difficulties with recognizing
23 birthright citizenship in American Samoa today.

24 So that leaves, I think, as the last argument
25 the government has the *Tuaua* case itself. Because

1 the D.C. Circuit did not think that *Downes* applied,
2 that *Downes* was controlling. It instead decided to
3 adopt some of the *Insular* cases framework and say
4 that it could be impractical and anomalous to
5 recognize birthright citizenship in American Samoa.
6 And I think that that is wrong and it is wrong for at
7 least three reasons.

8 First, ultimately what the D.C. Circuit said
9 is that it would be impractical and anomalous to
10 extend birthright citizenship when the government of
11 American Samoa did not want citizenship extended to
12 American Samoa, but that can't be what impractical
13 and anomalous means. It can't turn on a legislative
14 judgment and we know that especially with regard to
15 the Citizenship Clause because the very purpose of
16 the Citizenship Clause as the senators told us when
17 it was adopted, but also as the Supreme Court
18 confirmed in *Afroyim*, was to place questions of
19 citizenship beyond the legislative power. So to say
20 that the Citizenship Clause can be turned on or off
21 in American Samoa based on the will of the American
22 Samoan Government, is inconsistent with the purpose
23 of the Citizenship Clause. Nor is it impractical or
24 anomalous to recognize birthright citizenship in
25 American Samoa. There are plenty of American

1 citizens living in American Samoa, and there are many
2 people who acquire citizenship at birth in American
3 Samoa because their parents are recognized as United
4 States citizens. The government of American Samoa
5 has said that this might have an effect on
6 traditional Samoan way of life fa'a Samoa. But with
7 respect, we don't think that it will. This case
8 involves citizenship. The provisions that the
9 American Samoan Government have talked about involve
10 the Equal Protection Clause or the Establishment
11 Clause. As a matter of constitutional text, those
12 don't turn on whether someone is a citizen or not,
13 those turn on the Equal Protection Clause whether
14 somebody is a person or not. So we don't think that
15 there will be any effect of recognizing birthright
16 citizenship in American Samoa. But even if you were
17 inclined to accept as the D.C. Circuit did the
18 American Samoan Government's views on whether it
19 should be extended to American Samoa, that can't
20 control this case because this case involves three
21 Utahns, three residents of Utah. And if anything
22 would be anomalous, it would be to allow the
23 government of American Samoa for whom none of the
24 plaintiffs voted or were entitled to vote, to declare
25 whether they are entitled to citizenship of the

1 United States.

2 That question, to come back to where I began,
3 as the United States government agrees, depends on
4 what is the meaning of "in the United States." And
5 as we pointed out in our briefs, and I would be happy
6 to answer any questions, every historical source,
7 every source of constitutional meaning we have,
8 points to the same answer to that question.

9 Territories like American Samoa are in the United
10 States and for that reason the individual plaintiffs
11 are entitled to citizenship by virtue of the
12 Fourteenth Amendment.

13 THE COURT: Would you address the question as
14 to whether the provisions of the Constitution that
15 would seem to provide that territories should be
16 under the control of congress how that applies,
17 relates to your argument.

18 MR. SPENCER: Certainly. We have no dispute
19 that congress has plenary control over the
20 territories as it does over the District of Columbia.
21 But that does not mean that congress is free from the
22 constitutional obligations it has in passing laws for
23 the territories and especially it is not free of the
24 personal rights that are in the original Constitution
25 as well as the Bill of Rights under the Fourteenth

1 Amendment.

2 THE COURT: Okay. Unless you have got further
3 argument, let's hear from the government's position.

4 MR. SPENCER: Thank you, Your Honor.

00:28:34

5 MR. PEZZI: Good afternoon, Your Honor,
6 Stephen Pezzi from the Department of Justice on
7 behalf of the United States. Plaintiffs ask this
8 court to issue the first ever holding that with
9 respect to unincorporated territories birthright
10 citizenship is not only --

00:28:55

11 THE COURT: How do we know that American Samoa
12 is an unincorporated territory?

13 MR. PEZZI: Great question, Your Honor. First
14 of all, I don't think there is any dispute in this
15 case that American Samoa is an unincorporated
16 territory. I suspect that if you ask the
17 plaintiffs --

00:29:05

18 THE COURT: It doesn't just become an
19 unincorporated territory by fiat, somebody has got to
20 do something to say this is an unincorporated
21 territory.

00:29:14

22 MR. PEZZI: I think that's almost exactly
23 right, Your Honor. We would put it just slightly
24 differently. Actually the presumption with respect
25 to a territory is that it is unincorporated.

00:29:23

1 THE COURT: Where does that presumption arise?

2 MR. PEZZI: In *Balzac versus Porto Rico*, which

3 is one of the cases that followed after *Downes v*

4 *Bidwell* as decided in 1922, a majority of the Supreme

00:29:35

5 Court clearly adopts the *Insular* cases framework of

6 territorial incorporation, and it adopts effectively

7 what's a clear statement rule that suggests that if a

8 territory is to be incorporated into the union, we

9 look for a clear statement from congress to that

00:29:48

10 effect. There is no such clear statement from

11 congress here, and I again I think plaintiffs

12 wouldn't disagree with that. And Your Honor is

13 correct and my friend on the other side is correct

14 that generally the definition of an unincorporated

00:30:00

15 territory, and what we're looking for in that clear

16 statement, is a path to statehood.

17 It was around the turn of the 20th Century

18 where for the first time the United States acquired

19 territories that were not placed on the path towards

00:30:13

20 statehood, and that -- that new factual circumstance

21 was presented to the Supreme Court.

22 THE COURT: So at what point in the

23 territory's history is that determination made?

24 MR. PEZZI: It can be made at any point as

00:30:25

25 soon as congress acts to provide for the territory's

1 incorporation into the United States. So with
2 respect to some territories, it could be the moment
3 of acquisition. So there are many territories that
4 the United States acquired over the years primarily
5 before the Fourteenth Amendment for which either some
6 treaty with a foreign government or an explicit act
7 of congress or both.

8 THE COURT: To what extent does the treaty
9 under which the territory becomes subject to the
10 sovereignty of the United States influence that
11 decision?

12 MR. PEZZI: A treaty can be the supreme law of
13 the land just like an act of congress can.

14 THE COURT: So in the case of Puerto Rico,
15 there was a specific provision that talked about the
16 rights of the citizens would be subject to the
17 determinations of congress.

18 MR. PEZZI: That's exactly right.

19 THE COURT: Is there anything similar to that
20 in the treaties under which the American Samoan
21 islands became part of the United States.

22 MR. PEZZI: The short answer, Your Honor, is
23 no. Um, the legal document --

24 THE COURT: In fact, the treaty seems to
25 suggest that they will come with no discrimination.

1 MR. PEZZI: For today's purposes I think what
2 is important is that the treaties do not purport to
3 incorporate the American Samoa into the United States
4 and again I don't think plaintiffs would dispute
5 that. And so the question becomes when you have what
6 everyone agrees is an unincorporated territory, to
7 what extent does the Citizenship Clause apply. And I
8 think it is important to return to the text of that
9 provision again just to make sure we're all on the
10 same page there are two independent textual
11 requirements. One is that the individual be born in
12 the United States, the second that they're subject to
13 the jurisdiction thereof. My friend on the other
14 side is correct that the government does not dispute
15 that American Samoa is subject to the jurisdiction of
16 the United States. The question is whether American
17 Samoa, as an unincorporated territory, is in the
18 United States. Every court --

19 THE COURT: So at the time that the Fourteenth
20 Amendment was adopted, what was the -- what was the
21 common law understanding in the United States as what
22 it meant to be in the United States? The plaintiff
23 argues that it was well understood that that included
24 both the states and the territories.

25 MR. PEZZI: Well importantly, Your Honor,

1 there were no unincorporated territories in 1868 so
2 that does complicate the question of what --

3 THE COURT: There were territories, nobody had
4 made up the idea yet of unincorporated versus
5 incorporated so it was not on a play.

6 MR. PEZZI: That is true, Your Honor, there
7 were territories and the Doctrine of Territorial
8 Incorporation was not clearly expressed by the
9 Supreme Court until the early 1900s. But
10 respectfully, that argument and much of plaintiffs
11 argument is an argument that --

12 THE COURT: So answer my question. What was
13 the general understanding, under common law, as to
14 what it meant to be in the United States?

15 MR. PEZZI: So I think the government's
16 position is that "in the United States" means within
17 the 50 states.

18 THE COURT: That is not my question. That is
19 not my question. At the time the Fourteenth
20 Amendment was adopted, was it clearly understood that
21 "in the United States" included anyone that was
22 subject to the dominion and sovereignty of the United
23 States?

24 MR. PEZZI: The government does not dispute
25 that there was a common law understanding with

1 respect to birthright citizenship and that in the
2 United States for much of its history that --

3 THE COURT: Including at the time when the
4 Fourteenth Amendment was adopted?

00:33:42

5 MR. PEZZI: But before and after the
6 Fourteenth Amendment.

00:33:58

7 THE COURT: So at the time -- at the time that
8 the American Samoa islands became ceded to the United
9 States, what was the understanding under common law
10 of what it meant to be in the United States.

11 MR. PEZZI: So respectfully, Your Honor, at
12 that time I don't think there was any common law
13 understanding.

00:34:07

14 THE COURT: What do you do -- what do you do
15 with the 1898 decision of *Wong Kim Ark*?

16 MR. PEZZI: That is a great question.

17 THE COURT: Doesn't that clearly express
18 exactly the opposite of what you're arguing?

00:34:18

19 MR. PEZZI: I don't think it did, Your Honor.
20 So *Wong Kim Ark* is a plaintiff who was born in the
21 state of --

00:34:30

22 THE COURT: I understand the factual
23 distinction. But the court goes on after page after
24 page after page talking about the English common law
25 and what it meant under English common law and

1 applies that as an essential ingredient of part of
2 the logic to its conclusion.

3 MR. PEZZI: But the conclusion is about not
4 the in the United States requirement it is about --

00:34:44

5 THE COURT: I'm supposed to disregard --
6 disregard the 30 plus pages of analysis and say just
7 read the conclusion?

00:34:53

8 MR. PEZZI: Not at all, Your Honor, and I'm
9 not saying that. I'm saying that is a case about the
10 separate requirement not at issue here that someone
11 be subject to the jurisdiction of the United States.

00:35:08

12 THE COURT: But you can't deny the fact that
13 page after page of that decision develops the premise
14 that if you're subject to the jurisdiction of the
15 king, if you are a liege of the king, you are the
16 king's subject and subject to his rule which is
17 equivalent to being a citizen.

