

American Political, Economic and Security Issues

AMERICAN SAMOA

*Federal Law and
Court Issues*

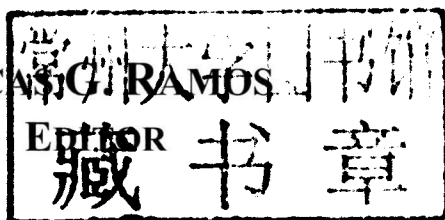
Lucas G. Ramos
Editor

AMERICAN POLITICAL, ECONOMIC, AND SECURITY ISSUES

AMERICAN SAMOA: FEDERAL LAW AND COURT ISSUES

LUCAS G. RAMOS

EDITOR



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**AMERICAN SAMOA: FEDERAL
LAW AND COURT ISSUES**

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PREFACE

Because American Samoa does not have a federal court like the CNMI, Guam or USVI, matters of federal law arising in American Samoa have generally been adjudicated in U.S. district courts in Hawaii or the District of Columbia. Reasons offered for changing the existing system focus primarily on the difficulties of adjudicating matters of federal law arising in American Samoa, principally based on American Samoa's remote location, and the desire to provide American Samoans more direct access to justice. This book discusses the current system of adjudicating matters of federal law in American Samoa and how it compares to those in the Commonwealth of the Northern Mariana Islands (CNMI), Guam and the U.S. Virgin Islands (USVI), and the reasons for or against changing the current system with potential scenarios and issues associated with establishing a federal court there.

Chapter 1- American Samoa is the only populated U.S. insular area that does not have a federal court. Congress has granted the local High Court federal jurisdiction for certain federal matters, such as specific areas of maritime law. GAO was asked to conduct a study of American Samoa's system for addressing matters of federal law. Specifically, this report discusses: (1) the current system for adjudicating matters of federal law in American Samoa and how it compares to those in the Commonwealth of the Northern Mariana Islands (CNMI), Guam, and the U.S. Virgin Islands (USVI); (2) the reasons offered for or against changing the current system for adjudicating matters of federal law in American Samoa; (3) potential scenarios and issues associated with establishing a federal court in American Samoa or expanding the federal jurisdiction of the local court; and (4) the potential cost elements and funding sources associated with implementing those different scenarios. To conduct this work, the authors reviewed previous studies and

testimonies, and collected information from and conducted interviews with federal government officials and American Samoa government officials.

Chapter 2 – These remarks were delivered as testimony. President Lolo M. Mogliga, before the House Subcommittee on Insular Affairs.

Chapter 3 – These remarks were delivered as testimony. Savali Talavou Ale, Speaker of the House of Representatives, before the United States House of Representative's Subcommittee on Insular Affairs.

Chapter 4 – This is a statement of Stephen Sander, Acting Director, Office of Insular Affairs, Department of the Interior, before the Subcommittee on Insular Affairs, House Committee on Natural Resources, regarding Federal Court Options for American Samoa.

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Chapter 1

**AMERICAN SAMOA: ISSUES ASSOCIATED
WITH POTENTIAL CHANGES TO THE
CURRENT SYSTEM FOR ADJUDICATING
MATTERS OF FEDERAL LAW**

United States Government Accountability Office

WHY GAO DID THIS STUDY

American Samoa is the only populated U.S. insular area that does not have a federal court. Congress has granted the local High Court federal jurisdiction for certain federal matters, such as specific areas of maritime law. GAO was asked to conduct a study of American Samoa's system for addressing matters of federal law. Specifically, this report discusses: (1) the current system for adjudicating matters of federal law in American Samoa and how it compares to those in the Commonwealth of the Northern Mariana Islands (CNMI), Guam, and the U.S. Virgin Islands (USVI); (2) the reasons offered for or against changing the current system for adjudicating matters of federal law in American Samoa; (3) potential scenarios and issues associated with establishing a federal court in American Samoa or expanding the federal jurisdiction of the local court; and (4) the potential cost elements and funding sources associated with implementing those different scenarios. To conduct this work, we reviewed previous studies and testimonies, and collected

information from and conducted interviews with federal government officials and American Samoa government officials.

WHAT GAO RECOMMENDS

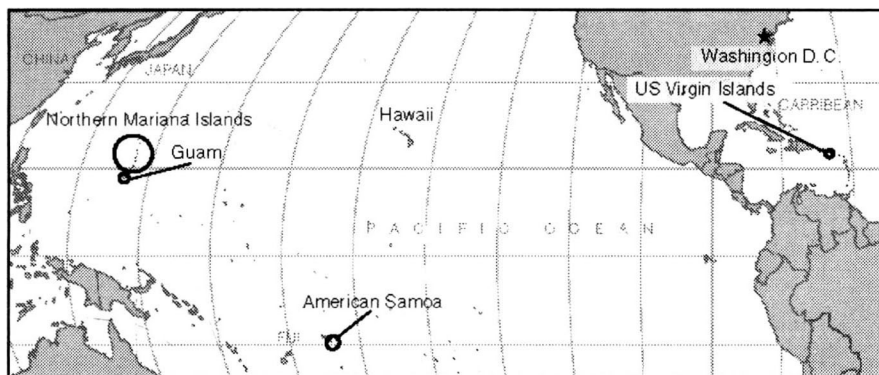
This report contains no recommendations, but is focused on providing decision makers with further details on various scenarios for potentially changing the current system of adjudicating matters of federal law in American Samoa.