00:35:21

18 MR. PEZZI: I would dispute that that's
19 equivalent to being a citizen, Your Honor. Again,
20 I'm of course not asking Your Honor to ignore
21 anything that the Supreme Court has said and I'm not
22 just saying, to be clear, I'm not just saying our
23 only argument about *Wong Kim Ark* is there is a
24 factual difference. That is not the argument. It is
25 that the court in *Wong Kim Ark* was not setting out to

00:35:34

1 define but alone define with any rigor the meaning of
2 constitutional text within the United States.

3 Instead that is a case about whether or not Mr. Wong
4 Kim Ark was born subject to the jurisdiction of the
00:35:47 5 United States because his parents were citizens of
6 China and at the time that carried a lot of
7 significance under the Chinese Exclusion Acts.

8 Now, as to the constitutional text in the
9 United States which again was not at issue in *Wong*
00:35:59 10 *Kim Ark* just about a few years later the Supreme
11 Court did issue some holdings on the meaning of that
12 -- of very similar constitutional text. So in *Downes*
13 *v Bidwell*, five justices of the Supreme Court held
14 that the meaning -- that the constitutional provision
00:36:14 15 that applied quote, "throughout the United States,"
16 did not apply to Puerto Rico because Puerto Rico was
17 an unincorporated territory of the United States.

18 THE COURT: That court was not construing the
19 language at issue before this court.

00:36:26 20 MR. PEZZI: It was construing the meaning of
21 the phrase the United States.

22 THE COURT: In a completely -- in a totally
23 different context.

24 MR. PEZZI: I would disagree that it was a
00:36:34 25 totally different context, Your Honor, and I think

1 that's reflected in part by the extensive discussion
2 of citizenship in those cases. But the point is, the
3 constitutional text -- the constitutional provision
4 that was to apply throughout the United States did
5 not apply to Puerto Rico because it was an
6 unincorporated territory and I do not think that's a
7 holding that this court can ignore. And I think
8 importantly, again, every court to consider this
9 question --

00:36:48
10 THE COURT: Are you suggesting that that
11 decision binds the court to reach that conclusion?

12 MR. PEZZI: I concede that this is not a case
13 under the Tax Uniformity Clause, Your Honor, so there
14 -- there is some analytical work to be done to
15 explain why that holding applies to this case. But I
16 think it is quite clear and I have not heard any
17 argument from plaintiffs as would offer a principle
18 distinction between constitutional text that says
19 throughout the United States and constitutional text
20 that says in the United States especially when you
21 look to those opinions. I mean citizenship itself is
22 of course discussed.

00:37:11
23 THE COURT: One of the problems with the
24 *Downes* decision, and the *Insular* decisions uniformly,
00:37:23
25 is that they seem to be based on racial animus. They
00:37:37

1 have language in there that we would all find
2 disgusting today. But doesn't that suggest that that
3 should no longer be considered good law unless it is
4 absolutely mandated that this court follow it?

00:37:53

5 MR. PEZZI: So Your Honor of course the
6 government does not quarrel with the proposition that
7 there is some language in the *Insular* cases that when
8 you read it in 2018 at a minimum raises your eyebrows
9 and frankly worse than that. I mean there is

00:38:05

10 language that is entirely inappropriate and I'm not
11 asking this court to rely on any of that language and
12 none of it has appeared in the government's brief.

13 However --

00:38:15

14 THE COURT: And that language is absolutely
15 essential to the conclusion they reached in those
16 decisions.

00:38:24

17 MR. PEZZI: I don't think I would agree with
18 that, Your Honor. I think the *Insular* cases are
19 cases about the United States of America as a
20 sovereign power and whether it like every other
21 country at that time had the power to acquire
22 territory and whether its legislature had the
23 authority --

00:38:35

24 THE COURT: And the logic as to why these
25 provisions don't apply is based on the racial animus

1 that's expressed in those decisions. We don't want
2 to recognize these territories as being, quote,
3 "throughout the United States," because these people
4 because of the racial makeup simply are not equal to
5 American citizens.

6 MR. PEZZI: Your Honor, again, setting aside
7 the rhetoric you're referring to, the Supreme
8 Court --

9 THE COURT: Isn't that -- that's more than
10 just a rhetoric. Isn't that the logic of the
11 decisions?

12 MR. PEZZI: I don't think that's the logic of
13 the decisions, I mean I think the decisions again are
14 about the United States of America as a sovereign
15 power. But I mean importantly, whether -- no matter
16 how strong our feelings are about some of that
17 language or about the *Insular* cases in general, they
18 are the law of the land and that has not changed.
19 The Supreme Court has reaffirmed their --

20 THE COURT: Isn't it also true in those cases
21 not a -- it was a fractured plurality. You could not
22 even -- the one that wrote the opinion that's
23 recognized as the opinion of the court couldn't get
24 any other justice to join his opinion.

25 MR. PEZZI: Respectfully, Your Honor, I don't

1 agree with that. It was not a fractured plurality.
2 There is a majority of five of nine justices who set
3 forth --

00:39:46

4 THE COURT: Who didn't join each others
5 opinions.

00:39:56

6 MR. PEZZI: Well, some joined, some didn't.
7 There were three separate opinions. But even the
8 dissenting justices in those cases acknowledged that
9 there was a holding from five justices that although
10 Puerto Rico belonged to the United States, it was not
11 part of the United States. And --

12 THE COURT: Isn't that what -- isn't that what
13 a plurality decision is?

00:40:05

14 MR. PEZZI: No, Your Honor. I mean it's a
15 majority, it's five of nine. It's not like there is
16 only four justices of nine came to that conclusion.
17 I mean five of nine --

18 THE COURT: I take your point.

00:40:15

19 MR. PEZZI: -- constitutional violation but
20 importantly, I mean setting aside *Downes v Bidwell*,
21 *Downes v Bidwell* entirely for a moment, I mean
22 throughout the 20 Century and as recently as 2008 in
23 *Boumediene*, it remains the case that the *Downes v*
24 *Bidwell* and the *Insular* cases are the law of the land
25 and, you know, the D.C. Circuit applied it as

00:40:28

1 recently as 2015. Again, the Supreme Court in 2008
2 said there are parts of the *Insular* cases that nobody
3 likes. There are parts of it that the government
4 still thinks are absolutely correctly decided about
5 the United States of America as a sovereign power,
6 that they remain the law of the land, and, you know,
7 plaintiffs are free to one day ask the Supreme Court
8 as you know other plaintiffs have asked before that
9 they be narrowed or overruled in some way. But until
10 that happens, I think --

11 THE COURT: If they don't apply -- they don't
12 apply as a matter of holding that's binding on this
13 court because they were addressing a completely
14 different issue.

15 MR. PEZZI: I wouldn't call it a completely
16 different issue. I mean I think there is extensive
17 discussion of course in those opinions about what it
18 means for a territory to be unincorporated and the
19 significance of the application of the Constitution.
20 It's not really a tariff opinion. Frankly, when you
21 read *Downes v Bidwell*, you don't walk away from it
22 thinking you learned a lot about taxes and duties and
23 tariffs applying in foreign ports. It's case about
24 the United States of America's ability to acquire
25 territory and about the discretion that congress

1 retains under the Constitution to manage that
2 territory and to make a determination about how its
3 inhabitants are to be received into the United States
4 and whether and when. Now of course that
5 Constitutional understanding, you know, whether
6 plaintiffs would have joined the dissenters in *Downes*
7 *v Bidwell* where they own the court or not, the
8 subsequent 120 years I mean there has been an
9 absolutely unanimous settled consensus from all three
10 branches of government and including every court to
11 consider the question that it is up to congress to
12 decide whether, when, and under what circumstances
13 individuals are granted birthright citizenship. And
14 that's why congress has passed statutes providing for
15 birthright citizenship in Guam and the Virgin Islands
16 and Puerto Rico and the Northern Mariana Islands.

17 THE COURT: How do you address the plaintiffs
18 argument that if congress can make them citizens they
19 can make them uncitizens?

20 MR. PEZZI: Well, I mean so first of all the
21 Supreme Court has actually said the opposite in some
22 ways. I mean in a case called *Afroyim versus Rusk*
23 the plaintiffs themselves cite suggest that congress
24 has very little if any power to withdraw someone's
25 U.S. citizenship.

1 THE COURT: In fact, there is language that
2 says that depriving a person of citizen once a person
3 is a citizen, it is cruel and unusual punishment.

4 MR. PEZZI: That's right. The Supreme Court
5 has taken a very strict view of expatriation.

6 THE COURT: So how is that consistent if that
7 right is so essential, how is that consistent with
8 the fact that this right could be set by congress?
9 Presumably congress has the ability to repeal any act
10 it passes. Why wouldn't that extend to citizenship?

11 MR. PEZZI: I mean there is no dispute that
12 congress has the constitutional authority to provide
13 a uniform rule of naturalization and make laws
14 regarding naturalization. Now once someone has been
15 granted citizenship, removing that citizenship from
16 someone raises different constitutional concerns that
17 the Supreme Court has been very strict about that are
18 not presented here. But I do think the fact that for
19 the past 120 years every branch of government and
20 every court to consider the question has understood
21 that congress has the power to decide when if ever an
22 unincorporated territory should be granted
23 citizenship. I think that is meaningful and it
24 cannot be cast aside as easily as plaintiffs would
25 wish.

1 With respect to the Philippines, in
 2 particular. I mean that is a territory that was for
 3 about 50 years an unincorporated territory of the
 4 United States just like American Samoa is today.
 00:43:53 5 Congress never provided for birthright citizenship by
 6 statute and nobody thought that individuals born in
 7 the Philippines were U.S. citizens. The Supreme
 8 Court has encountered those enactments on several
 9 occasions and has never once expressed any concern
 00:44:09 10 that there might be any constitutional problem.

11 THE COURT: How would you address what seems
 12 to be undisputed in the historical factual background
 13 that when the -- when the American Samoans came in to
 14 the United States they believed they were coming in
 00:44:24 15 as citizens?

16 MR. PEZZI: I'm not sure that's undisputed.
 17 Frankly the government hasn't taken a position on
 18 that factual question. I don't think ultimately it
 19 answers any questions before Your Honor now, you
 00:44:38 20 know, whether they were correct --

21 THE COURT: Well, isn't it relevant as to what
 22 the language meant at the time they came into the
 23 United States?

24 MR. PEZZI: Well, it might be relevant if
 00:44:46 25 there were something in, you know, the legal

1 documents incorporating American Samoa or even
2 acquiring American Samoa that addressed the question
3 of citizenship. But again, as I don't think
4 plaintiffs would dispute, there is nothing in those
00:44:58 5 Deeds of Cession and there is nothing in the relevant
6 treaties with Great Britain and Germany that would
7 suggest that anyone in American Samoa is entitled to
8 citizenship and that's not their argument of course.
9 Their argument is regardless of what anybody put in
00:45:09 10 those documents as a matter of constitutional law
11 they're entitled to birthright citizenship.