WHAT GAO FOUND

Because American Samoa does not have a federal court like the CNMI, Guam, or USVI, matters of federal law arising in American Samoa have generally been adjudicated in U.S. district courts in Hawaii or the District of Columbia.

Reasons offered for changing the existing system focus primarily on the difficulties of adjudicating matters of federal law arising in American Samoa, principally based on American Samoa's remote location, and the desire to provide American Samoans more direct access to justice. Reasons offered against any changes focus primarily on concerns about the effects of an increased federal presence on Samoan culture and traditions and concerns about juries' impartiality given close family ties. During the mid-1990s, several proposals were studied and many of the issues discussed then, such as the protection of local culture, were also raised during this study.

Based on previous studies and information gathered for this report, GAO identified three potential scenarios, if changes were to be made: (1) establish a federal court in American Samoa under Article IV of the U.S. Constitution, (2) establish a district court in American Samoa as a division of the District of Hawaii, or (3) expand the federal jurisdiction of the High Court of American Samoa. Each scenario would present unique issues to be addressed, such as what jurisdiction to grant the court.



Source: GAO, Map Resources (map art).

Map Showing Location of American Samoa, CNMI, Guam, and USVI

The potential cost elements for establishing a federal court in American Samoa include agency rental costs, personnel costs, and operational costs, most of which would be funded by congressional appropriations. Exact details of the costs to be incurred would have to be determined when, and if, any of the scenarios were adopted. The controversy surrounding whether and how to create a venue for adjudicating matters of federal law in American Samoa is not principally focused on an analysis of cost effectiveness, but other policy considerations, such as equity, justice, and cultural preservation.

ABBREVIATIONS

AOUSC	Administrative Office of the U.S. Courts
CJA	Criminal Justice Act
CNMI	Commonwealth of the Northern Mariana Islands
DOI	Department of the Interior
DOJ	Department of Justice
EOUSA	Executive Office for U.S. Attorneys
FBI	Federal Bureau of Investigation
GSA	General Services Administration
USMS	U.S. Marshals Service
USVI	U.S. Virgin Islands

June 27, 2008

The Honorable Nick J. Rahall II

Chairman

The Honorable Don Young

Ranking Republican Member

Committee on Natural Resources

House of Representatives

The Honorable Eni F.H. Faleomavaega

House of Representatives

American Samoa is unique among U.S. insular areas in that it does not have a federal court.¹ A U.S. territory since the early 1900s, American Samoa has internal self-government under a locally adopted Constitution, and the High Court of American Samoa is not part of the U.S. federal judicial structure. American Samoa's local judiciary was initially created and administered by the U.S. Navy, but since 1951 has operated under the authority of the Secretary of the Interior, who appoints the High Court Chief Justice and Associate Justice.

The issue of establishing a federal court in American Samoa is not new. In the mid-1990s, legislative proposals were developed that would have included the establishment of a federal court in American Samoa. However, these initiatives were not enacted by Congress and were controversial among American Samoans. Then, again, in February 2006, the Delegate from American Samoa introduced legislation in the U.S. Congress to establish a federal court in American Samoa² and later that month, the American Samoa legislature held a public hearing to solicit public comments.³ No congressional actions were taken on the bill and the Delegate from American Samoa withdrew the legislation after he and others requested this report.

In particular, you requested that we examine the unique judicial structure of American Samoa and identify the issues associated with establishing a federal court in American Samoa. This report discusses:

- (1) the current system and structure for adjudicating matters of federal law arising in American Samoa and how it compares to those in the Commonwealth of the Northern Mariana Islands (CNMI), Guam, and the U.S. Virgin Islands (USVI);

- (2) the reasons that have been offered for or against changing the current system and structure for adjudicating matters of federal law in American Samoa;
- (3) the description of different scenarios for establishing a federal court in American Samoa or expanding the federal jurisdiction of the High Court of American Samoa if a change to the current system were made, and the identification of issues associated with each scenario; and,
- (4) the potential cost elements and funding sources associated with implementing the different scenarios for establishing a federal court in American Samoa.

We are not making recommendations regarding whether the current system and structure for adjudicating matters of federal law in American Samoa should be changed. Also, we will not be making any determinations as to whether the current system is more or less costly than the different scenarios presented in this report. Rather, our purpose is to provide decision makers with information regarding the issues associated with potential scenarios for change.