12 THE COURT: I think their argument is at least
13 as I understand it would be that the time they came
14 in to the United States the common law was so well
00:45:21 15 established that if you are subject to the
16 jurisdiction, subject to the dominion, subject to the
17 control of the United States, you are a citizen of
18 the United States and therefore that should be the
19 understanding of the provisions that brought them
00:45:38 20 into the United States and the Fourteenth Amendment
21 that of course controlled whether they are citizens
22 of the United States.

23 MR. PEZZI: Respectfully, Your Honor, again I
24 don't think that common law understanding sheds any
00:45:49 25 light on the question of whether in an unincorporated

1 territory one is born, quote, in the United States.

2 And remember here I mean you have specific --

3 THE COURT: There is nothing in the treaty
4 that says you're coming in as a -- that was a concept
5 that was formed and not even conceived in anyone's
6 mind at the time they came into the United States.

7 MR. PEZZI: That may be so, Your Honor.

8 THE COURT: So why should we pick something
9 that happened 40 years later and use that as the
10 basis of the understanding of what their position was
11 when they came into the United States or within its
12 control.

13 MR. PEZZI: Respectfully, Your Honor, I hear
14 that from plaintiffs as an argument effectively that
15 the *Insular* cases are wrongly decided, that they
16 should be overruled, that the distinction between
17 unincorporated territory --

18 THE COURT: I don't have to overrule them,
19 they don't apply to this case. That's all I have to
20 find.

21 MR. PEZZI: But to do so, Your Honor --

22 THE COURT: I obviously couldn't overrule
23 them, that's not within my jurisdiction. But I can
24 find that they don't apply because they dealt with a
25 completely different constitutional provision.

1 MR. PEZZI: And to do that, Your Honor, you
2 would have to come up with a principle justification
3 that explains why although the five justices of the
4 Supreme Court held that constitutional language
5 throughout the United States does not include
6 unincorporated territories but does include
7 incorporated territories, you would have to come up
8 with some sort of principle legal explanation as to
9 why that wouldn't be true in a case of constitutional
10 language that says in the United States. And I have
11 heard nothing from plaintiffs thus far and again I
12 think it is instructive that again every court to
13 consider this question has come out the other way,
14 has looked at the same authorities that Your Honor is
15 considering, and has obviously ruled very closely.

16 THE COURT: Let me ask the question
17 differently. Do I even have to reach the *Insular*
18 cases to decide this case?

19 MR. PEZZI: It's a great question, Your Honor.
20 So I mean I think there is two answers. One, I think
21 the *Insular* cases are relevant for some of the
22 reasons we just discussed about the constitutional
23 text in the United States and what it means. That
24 said, there is a separate and frankly what the
25 *Insular* cases are more famously known for outside of

1 this case is the Doctrine of Territorial
2 Incorporation by which individual constitutional
3 rights either apply or don't apply to the
4 territories. So there are cases that come up that
5 say does the First Amendment apply in the
6 territories? Does the Fourth Amendment apply? Does
7 the Sixth Amendment apply? That doctrine I think the
8 plaintiffs and the government agree is not a doctrine
9 the court needs to consider here. That's because
10 there is a constitutional provision here that
11 actually has its own geographic scope and the real
12 question for Your Honor is whether in the United
13 States applies to incorporated territories, whether
14 that applies to unincorporated territories. So that
15 -- that secondary question of territorial
16 incorporation frankly I don't think makes a lot of
17 sense with respect to the Citizenship Clause.
18 Although, of course I do think it's entirely
19 consistent with the government's argument here and in
20 some tension with the plaintiffs' argument that the
21 Supreme Court continues to analyze these questions,
22 you know, as to whether certain constitutional rights
23 apply in the territories. It's hard to understand
24 why that would be the law of the land if everyone
25 understood that everyone born in the U.S. territory

1 was a U.S. citizen.

2 But in any event, to be clear, I think that
3 the parties agree that at least the government's view
4 is to the extent the *Insular* cases are relevant,
5 they're relevant in terms of defining the
6 constitutional text in the United States and that's
7 why primarily *Downes v Bidwell* is the case that's
8 most important. But the fundamental rights question
9 and the impractical and anomalous question that is
10 only in our brief really as an alternative argument
11 in response to plaintiffs' arguments that they
12 satisfied those requirements which we don't.

13 THE COURT: If I'm understanding what you're
14 saying, you're saying that I don't have to reach the
15 question of whether being a citizen is a fundamental
16 right.

17 MR. PEZZI: I think that's right, Your Honor.

18 THE COURT: But does the question of whether
19 being a citizen as a fundamental right inform as to
20 how the Fourteenth Amendment should be interpreted?

21 MR. PEZZI: I don't think it does, Your Honor.
22 I mean I think the only question is whether
23 unincorporated territories are in the United States
24 as that language is used in the Fourteenth Amendment.
25 And again, I think in *Downes v Bidwell*, Your Honor is

1 right this is about -- this case is about the Tax
 2 Uniformity Clause. I think that the holding of that
 3 case and even much of its reasoning makes it very
 4 hard to see how plaintiffs can get around to a
 5 holding that "in the United States" includes
 6 unincorporated territories. And, you know, were we
 7 in the D.C. Circuit or the Second or Third or Fifth
 8 or Ninth Circuits, you know, we would have submitted
 9 a five page brief instead of a 75 page brief that
 10 just says, you know, the courts have already decided
 11 with respect to the Philippines that in the United
 12 States --

13 THE COURT: Your whole argument is premised on
 14 the argument which we started with which is whether
 15 or not American Samoa is an unincorporated territory.
 16 If I wanted to go look up whether or not American
 17 Samoa is an unincorporated territory, where would I
 18 go find the answer to that?

19 MR. PEZZI: I think it is -- you would be
 20 proving a negative so I can't point you to one
 21 document to look up, but I mean you could look at the
 22 legal documents by which American Samoa was acquired
 23 by the United States you would find no discussion of
 24 incorporating American Samoa into the United States,
 25 you would find no discussion providing citizenship,

1 you would find no discussion making sure that
2 constitutional rights apply.

3 THE COURT: What territories were incorporated
4 territories?

00:51:06

5 MR. PEZZI: So I mean the Utah territory is an
6 example that was an incorporated territory. I mean
7 much of the --

00:51:19

8 THE COURT: If I wanted to go find the legal
9 documentation of Utah being an incorporated
10 territory, where would I find that?

00:51:31

11 MR. PEZZI: I wish I had that particular one
12 with me. I mean with respect to all of the -- with
13 respect to many of the territories, there were
14 explicit acts of congress or explicit treaty
15 provisions that provided that this territory will be
16 incorporated into the United States, will be placed
17 on a path to statehood under a certain timeline both
18 before and after the Fourteenth Amendment. That's
19 actually also discussed in *Downes*. I mean in
20 footnote one of the government's reply brief in this
21 case actually pulls out some language from *Downes*.

00:51:45

22 THE COURT: Let's test your logic. What about
23 Alaska?

24 MR. PEZZI: So Alaska --

00:51:54

25 THE COURT: Was there a treaty that said

1 Alaska will be made a state?

2 MR. PEZZI: On that particular example I don't
3 have the answer with respect to Alaska in particular.
4 I can tell you the Supreme Court did decide that
00:52:05 5 Alaska was an incorporated territory. And there is a
6 Supreme Court decision called *Rasmussen* that says
7 that Alaska is incorporated into the United States
8 and it was incorporated by means of legal documents
9 acquiring the territory from Russia. And so that
00:52:20 10 would present a different question.

11 THE COURT: But what about Hawaii?

12 MR. PEZZI: Hawaii I think is the same answer
13 except maybe without an explicit Supreme Court case
14 saying so. So Hawaii originally one of the *Insular*
00:52:31 15 cases is *Hawaii versus Mankichi* and that talks about
16 the Sixth Amendment jury trial right. But eventually
17 Hawaii is incorporated into the United States and
18 there is also an explicit act of congress that
19 provides that individuals in Hawaii, even while it
00:52:46 20 was a territory, were to be provided birthright
21 citizenship.

22 THE COURT: So is it -- is it a correct
23 conclusion to say at this point we have no
24 determination as to whether American Samoa is an
00:52:59 25 incorporated or unincorporated. We don't have any

1 judicial actions saying it's unincorporated. We
2 don't have any legislative actions saying it's
3 unincorporated. We have an assumption by the United
4 States that it's unincorporated as a position in this
5 party in this litigation. What else is there?

00:53:18
6 MR. PEZZI: Well, there's the Supreme Court's
7 decision in *Balzac* which sets forth a clear statement
8 that says absent a clear statement suggesting a
9 territory has been incorporated, it's not
10 incorporated.

11 THE COURT: Clear statement by whom?

12 MR. PEZZI: By the congress or by the treaty,
13 whatever legal documents acquired the territory.

14 THE COURT: So your argument is all
00:53:39 15 territories are unincorporated until someone makes a
16 determination that they're incorporated?

17 MR. PEZZI: That is the Supreme Court's -- I
18 mean that is the law of the land in *Balzac*. And
19 again, if you're concerned about the question of
00:53:50 20 whether you can confidently rely on the fact that
21 American Samoa is an unincorporated territory, I mean
22 you could ask plaintiffs or you could ask the
23 permissive intervenors I suspect plaintiffs would
24 tell you they don't like the distinction between
00:54:01 25 incorporated and unincorporated territories at all,

1 but I don't think plaintiffs are arguing here that
 2 American Samoa is an incorporated territory. And
 3 again, I mean that distinction whether we find it
 4 persuasive or not, whether we would have ruled
 5 differently if we were on the Supreme Court in the
 6 1900s, that is the law of the land, there is a
 7 distinction between incorporated and unincorporated
 8 territories, and I don't think that's something that
 9 this court can ignore.

10 THE COURT: Other than American Samoa, are
 11 there any other unincorporated territories?

12 MR. PEZZI: There are. Guam, the U.S. Virgin
 13 Islands, Puerto Rico, and the Northern Mariana
 14 Islands are all unincorporated territories. Congress
 15 has provided for birthright citizenship by statute in
 16 those territories. The Philippines was also an
 17 unincorporated territory where they did not like
 18 American Samoa and of course that's all consistent
 19 with the government's view that it is up to congress
 20 to determine whether, when, and under what
 21 circumstance citizenship is provided to
 22 unincorporated territories.

23 Again, I mean if plaintiffs are correct, then,
 24 you know, the U.S. congress and the executive branch
 25 have been violating the Constitution for hundreds of

1 years. Every court to have considered the question
 2 has misinterpreted the meaning of the constitutional
 3 text and I just don't think that's the appropriate
 4 reading of the past 120 years of practice and
 5 precedent. They spend a lot of time in their briefs
 6 arguing about sort of background common law
 7 understanding, and I think some -- well some of that
 8 is certainly interesting and some of it is even
 9 helpful in terms of understanding what the drafters
 10 of the Fourteenth Amendment were thinking about, it
 11 can't answer the question of whether citizenship
 12 applies in unincorporated territories because the
 13 United States had no unincorporated territories at
 14 the time of the Fourteenth Amendment's enactment.

15 So I think with respect to plaintiffs' other
 16 arguments, unless Your Honor has specific questions
 17 on what we just discussed --

18 THE COURT: You just made an assertion that
 19 there were no unincorporated territories at the time
 20 of the Fourteenth Amendment. So what were the
 21 territories?

22 MR. PEZZI: So --

23 THE COURT: If they weren't -- they were
 24 either incorporated or unincorporated or that concept
 25 didn't exist.

1 MR. PEZZI: They were incorporated
2 territories. So I mean --

3 THE COURT: So what made them incorporated
4 territories?

00:56:10 5 MR. PEZZI: Say that again, Your Honor?

6 THE COURT: What made them incorporated
7 territories?

8 MR. PEZZI: So there were either acts of
9 congress or they were treaties and the legal
00:56:17 10 documents by which the United States acquired those
11 territories provided that they were placed on a path
12 toward statehood. So the first example is the
13 Northwest Territory, you know, the territory
14 northwest of the Ohio River that eventually became
00:56:30 15 Ohio, Michigan, Wisconsin, et cetera. The Northwest
16 Ordinance of 1787 enacted by the Confederation
17 Congress and then ultimately by the First Congress in
18 1789 it explicitly places the Northwest Territory on
19 the path to statehood. It sets forth a system of
00:56:48 20 government in that territory that is entirely
21 inconsistent with the way the rest of the actual
22 states were governed and the way the District of
23 Columbia was later governed, and says, you know, when
24 a certain amount of people live in the Northwest
00:56:58 25 Territory they can elect a representative and be

1 placed on a timeline by which they become
2 incorporated into the United States as individual
3 states.

4 And so that's an example of although the, you
5 know, the distinction between incorporated and
6 unincorporated territories those labels perhaps not a
7 matter of common parlance until later the ideas
8 behind that distinction really do come from the
9 founding, and, you know, wasn't just the Northwest

10 Territory. I mean virtually all of the land that is
11 in the contiguous 48 states the portions of it that
12 were once territories and that later became states,
13 the documents by which they were acquired would

14 generally explicitly point out they would say

15 something to the effect of, you know, the

16 Constitution will attach to this land and be set on
17 some path 5 years, 10 years become a state, et

18 cetera. And so, you know, much of this debate of

19 course is a debate that the Supreme Court has already

20 resolved. So even if Your Honor thinks that the

21 distinction between incorporated and unincorporated

22 territories makes some sense, even if you think it's

23 inappropriate to draw those distinctions, that is the

24 approach the Supreme Court has taken and I think it

25 remains the law of the land today.

1 Unless Your Honor has other questions.

2 THE COURT: Let's -- let me hear from the --
3 from Amici brief or counsel.

4 MR. PEZZI: Thank you.

00:58:19

5 MR. WILLIAMS: Good afternoon, Your Honor.
6 For the record, Mike Williams from Kirkland and Ellis
7 on behalf of the American Samoa Government and
8 Congresswoman Aumua Amata. And if Your Honor would
9 indulge me, I have a presentation that I would like
10 to show. I have hard copies that I can hand up to
11 the court and to counsel. May I approach?

00:58:35

12 THE COURT: You may.

13 MR. WILLIAMS: May I publish this in the
14 courtroom, Your Honor?

00:58:52

15 THE COURT: You may.

16 MR. WILLIAMS: And Your Honor, I would like to
17 thank Your Honor for granting my pro hac motion and
18 for giving us an opportunity to be heard today.

00:59:20

19 During the argument on the motion for
20 intervention, we stressed to the court that the
21 American Samoa Government and the Congresswoman view
22 this as an existential issue for American Samoa. I
23 have heard a lot of arguments about the text of the
24 Constitution and English common law. I'm going to
25 try to address each of the questions that Your Honor

00:59:34

1 asked both plaintiffs counsel and counsel for the
2 United States over the course of this presentation.
3 But while I'm giving the presentation I would like to
4 focus on three particular issues that I hope will
00:59:47 5 inform Your Honor's ruling in this case. And those
6 three issues are, first, what happened before, what
7 is the precedent, what is the context, what did the
8 law say at the time that this case came to Your
9 Honor.

00:59:59 10 Second, what American Samoa expects. And I
11 don't mean expects in the terms of entitlement during
12 the terms of wants from the court, but rather what
13 are the stabilized expectations that the American
14 Samoa Government is acting under today.

01:00:14 15 And then third, because I don't think it was
16 addressed by either of the counsel that spoke before
17 me, including plaintiffs' counsel, what about these
18 plaintiffs? What about their injuries? And is there
19 some way that they can be ameliorated.

01:00:26 20 So turning to the first of those issues, Your
21 Honor, what happened before. I want to quote Judge
22 Leon on the Federal Court in the District of the
23 District of Columbia who was reviewing the same
24 issues, substantively the same issues that are before
01:00:39 25 this court. And when he granted the motion to

1 dismiss in the case *Tuaua versus The United States*,
2 he acknowledged, "in short, federal courts have held
3 over and over again that unincorporated territories
4 are not included within the Citizenship Clause, and
01:00:54 5 this court sees no reason to do otherwise"
6 exclamation point. Which is sort of a tick that
7 Judge Leon does.

8 But what he was saying was absolutely correct.
9 Because this goes back, even though these are cases
01:01:09 10 that don't necessarily resolve this specific issue on
11 the unincorporated status of American Samoa, Your
12 Honor, the United States Supreme Court was assuming
13 in the footnotes as early as 1954, for example, that
14 the people of the Philippines were nationals who had
01:01:25 15 permanent allegiance to the United States, but who
16 weren't on the path to citizenship. And granted
17 that's dicta in a Supreme Court footnote, but dicta
18 in a Supreme Court footnote are the things that court
19 of appeals cases and then district court cases are
01:01:39 20 made of later on because they're the sort of things
21 that establish those stabilized expectations that I'm
22 going to speak about in just a little bit. And
23 consistent with this understanding, Your Honor, as
24 you will see over and over again, the federal courts
01:01:52 25 of appeals have ruled that the Citizenship Clause

1 does not extend into the unincorporated territories
2 of the United States. This case was brought by this
3 counsel with a different set of plaintiffs in the
4 D.C. Circuit. They lost that case all the way up to
5 certiorari denied at the United States Supreme Court.
6 I expect that we would see this case brought in the
7 Ninth Circuit next because there is such a huge
8 Samoan population in the Ninth Circuit and because
9 there are stereotypes about the Ninth Circuit Court
10 of Appeals. But there the arguments are probably
11 foreclosed. Because as Your Honor knows, in *Rabang*
12 *versus I.N.S.* in 1994, the Ninth Circuit rejected
13 these arguments as applied to the Philippines. The
14 Fourth Circuit in 1998 called these arguments an
15 intricate argument but this was 20 years ago, Your
16 Honor, and they rejected just the theories that the
17 plaintiffs are putting before you at this time.

18 The Second Circuit in 1998, and again 20 years
19 ago the Second Circuit said that these arguments are
20 novel, they're interesting. But was it novel 20
21 years ago, Your Honor? At this point it is pretty
22 old and stale and it has been rejected every time
23 that it has come up.

24 Now, the Fifth Circuit has also ruled that
25 these cases have persuasive reasoning as recently as

1 2010, so 1998, and then we can bring this back to
2 about 10 years ago. And on the face of this,
3 plaintiffs' argument is as follows. None of these
4 other courts took this case seriously. That is, they
5 say none take seriously the task of examining the
6 text, structure, history, and purpose of the
7 Citizenship Clause. I'm going to say that's just not
8 true from a review of these courts decisions, Your
9 Honor, because if you look at cases like *Rabang*,
10 you'll see that they were addressing exactly the
11 textual arguments that you saw the plaintiffs'
12 counsel on this side and the United States Government
13 on that side raise about whether or not the
14 Fourteenth Amendment is different from the Thirteenth
15 Amendment because it contains this expressed
16 geographical limitation. The Ninth Circuit also
17 addressed all of these common law issues that Your
18 Honor had addressed here. So the *Snails* case or the
19 *Barnes* case and all of those other cases from before
20 the United States was founded or at around that time,
21 the *Rabang* decision took on this notion that there
22 were codified English common law principles and it
23 addressed them. And the cases that followed *Rabang*
24 in the Ninth Circuit more than 20 years ago also
25 looked at all these arguments and rejected them.

1 There is nothing new under the sun so far, Your
2 Honor.

3 Next, there is this idea that we should extend
4 *Wong Kim Ark*. But both the Ninth Circuit, the Second
01:04:35 5 Circuit, the Fourth Circuit, the Fifth Circuit have
6 all said that *Wong Kim Ark*, despite its page after
7 page about citizenship, shouldn't be extended to the
8 unincorporated territories because of the anomalous
9 results that it would have that would put too much
01:04:49 10 wait on *Wong Kim Ark* to say that.

11 Finally, there is this argument that because
12 the *Insular* cases were born on racist sentiments that
13 the court should disregard them. I will say Your
14 Honor on that point I think there is nobody who is
01:05:04 15 more exercised about the racist sentiments that are
16 in the *Insular* cases than the Government of American
17 Samoa that represents the American Samoan people or
18 the congresswoman from American Samoa who represents
19 those same people in our federal government. And she
01:05:17 20 is the only individual who represents the people of
21 American Samoa in the federal government, Your Honor,
22 by popular vote. Nobody is more offended, is more
23 mortified and who has more at stake in deploring
24 those racist arguments. But I will say that those
01:05:34 25 same courts, Your Honor, also address those racist

1 arguments. As you can see in *Rabang*, the Ninth
2 Circuit said, while we're mindful of plaintiffs'
3 claims that the district court erroneously excluded
4 expert evidence, it says they are affirming the
5 district court's dismissal on an issue of law only.
6 So it is they wouldn't affirm the racial elements of
7 the *Insular* cases, but it's a matter of law that they
8 knew they were going to apply them, Your Honor.

9 There is a separate argument that plaintiffs
10 have made that you should ignore those cases, not
11 *Tuaua* which spoke directly to this issue by the D.C.
12 Circuit, but these other Courts of Appeals cases that
13 involve the Philippines because the Philippines are a
14 former colony. Now I'll note, Your Honor, that this
15 argument is at tension with the arguments that
16 they're making about how citizenship can't be
17 withdrawn. Because by my calculations, and this
18 isn't record evidence and I could be wrong, but I
19 think there are 11,000,000 Filipino citizens who were
20 born before 1946, before the Philippines gained its
21 independence who could claim to be birthright
22 citizens of the United States today. And I think
23 that the valence of the Philippines could claim to be
24 citizens by descendency from a U.S. citizen. So it
25 is understandable why the plaintiffs would want to

1 try to set that apart, but their argument for doing
2 so, Your Honor, is that when the Philippines became
3 independent, it extinguished any claim to
4 citizenship. There is no statute on that, there is
01:07:01 5 no case law on that. It is an anomaly because
6 they're trying to explain away an inconvenient fact
7 for them, Your Honor. But even if that weren't the
8 case, this hasn't been applied just to the
9 Philippines and it hasn't been applied just 20 years
01:07:14 10 ago or 100 years ago. Because as recently as 2012,
11 the Ninth Circuit in applying the Naturalization
12 Clause of the Fourteenth Amendment to the
13 Commonwealth of the Northern Mariana Islands affirmed
14 that the Citizenship and Naturalization provisions of
01:07:30 15 the Fourteenth Amendment do not apply to
16 unincorporated territories. And we've cited all
17 these courts -- all these cases in our brief, Your
18 Honor.

19 Now, I'll notice as the United States
01:07:42 20 government did, that it's not just courts who have
21 been making these decisions. That it has been the
22 uniform understanding of the United States government
23 in congress, in the executive, and in the judiciary,
24 that the Citizenship Clause does not apply to these
01:07:58 25 unincorporated territories.

1 Now, I don't know what senator so and so or
2 what some ratifier was thinking in 1866 or in 1868,
3 but I do have a sense of what was being done in 1899
4 in the Supreme Court and what has been done in all of
5 the times since when unincorporated territories like
6 Guam, like the Commonwealth of Northern Mariana
7 Islands had evinced such a desire for citizenship
8 that congress decided to act upon it. And in each of
9 those cases, congress said as a statutory matter that
10 they would make Puerto Rican citizens, that they
11 would make residents of the CNMI citizens, or that
12 they would make residents of Guam citizens. And they
13 have not done so for American Samoa. And I can say
14 that's important, Your Honor. Not because American
15 Samoans are being racially excluded, I'm coming right
16 now before you, Your Honor, as the only voice of the
17 elected representatives of the American Samoan people
18 to say we do not want you to grant birthright
19 citizenship. It would be an affront to our
20 sovereignty if you were to do that now. It's not
21 something that we believe you should do as a matter
22 of the law what the cases say and what the Fourteenth
23 Amendment says, but it is something that if you take
24 that step Your Honor, will threaten American Samoan
25 society and upset the real agreement that we had with

1 the United States.

2 Turning to that agreement, that's what
3 American Samoa expects. So I'll preface this by
4 saying, American Samoa is a very different place than
01:09:32 5 what Your Honor is used to here in Utah. I
6 understand that Utah doesn't have the largest
7 territory of the United States, but American Samoa
8 has roughly 50,000 people. The judicial definition
9 of unincorporated territory as a shorthand has often
01:09:47 10 been whether or not a territory is on a path to
11 statehood. American Samoa would be unlikely for
12 many, many years to ever reach the population minimum
13 in order to become a United States state. It has
14 about 50,000 people and I believe it would need about
01:10:04 15 500,000 to even start contemplating that. But the
16 differences between American Samoa and the United
17 States go far beyond just the fact that it is very
18 remote geographically and the fact that there are so
19 few people there.

01:10:19 20 Your Honor saw the American Samoan seal
21 splashed on the screen for just a moment. I can
22 bring it back just so that you can see it because I
23 think it is worth looking at. And it has the logo of
24 American Samoa on it. And the motto of American
01:10:32 25 Samoa is Samoa Muamua Le Atua which means in Samoan,

1 "In Samoa God is first." Not in God we trust, not
2 God is great, but there's lots of freedom of religion
3 around here. And for sure it is a very pluralistic
4 place and it is very accepting of outside people.

01:10:50 5 But American Samoa has a culture and a history and
6 traditions that are completely different from
7 anything that ever existed in the United States, Your
8 Honor. Hawaii is a useful analogue, but Hawaii is
9 also an instructive analogue because of the way that

01:11:05 10 the Hawaiian people have lost their land and because
11 of the way that Hawaiians have had to struggled to
12 maintain their language, their identity, and their
13 culture. And the reason why I think it is important
14 to talk about what American Samoa expects, is because

01:11:18 15 American Samoa was promised something different from
16 the United States Government, Your Honor. And what
17 the plaintiffs argue is that without granting
18 birthright citizenship, and this appears at Page 30

01:11:34 19 of their summary judgment motion, that denying their
20 right to birthright citizenship would thwart the

21 voluntary agreement that Samoans entered with the
22 United States. And I am here to tell you nothing
23 could be further than the truth, Your Honor, because
24 American Samoa is the only U.S. territory that was

01:11:49 25 not taken by conquest. The relationship with the

1 United States and American Samoa has been entirely
2 voluntary since its inception since the chiefs deeded
3 their territories to the United States and entered
4 into the Deeds of Cession. And I would challenge
5 plaintiffs' counsel to point to a single provision in
6 the Deeds of Cession that show that citizenship of
7 any sort was ever a part of this deal. We can go
8 back to 1899 and determine whether or not there is
9 something in those Deeds of Cession which exist, you
10 can find them in the U.S. reports, Your Honor, you
11 can find them in the U.S. statutes, anything about
12 citizenship there, but I would also point Your Honor
13 to the history of American Samoa since those Deeds of
14 Cession were entered because American Samoa has
15 created its own Constitution in 1967, it has amended
16 its Constitution in 1984, and it has developed its
17 own system of self-government, it has a voice in the
18 federal government, and in all of those 100 plus
19 years since the Deeds of Cession were entered,
20 American Samoa has never, despite its vibrant
21 democracy, and its functioning self-government, asked
22 the United States for citizenship.

23 THE COURT: That seems to be contrary with the
24 historical evidence that has been provided. That for
25 the first 30 years after they were ceded into the

1 United States they strongly believed that they were
2 citizens and were much disappointed that they were
3 not accepted as citizens.

4 MR. WILLIAMS: Your Honor, I would like
01:13:17 5 plaintiffs' counsel, when he or she gets up, when he
6 gets up in reply, to discuss that historical
7 evidence. Because all that I have seen to support it
8 is a stray reference to two members of a commission
9 that went to Samoa in 1930, there is a page that's
01:13:32 10 cited there, and I have looked through those
11 materials, Your Honor, and I haven't seen what it is
12 exactly whom they spoke to, whether or not there were
13 some governmental pronouncement, this isn't a
14 document that's very accessible, I've looked for it
01:13:47 15 and I haven't been able to find it. I know
16 representing the United States the American Samoan
17 Government that right now we are telling Your Honor
18 that there is no desire for citizenship and in fact
19 there is an opposite desire. If American Samoa wants
01:14:02 20 citizenship, we will decide it for ourself and we'll
21 raise it with congress or if necessary with the
22 courts, Your Honor. But I would be really interested
23 in learning more about that, whatever that -- I don't
24 see any quotations, I didn't see any documents that
01:14:14 25 were attached to any of the briefs. All I have seen

1 are stray references to that document which I haven't
2 had a chance to examine despite my best efforts to
3 get it in my hand.

4 Now, I'm not saying that two members of
5 congress or two members of a commission in 1930
6 didn't go to American Samoa and despite the
7 linguistic differences didn't learn that some Samoans
8 thought that they were citizens or thought that there
9 might be some confusion about their citizenship

10 status. What I am saying is that if American Samoa
11 wants citizenship, Your Honor, I'm telling you it
12 knows how to ask for it now, it knew how to ask for
13 it in 1967, it knew how to ask for it in 1984, and it
14 has seen Puerto Rico and Guam and the Northern
15 Mariana Islands ask for it. There should be no
16 confusion on this point, Your Honor.

17 And if there were any place where that promise
18 of citizenship should have been made, it would have
19 been in the Deeds of Cession. And I will be
20 surprised if plaintiffs' counsel gets up after I sit
21 down and says it is right here, Your Honor.

22 What did the United States promise? And I'm
23 quoting here from something that we attached to the
24 record and it is our brief in opposition from the
25 Supreme Court decision in *Tuaua*, Your Honor, and it's

1 an observation by Governor Peter Tali Coleman who was
 2 the first Samoan who became governor of American
 3 Samoa. Peter Tali Coleman in addition to being the
 4 first governor of American Samoa is also the
 5 congresswoman's father. He is a gentleman who was a
 6 Capital Hill Police Officer who worked in the daytime
 7 on Capital Hill, put himself through Georgetown Law
 8 School at night, and then went back home to become
 9 the first Samoan who was governor of American Samoa.

10 And so what he says should be given some credence.
 11 And what he noted that what was promised was that the
 12 United States would guarantee not only the protection
 13 of American Samoa, not only our islands themselves,
 14 but also of our land, customs, and traditions. And
 15 that is what American Samoa has asked of the United
 16 States. And as of the United States Government --

17 THE COURT: What is the basis for his making
 18 that statement? Was he present? Was he part of the
 19 negotiation?

20 MR. WILLIAMS: He can review the Deed of
 21 Cessions and Your Honor in American Samoa --

22 THE COURT: Yeah, I understand his statement,
 23 but I don't know the foundation for his statement.
 24 What basis does he have to make that assertion?

25 MR. WILLIAMS: The foundation is -- there are

1 two, Your Honor. First, in the United States -- in
2 the American Samoan Constitution which because
3 American Samoa is an unincorporated territory was
4 also enacted as a statute in congress and I believe
01:16:46 5 that it is at 14 USC 1661, I might be wrong about
6 that citation but if I am I will be sure to get it to
7 Your Honor, it explicitly guarantees Samoa and makes
8 it of paramount importance that the Samoan way of
9 life is preserved.

01:17:01 10 And second, as Robert Shanks who was one of
11 the people who was involved in the 1984 amendment to
12 the Constitution observed, it has been a constant
13 policy of the United States partly as a matter of
14 honor, partly as result of treaty obligations, not to
01:17:17 15 impose our way of life on Samoa. That's where that's
16 coming from, Your Honor. It's coming from Deeds of
17 Cession that were signed by chiefs who aren't just
18 Thomas Jefferson and George Washington, they're not
19 just people who we watch Broadway plays about like
01:17:31 20 Hamilton, these are people who are family members who
21 hold chiefly titles that have been passed down, who
22 these 50,000 people in American Samoa feel a
23 familial, traditional, cultural, social connection
24 with that's very different from how we view our
01:17:46 25 founding fathers, Your Honor, and that's why Peter

1 Coleman spoke about that with such authority.

2 So what I would say is what do the plaintiffs

3 do with these arguments that granting birthright

4 citizenship would disrupt the American traditional

01:18:03 5 way of life which the United States Government has

6 agreed would be of paramount importance. And what

7 they say, Your Honor, is they say on Page 75 of their

8 motion -- on Page 30 of their motion to dismiss they

9 say there are -- their arguments that this

01:18:23 10 citizenship clause extension would imperil the

11 traditional Samoan way of life such as the

12 territories longstanding system of communal land

13 ownership in *Tuava* American Samoa's government and

14 the territories delegate posited that the extension

01:18:39 15 of citizenship could result in greater scrutiny under

16 the Equal Protection Clause. This concern has never

17 made any sense. So you can understand why the

18 American Samoa Government doesn't necessarily see

19 these plaintiffs who are just saying that their

01:18:53 20 arguments don't make any sense, that these concerns

21 are unfounded, and that Mr. Spencer can stand up in

22 front of you and say he doesn't think it would make a

23 difference in the future, why they're not willing to

24 take Mr. Spencer and plaintiffs word for it when

01:19:07 25 they're saying that this fundamental change to status

1 is something that could harm American Samoa. And
2 I'll say what gives them more concern there, Your
3 Honor, is when you look at the plaintiffs' complaint,
4 over and over again at the same time that the
5 plaintiffs seem to give some sort of hand waving to
6 the idea that Samoan culture would be preserved, the
7 statements in their brief show that what they're
8 really looking to do, or what they're really asking
9 the court to do, is to recognize that because times
10 are changing American Samoa should change as well.

11 And if you look on Page 31 of their summary
12 judgment motion, they say the *Insular* cases rationale
13 for adopting special rules for certain territories
14 does not extend because it only provides rules and
15 regulations to govern temporarily territories. So
16 Your Honor, it has been 100 years, but the United
17 States Government, the American Samoa Government,
18 hasn't made a decision yet that it is not temporarily
19 a territory of the United States. They go on to say
20 in their complaint where they talk about American
21 Samoa governance. This is where they're talking
22 about the clients that I represent, Your Honor. They
23 say the government's structure of American Samoa has
24 become distinctly American in significant ways since
25 it came under U.S. sovereignty.

1 Your Honor, that's absolutely irrelevant. If
2 plaintiffs are saying that because times are changing
3 it is time for American Samoa to accept this court
4 ordering their citizenship, that's exactly why I so
01:20:36 5 urgently asked to intervene in this case, Your Honor,
6 because as Judge Janice Roger-Brown writing for the
7 unanimous panel of the D.C. Circuit in *Tuaua*
8 recognized, despite American Samoa's lengthy
9 relationship with the United States, the American
01:20:52 10 Samoan people have not formed a collective consensus
11 in favor of the United States citizenship. In part,
12 this reluctance stems from unique kinship practices
13 and social structures inherent to the traditional
14 Samoan way of life. And that's absolutely correct,
01:21:07 15 Your Honor. And what the D.C. Circuit said was that
16 to accede to the plaintiffs demands in this case and
17 to impose birthright citizenship over the objections
18 of the American Samoan Government that is the
19 elected, the only representative voice of the
01:21:24 20 American people that is coming before Your Honor in
21 this court or in any of this litigation, would be
22 paternalistic or imperialistic, Your Honor.

23 THE COURT: But isn't that a misdirected
24 argument? The whole argument you've made seems to me
01:21:37 25 to ignore the fact if the Fourteenth Amendment in

1 fact requires that anyone born in the United States
2 be a citizen, it seems irrelevant whether or not the
3 Samoan people today want that right or not. We long
4 ago decided the issue. You don't get to voluntarily
5 decide whether or not you can opt out of the
6 Constitution.

7 MR. WILLIAMS: Your Honor, that raises an
8 interesting question because if we long ago decided
9 the issue, why have all of the other courts got it
10 wrong?

11 THE COURT: I don't know. Maybe they didn't
12 get it wrong. But it is at least a question that has
13 to be answered.

14 MR. WILLIAMS: And that's why I think pointing
15 to the context and why I spent so much time on it,
16 Your Honor, is because the fact that all of these
17 courts unanimously have decided whether it's with the
18 specific holding with regard to American Samoa,
19 whether it is in a case that's about taxes and
20 duties, whether it is with racist judges or whether
21 it is with more enlightened judges of the Ninth
22 Circuit just eight years ago, they have unanimously
23 found that plaintiffs' arguments do not state a
24 claim. That they are wrong. And so whether or not
25 that's persuasive authority, whether or not that is

1 binding authority, what I will say to Your Honor is
2 it is authority that the American Samoa government
3 has relied upon in ordering its business. It's a
4 framework that even though there were racist elements
5 to it, the American Samoan Government is saying let's
6 put aside the racist arguments of the Florida court
7 or the Taney court or whatever you have. If there
8 weren't something like the unincorporation doctrine,
9 the United States would probably have to invent one.
10 Because the alternative, Your Honor, would be even
11 crazier. The alternative would be that any time the
12 United States takes some territory, that the
13 Constitution, including the Citizenship Clause,
14 applies with full force and effect wherever the
15 United States might find itself. And I don't know
16 all of the different permutations, and my imagination
17 probably isn't good enough to give you great examples
18 right now, but I can point to Bagram Air Force Base,
19 I can point to Guantanamo Bay, I can anticipate that
20 some time maybe not in ten years and maybe not under
21 the Trump Administration but maybe at some point in
22 100 years there might be a use for trust territories
23 of the way that the United States and other European
24 powers have taken on after World War I and World War
25 II. And even Justice Kennedy, who is no racist, Your

1 Honor, recognized in *Boumediene* when you were asking
2 counsel for the United States isn't the inherent
3 logic of these *Insular* cases racist? I would say no.
4 What Justice Kennedy said in *Boumediene* was there was
5 a recognition, Your Honor, that these territories
6 that were acquired by the United States, many of them
7 had Spanish civil law systems, there would have been
8 great disruption to those societies to impose the
9 English common law system upon them. And so what the
10 *Insular* cases allowed, whether right or wrong, we
11 have been living under it for 100 years and we've
12 come to rely on it, is that the United States could
13 hold territories and not say to people who didn't
14 want it, you are now Americans, welcome to America,
15 this is how it's going to be. And for the American
16 Samoa people, Your Honor, this has allowed them to
17 perpetuate their cultures and their traditions in a
18 way that wouldn't be possible otherwise. And that's
19 why we're asking Your Honor to maintain that today.

20 Now, let's say the third point, Your Honor, is
21 what about the plaintiffs. Because as I said, nobody
22 has spoken about the plaintiffs during this entire
23 argument. But I read their complaint and I do see
24 that they have different categories of complaints,
25 different categories of harms they're alleging. And

1 the American Samoan Government and the congresswoman
2 from American Samoa they care deeply about any harms
3 that are being undertaken to any American Samoans
4 anywhere in the world. Now, one category of those
01:25:19 5 complaints, Your Honor, is the fact that people who
6 are in Utah but they are nationals, who are really
7 U.S. American Samoa citizens, they're not citizens of
8 the United States, but more citizens from American
9 Samoa, they're not able to vote, and say, that's --
01:25:34 10 that is right, Your Honor. That happens when
11 somebody from France or somebody from Spain is in a
12 different jurisdiction. If I were to move to
13 California I wouldn't be able to vote without
14 establishing a residency within California. What's
01:25:47 15 fortunate for these particular plaintiffs is that if
16 they had decided that they wanted to become United
17 States citizens, not only do they have a path, not
18 only are they not disabled from doing so, but they
19 have a glide path for doing so, Your Honor.

01:26:01 20 The United States has made it easier for
21 American Samoan residents to become citizens of the
22 United States. There is no five-year resident alien
23 requirement. That's actually a three-month
24 requirement. They do have to take the citizenship
01:26:16 25 exam. They do have to demonstrate a proficiency in

1 English. And having grown up in American Samoa with
2 the schools there and with the English education
3 there, they'll have a much better chance at it than
4 others. But if these plaintiffs in this case want to
5 become American Samoans, they want to become United
6 States citizens, they have a way to do so very
7 quickly Your Honor and for very little in terms of
8 resources. And I understand the \$700.00 fee may be a
9 burden, but as I look around this room and I think
10 what their lawyers must be charging by the hour, or
11 could be charging by the hour, I think that there is
12 a way that people who have resources can help
13 American Samoans who want to become citizens get
14 there without a financial burden.

15 Second, Your Honor, I saw that there were
16 allegations that these American Samoan residents are
17 being discriminated against in Utah in terms of their
18 economic opportunities, their jobs, their positions
19 within the military and the like. I don't know that
20 that is the case. We're here on notice pleading. I
21 know that there are American Samoan -- American
22 Samoan nationals of the United States who have
23 reached high positions as commissioned officers
24 within the United States. What I'll say there is if
25 there really is this invidious discrimination, the

1 sort of discrimination that doesn't make sense, I'll
2 fight it. The American Samoan Government will fight
3 it. The congresswoman from American Samoa will grant
4 it. If one of these plaintiffs really was denied a
5 job because she is a U.S. national and not a U.S.
6 citizen, I welcome her to come and tell me who that
7 was and we'll start working on that 1983 action or
8 whatever it is right now because that would be an
9 irrational distinction that I don't think would pass
10 muster under Title VII or under the Equal Protection
11 Clause. So there is a way to address the harms that
12 these plaintiffs are alleging.

13 What's going on here, Your Honor, and I just
14 learned this vocabulary word so I'm going to use it
15 even though I'm worried I'm taxing Your Honor's
16 attention, is iatrogenic. And for the court reporter
17 that's I-A-T-R-O-G-E-N-I-C. I just learned this. It
18 is a term that I understand applies to a medical
19 treatment that is actually worse than the disease.
20 That is, that it causes more harm than it cures. And
21 I think that's what would happen, Your Honor, if you
22 were to accept these plaintiffs' invitations to
23 declare that all American Samoans are now birthright
24 citizens. Notwithstanding that every court who has
25 considered the issue or to consider related issues

1 have come out in the opposite way.

2 So I started by thanking Your Honor and by

3 saying this is an issue of existential importance to

4 the American Samoan Government and they would say on

01:28:53 5 behalf of the American Samoan people for all of those

6 people Your Honor doesn't get a chance, we can't do a

7 site visit to American Samoa so you can see firsthand

8 what makes that place very special and what makes it

9 so different from the United States. But the

01:29:08 10 overriding concern here is if you were to rule that

11 all American Samoan citizens have a change in status,

12 have a change in allegiance, have to do something

13 different just because of what you understand the

14 text of the Fourteenth Amendment to be or to have

01:29:21 15 been in 1868, it might ensure that Your Honor never

16 gets a chance to experience that ever.

17 And that's why at the end of the day we're

18 going to ask you to deny the plaintiffs' motion for

19 summary judgment and to grant the United States'

01:29:33 20 motion to dismiss and our motion to dismiss because

21 on this record that's the only just and fair result.

22 And if Your Honor has questions, I'll answer them.

23 THE COURT: Thank you. Other amici wish to be

24 heard? If not, let's hear response from the

01:29:50 25 plaintiffs' counsel.

1 MR. SPENCER: Your Honor, I think I would like
2 to start with the record evidence that the
3 intervenors mentioned. First, on the evidence of
4 American Samoan people believing that they had
5 acquired U.S. citizenship, I would point Your Honor
6 to the brief filed by the Samoan Federation of
7 America which is Docket 55 as well as the extensive
8 exhibits and supporting evidence that they put into
9 place. And in particular, I think counsel questioned
10 whether we had properly cited a source about the
11 commissions visit to Samoa which counsel said that he
12 had not been able to find. That is in the docket,
13 Document 41-1, and on Page 91 you see that or a
14 report that "people were pretty well satisfied with
15 the naval government. The first witness, a high
16 chief, told the commission that the Samoans
17 understood first that annexation by the United States
18 meant the people would receive American citizenship."

19 And then if you turn to page 74, you will see
20 that High Chief Mauga, District Governor of the
21 Eastern District of Tutuila, American Samoa, was
22 actually one of the chiefs who signed the original
23 Deed of Cession. So I would say that that is fairly
24 compelling evidence that at least some American
25 Samoans here in the early years believed that they

1 had in fact acquired citizenship by virtue of the
2 Deeds of Cession.

3 And I think they would have been right to do
4 so because we heard this afternoon no textual
01:31:40 5 argument and no history supporting the view that in
6 the United States which in 1868 meant states and the
7 District of Columbia and territories somehow carved
8 out a category that was developed in the judicial
9 opinion 40 years later of so-called unincorporated
01:32:02 10 U.S. territories. And as I understand that phrase,
11 according to *Boumediene*, that refers to territories
12 that are surely destined for statehood.

13 So I think that if that is the correct
14 definition of unincorporated territory, then it is
01:32:17 15 inaccurate as counsel for the U.S. Government said to
16 say that there were no unincorporated territories as
17 of 1868 because certainly there were territories that
18 no one knew would become states. As of that time the
19 United States had acquired Alaska in 1867 and
01:32:36 20 although there was an act, an organic act for the
21 territory of Utah in 1850, whether Utah would become
22 a state is my understanding was actually settled
23 very, very late in the process for all manner of
24 historical reasons. So to say that all territories
01:32:53 25 in 1868 were on a sure path to statehood is

1 anarchistic. But if we move beyond that to jus soli
2 into the history of the common law, we find just a
3 few years before the Deeds of Cession the United
4 States Supreme Court in *Wong Kim Ark* saying seven
5 times that it was a fundamental principle or a
6 fundamental rule at common law that was
7 constitutionalized and added to the Fourteenth
8 Amendment of the United States of citizenship by
9 birth within the sovereignty, by birth within the
10 dominion, by birth within the territory, or by birth
11 within the country. A fundamental principle the
12 court said seven times all of which would apply to
13 all territories and the Deeds of Cession or in the --
14 when congress passed a statute, a statute that says
15 the persons of American Samoa owe permanent
16 allegiance to the United States and that is the
17 lynchpin said *Wong Kim Ark* for the fundamental
18 principle of birthright citizenship.

19 But I think we can move further back in
20 history if we take this concept of territories that
21 not only are not surely destined for statehood but
22 have very little possibility of becoming states. To
23 my mind the best historical example of that would be
24 the British colonies including the North American
25 colonies at the time of war the revolutionary war.

1 And we don't have to question what the common law
2 understanding there was because the Supreme Court
3 told us in *Inglis versus Sailor's Snug Harbor*. That
4 there was no dispute that a person born in what would
01:34:28 5 become the State of New York, if he was born before
6 July 4th, 1776, was a subject of Great Britain
7 because he owed allegiance to the crown of Great
8 Britain. And it is true that sometimes some courts
9 have suggested that there might be a meaningful
01:34:44 10 difference between being a subject and being a
11 citizen, but the court in *Wong Kim Ark* told us that
12 there is no meaningful difference. A citizen is
13 someone who is part of the polity, a subject is a
14 subject of a king. But from the perspective of jus
01:34:59 15 soli, common law, which was constitutionalized, is
16 there is no dispute. Those two terms are synonymous.

17 So I would submit that as of 1868 it was the
18 United States had unincorporated territories and no
19 one thought that those unincorporated territories
01:35:17 20 were somehow not a part of the United States.

21 I think the government, the United States
22 Government ultimately comes down to the *Insular*
23 cases. But it's curious because they don't really
24 want you to look at the *Insular* cases, they don't
01:35:34 25 want you to look at the fundamental rights doctrine

1 under which I would submit that birthright
2 citizenship is being the right to have rights is a
3 preeminent fundamental right. They don't want you to
4 look to the other nonfundamental rights which may be
5 applied in so-called unincorporated territories
6 unless it is impractical and anomalous. They want
7 you to ignore that entire framework of the *Insular*
8 cases and they want you to focus on *Downes against*
9 *Bidwell*.

10 Well, as Your Honor said, *Downes against*
11 *Bidwell* involved the Tax Uniformity Clause not the
12 Citizenship Clause. And counsel said that he has yet
13 to hear a principle distinction between the phrase
14 throughout the United States and the Tax Uniformity
15 Clause and in the United States in the Citizenship
16 Clause. But as the Supreme Court said just a few
17 years ago in the Arizona legislature case, the word
18 legislature is used several times in the Constitution
19 and it means different things in different places.

20 Also say the word officer, the word property. And it
21 should be no surprise that the words the United
22 States had a different meaning at the time when the
23 original Constitution was ratified, and in the years
24 shortly after the great Civil War that changed the
25 relationship between this nation and its federal

1 government and the individual states. Moreover, the
2 purpose of the two clauses is entirely different.

3 The Tax Uniformity Clause was at root a
4 nondiscrimination provision to mollify the concerns
01:37:01 5 of the new states that the federal government would
6 discriminate against one in favor of the other.

7 The Citizenship Clause, there is no dispute on
8 what the purpose of the Citizenship Clause was as
9 *Wong Kim Ark* says to reaffirm the fundament --
01:37:17 10 ancient and fundamental principle of birth within --
11 the citizenship by birth within the territory.

12 So as the phrase "the United States" was used
13 in the context of citizenship and in the Fourteenth
14 Amendment, it is very different context from the Tax
01:37:31 15 Uniformity Clause. And I think that the best example
16 of that, the best textual example of what the United
17 States meant is the Civil Rights Act of 1866. Now,
18 that Act was enacted by the same congress that
19 adopted the Fourteenth Amendment and, in fact, it was
01:37:48 20 enacted two months before congress enacted the
21 Fourteenth Amendment. Of course the Fourteenth
22 Amendment was ratified a few years later, but it was
23 adopted by congress just two months after the Civil
24 Rights Act of 1866. And that Act first declared that
01:38:02 25 all persons born in the United States were citizens

1 of the United States of the United States and then it
2 guaranteed that they would have equal rights in every
3 quote, "state and territory in the United States",
4 end quote.

01:38:18 5 So whatever the historical evidence might be
6 regarding the meaning of "throughout the United
7 States" in the Tax Uniformity Clause, the tax
8 structure, the purpose and not to mention the context
9 of the Civil War demonstrates that it has a very
01:38:32 10 different meaning in the context of the Citizenship
11 Clause.

12 I will also say about *Downes versus Bidwell*
13 that it was a fractured opinion and the Supreme Court
14 has said that fractured opinions that do not garner a
01:38:45 15 majority of any given line of reasoning are binding.

16 It is good law to a very limited and narrow
17 extension. And that is what is the meaning of the
18 Tax Uniformity Clause as applied to Puerto Rico in
19 the year 1901. Because as *Boumediene* told us, the
01:39:05 20 ties between the United States and one of its
21 territories can strengthen in a way that are of
22 constitutional significance. I think it's striking
23 that the court would say that which means that even
24 as to the Tax Uniformity Clause and Puerto Rico, I
01:39:20 25 don't think that you can say post *Boumediene* that it

1 is controlling. As Justice Brennan said, whatever
2 the value of the *Insular* cases may have been at their
3 time, they are no excuse for refusing to extend the
4 Fourth Amendment to Puerto Rico in the 1970s. What
01:39:37 5 it comes down to is not the holding of *Downes versus*
6 *Bidwell* or any of the other *Insular* cases, what it
7 comes down to is what counsel for the government
8 referred to as their extensive discussion on
9 citizenship. And I must say it is surprising that
01:39:49 10 counsel for the government would rely on that --
11 those passages because those are the exact passages
12 that include the rhetoric that everyone agrees is
13 abhorrent. The driving force behind those -- that
14 decision in *Downes versus Bidwell* is that Puerto Rico
01:40:05 15 cannot be part of the United States because if it is,
16 then that may mean the United States would have to
17 grant citizenship to people who are entirely unfit to
18 receive it. That reasoning has no place in
19 constitutional juris prudence now and it never did.

01:40:23 20 So I would urge Your Honor as the D.C. Circuit
21 recognized to recognize that *Downes versus Bidwell* is
22 not controlling and to resolve this case in light of
23 the text, the structure, and the largely undisputed
24 history of the Fourteenth Amendment yourself.

01:40:36 25 THE COURT: Let me ask you to address

1 Mr. Williams' heartfelt argument that this would be a
2 significant impact upon the people of American Samoa
3 in terms of how their culture, law, and customs have
4 developed.

01:40:51 5 MR. SPENCER: Your Honor, I took issue with
6 parts of Mr. Williams' argument because he certainly
7 represents the Government of American Samoa but he
8 does not represent the plaintiffs who are born in
9 American Samoa and who care deeply about the

01:41:07 10 traditional American Samoan way of life and fa'a
11 Samoa. And I will say this, there is when he pointed
12 out our statement that the concerns make little sense
13 that recognizing citizenship in American Samoa would
14 have an impact on the Samoan way of life. We did not
01:41:24 15 mean by that that the value placed on the Samoan way
16 of life makes little sense. It makes a great deal of
17 sense to the plaintiffs themselves, they care very
18 deeply about it. What we meant is this. The

01:41:41 19 argument, as I understand it, is that certain
20 practices, customs, and traditional way of life
21 might, some might think, be subject to scrutiny under
22 equal protection or as Mr. Williams began at one
23 point in his presentation pointed out to the slogan
24 of American Samoa which perhaps he was suggesting as
01:41:57 25 he did in his motion to intervene might be subject to

1 scrutiny under the Establishment Clause.

2 This case is about citizenship. The
3 Fourteenth Amendment or the Fifth Amendment, Equal
4 Protection and due process principles protect
01:42:11 5 persons. They do not protect citizens. Nothing
6 about them turns on citizenship status. And it would
7 be very surprising to me if the government of the
8 United States could establish a religion in a place
9 so long as it ensured that no one who lived in the
01:42:28 10 place had birthright citizenship. I don't think that
11 there is any constitutional theory under which
12 recognizing birthright citizenship in American Samoa
13 would somehow change the analysis of the traditional
14 American Samoan way of life under the Equal
01:42:44 15 Protection or Establishment Clauses. As we pointed
16 out in our brief, in fact, the Equal Protection
17 Clause has been held to extend to American Samoa and
18 certain traditional aspects of fa'a Samoa have been
19 upheld under strict scrutiny under the Equal
01:43:01 20 Protection Clause. So that's what we said made
21 little sense. It makes little sense to say that
22 recognizing birthright citizenship would somehow
23 implicate the customs of American Samoa. But I think
24 there is one other piece of Mr. Williams' argument.
01:43:12 25 It's not that this would impact particular customs,

1 because as a matter of constitutional theory, it is
2 an autonomy interest that the people of American
3 Samoa should be allowed to decide for themselves
4 whether they want to be citizens of the United
5 States. And I think that autonomy interest and that
6 independence is vitally important. And as a
7 political matter, it is in short that people of
8 American Samoa can decide, I believe, whether they
9 want to be a part of the United States, whether they
10 want to seek independent status, or whether they want
11 to remain a territory of the United States.

12 That is the autonomy interest that the people
13 of American Samoa have. But so long as they are a
14 part of the United States, so long as they are a
15 territory of the United States, and so long as by
16 statute they owe permanent allegiance to the United
17 States, they are, as a matter of every source of
18 constitutional meaning we have in the United States
19 for purposes of the Fourteenth Amendment and that, as
20 Your Honor said, as the United States Government has
21 said, is the sole question in this case.

22 If American Samoa is in the United States,
23 then plaintiffs who are three Utahns are entitled to
24 citizenship. And the defendants' refusal to
25 recognize that citizenship, to deny them the right to

1 vote, to serve on juries, to make them have to decide
2 as they move from state to state which rights they do
3 or do not have, are entirely unconstitutional.

4 THE COURT: Okay.

01:44:42 5 MR. SPENCER: Are there any further questions?

6 THE COURT: Mr. Pezzi, I'll give you the
7 chance to have the final word, if you wish.

8 MR. PEZZI: Just for a few moments, Your
9 Honor, if you would indulge me. I will be brief
01:44:54 10 unless Your Honor has additional questions. We have
11 talked extensively today about common law, about the
12 law of Great Britain, and a lot of the history
13 leading up to the adoption of the Fourteenth
14 Amendment. And Mr. Spencer and his colleagues are
01:45:08 15 able advocates who have told that story the best they
16 can tell it to advance the position that they're
17 representing here.

18 The story that they tell stops at 1868. And
19 they have offered no explanation and no precedent
01:45:21 20 since the Citizenship Clause was actually enacted of
21 how it was actually understood by the courts, by the
22 Executive Branch, by the Congress, and we are left to
23 understand that on their view, every congressional
24 enactment with respect to citizenship in the
01:45:39 25 unincorporated territories was either

1 unconstitutional, unnecessary, or both. Every judge
2 to look at the same question that Your Honor is now
3 considering has gotten it wrong despite the fact that
4 all of the same arguments being advanced here were
5 advanced in those cases. And respectfully, I don't
6 think that is the appropriate outcome. I think that
7 the D.C. Circuit and the Second Circuit, the Third
8 Circuit, the Fifth Circuit and the Ninth Circuit I
9 think they got it right. Congress may provide for
10 birthright citizenship in the territories as it has
11 done with respect to Guam, the U.S. Virgin Islands,
12 Puerto Rico and the Northern Mariana Islands. It is
13 not required, as a matter of constitutional law, and
14 for that reason I would ask that the court grant the
15 government's motion to dismiss. And, of course, I'm
16 happy to answer any additional questions Your Honor
17 may have.

18 THE COURT: Thank you. Thank all of the
19 parties for the work that you have done on the
20 briefs. I am going to take this under submission and
21 will issue an opinion once I have been able to reach
22 a decision as to what the appropriate conclusion
23 would be. We will be in recess.

24 (Whereupon, the hearing concluded
25 at 4:34 p.m.)

REPORTER'S CERTIFICATE

I, Laura W. Robinson, Certified Shorthand Reporter, Registered Professional Reporter and Notary Public within and for the County of Salt Lake, State of Utah, do hereby certify:

That the foregoing proceedings were taken before me at the time and place set forth herein and were taken down by me in shorthand and thereafter transcribed into typewriting under my direction and supervision;

That the foregoing pages contain a true and correct transcription of my said shorthand notes so taken.

In witness whereof I have subscribed my name this 20th day of November, 2018.

Laura W. Robinson
RPR, FCRR, CSR, CP

EXHIBIT B



State of Utah

Voter Registration Form

Deliver this form to:
Davis County Clerk
PO Box 618
Farmington, UT 84025

Registering to Vote through a state agency:

- If you decline to register to vote, the fact that you have declined will remain confidential and will be used only for voter registration purposes
- If you register to vote, the office at which you submit your registration will remain confidential and will be used only for voter registration purposes

To register to vote in Utah, you must:

- Be a citizen of the United States
- Have resided in Utah for 30 days immediately before the next election
- Be at least 18 years old on or before the next election

Voter Instructions:

- Complete all required information
- If you have registered to vote with a different name or address, complete the change of information section
- One of the following is required: a **Utah** State Driver License number, a **Utah** State Identification number, or the last four digits of your Social Security number. If you do not have a Utah State Driver License or a Utah State Identification card, please write "None" in the space designated for a Driver License or State Identification and fill in your Social Security number
- Read the voter declaration and citizenship affidavit and sign and date below

Deadline for submitting this form:

- By Mail: This form must be postmarked at least 30 days before an election to be eligible to vote in that election
- Walk In: This form must be delivered in person to your county clerk at least 15 days before the election to be eligible to vote in that election

PLEASE NOTE: If you are qualified and the information on your form is complete, your county clerk will mail confirmation of your voter registration to you. For more information contact your county clerk or the Lieutenant Governor's Office at elections.utah.gov or 1-800-995-VOTE

! Notice: In order to be allowed to vote you must present valid voter identification to the poll worker before voting, which must be a valid form of photo identification that shows your name and photograph, or, (2) two different forms of identification that show your name and current address					
In accordance with section 20A-2-401, the penalty for willfully causing, procuring, or allowing yourself to be registered to vote if you know you are not entitled to vote is up to one year in jail and a fine of up to \$2,500.					
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No: Are you a citizen of the United States of America?					
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No: Will you be at least 18 years of age on or before Election Day?					
Name (required) Last FITISEMANU		First JOHN		Middle [REDACTED]	
Date of Birth (required, month/day/year) [REDACTED] 65					
Home Address (required, principle place of residence) [REDACTED]		City WOODS CROSS		State Utah	
Zip Code 84087		Country of Birth (required) USA			
Mailing Address [REDACTED]		City WOODS CROSS		State UT	
Zip Code 84087					
County of Residence (required) Davis		Phone Number (optional) [REDACTED]		Last 4 of SS# 3229	
Name at Birth, if different [REDACTED]					
Absentee Ballot (if Applicable) I, a qualified elector residing in <u>Davis</u> County at the above address, apply for an official absentee ballot to be cast by me on any election on or before <u>N/A</u> date <u>N/A</u> . I understand that I must be affiliated with or authorized to vote a political party's ballot for a primary election. I'm applying for an absentee ballot for the <u>Democratic</u> political party. I would like my name to be placed on the permanent absentee voter list: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Please mail my absentee ballot to this address: <u>See Mailing Address</u> I am an overseas or military voter: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, you may provide a fax number or email address: _____					
Political Party: <input type="checkbox"/> Constitution <input checked="" type="checkbox"/> Democratic <input type="checkbox"/> Libertarian <input type="checkbox"/> Republican <input type="checkbox"/> Green <input type="checkbox"/> Independent American <input type="checkbox"/> United Utah <input type="checkbox"/> Unaffiliated (no party preference) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No: I am a person with a disability (optional)				Utah Driver License or Identification *****2547 UT Place of Naturalization (if Applicable) [REDACTED] Date [REDACTED]	
If previously registered and/or changing personal information, also fill out this section.					
Name on Previous Registration		Address on Previous Registration		City County State Zip Code	
Read and sign below Voter Declaration: I do swear (or affirm), subject to penalty of law for false statements, that the information contained in this form is true and that I am a citizen of the United States and a resident of the State of Utah, residing at the above address. I will be at least 18 years old on or before the next election and I will have resided in Utah for 30 days immediately before the next election. I am not a convicted felon currently incarcerated for commission of a felony. Citizenship Affidavit: I hereby swear and affirm, under penalties for voting fraud set forth below in Utah Code Section 20A-2-401, that I am a citizen and that to the best of my knowledge and belief the information above is true and correct.					
Signature <i>John Fitisemanu</i>		Date (month/day/year) 12/13/2019			
Barcode 402033274		Office Use Only: Type of Id		Voting Precinct	
				Voting ID #	

**CERTIFICATE OF DIGITAL SUBMISSION
AND PRIVACY REDACTIONS**

I certify that with respect to this supplemental appendix:

- All required privacy redactions have been made in compliance with 10th Cir. R. 25.5.
- Consistent with this Court's General Order No. 95-1, *In re: Restrictions on Public Access to the Byron White United States Courthouse and Temporary Suspension of Paper Copy Requirements* (Mar. 16, 2020), Appellees have not submitted paper copies of their Supplemental Appendix, but stand ready to do so if the Court lifts its current suspension of the paper-copy requirements.
- The digital submission has been scanned for viruses with the latest version of Symantec Endpoint Protection, and according to that program, the digital submission is free of viruses.

Dated: May 5, 2020

s/ Matthew D. McGill

Matthew D. McGill

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing supplemental appendix, consisting of one volume, with the Clerk of the Court for the United States Court of Appeals for the Tenth Circuit by using the appellate CM/ECF system on May 5, 2020.

I certify that all participants in the case are registered CM/ECF users, and that service will be accomplished by the appellate CM/ECF system.

Dated: May 5, 2020

s/ Matthew D. McGill

Matthew D. McGill