To meet our objectives, we reviewed historical documents, congressional testimonies, law review articles, and previous studies, and conducted interviews with federal government officials, to include: the Administrative Office of the U.S. Courts (AOUSC); the Department of the Interior (DOI); the Department of Justice (DOJ); the General Services Administration (GSA); the U.S. Attorneys offices serving federal courts located in CNMI and Guam, Hawaii, and USVI; the Inspector General offices of the Departments of Education, Homeland Security, Transportation, and Health and Human Services; the U.S. Court of Appeals for the Ninth Circuit; the U.S. District Court of Hawaii; the District Court for the Northern Mariana Islands; the District Court of Guam; and the District Court of the Virgin Islands. We also reviewed historical documents and court statistical data from and conducted interviews with American Samoa government officials in the legislative, judicial, and executive branches of government. In addition, to address the first three objectives, we held group discussions with members of the local bar association and the local chamber of commerce, and conducted a public forum with college students and members of the general public during our visit to American Samoa in October 2007. Further, we established an e-mail account and received comments from the general public regarding their views on possible scenarios for establishing a federal court in American Samoa or

expanding the federal jurisdiction of the High Court of American Samoa. Although these views cannot be generalized to the population of American Samoa as a whole, they provided us with a better understanding of the range of issues that were important to members of the local community. To address the first three objectives, we also interviewed recognized legal experts on territorial governance issues. These experts were not intended to be representative of all expert opinions on American Samoa judicial issues, but were contacted because they could provide insights on territorial governance issues in general. For the fourth objective, we collected available data regarding the potential cost elements and funding sources related to establishing a federal court in American Samoa from AOUSC, GSA, and DOJ's Executive Office for United States Attorneys (EOUSA) and U.S. Marshals Service (USMS). Since these agencies could only provide rough estimates of potential costs, and because of the numerous caveats associated with the various costs elements, the data cannot be used for budget purposes or to measure the true costs regarding the establishment of a federal court in American Samoa. Further, since the court scenarios were hypothetical and the exact details of the jurisdiction, staffing, and physical facilities are not known, the estimated costs cannot be aggregated to obtain a precise estimate of the total costs for the scenarios. We did not collect any cost data related to expanding the federal jurisdiction of the High Court of American Samoa, since this would be a unique judicial structure and there is no comparable existing federal court structure upon which to estimate costs. We found the cost data provided to be sufficiently reliable to provide rough estimates of potential future costs for establishing a federal court in American Samoa, with limitations as noted. Appendix I contains a more detailed description of the scope and methodology.

We conducted this performance audit from April 2007 to June 2008 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

RESULTS IN BRIEF

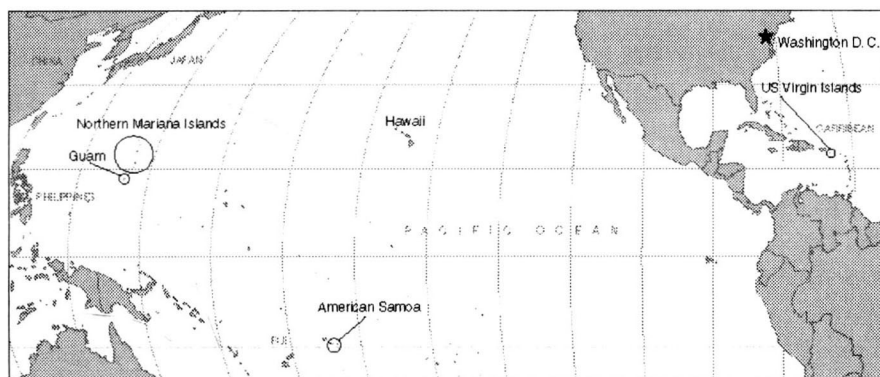
In contrast to other insular areas of the United States, such as CNMI, Guam, and USVI, which have their own federal courts, American Samoa does not have a federal court; rather, the High Court of American Samoa has been granted limited federal jurisdiction for certain issues, such as food safety, protection of animals, conservation, and shipping issues. Because of the limits to the High Court's federal jurisdiction, other matters of federal law arising in American Samoa have been adjudicated in U.S. district courts, mainly in Hawaii or the District of Columbia. Since a 2001 precedent-setting case involving human trafficking, federal prosecutors have initiated criminal proceedings in the U.S. District Court of Hawaii, in addition to past practices of handling matters only in the U.S. District Court for the District of Columbia. With regard to federal civil cases, in certain circumstances, such as when both the plaintiff and the defendant reside in American Samoa and the events giving rise to the civil action occurred in American Samoa, there is no federal court with jurisdiction to handle such matters.

Reasons offered for changing the existing system focus primarily on the difficulties of adjudicating matters of federal law arising in American Samoa, such as logistical challenges related to American Samoa's remote location, along with the goal of providing residents with more direct access to justice in their place of residence, while reasons offered against changing the current system of adjudicating matters of federal law focus largely on concerns about the impact of an increased federal presence on Samoan culture and traditions, as well as concerns regarding the impartiality of local juries given close family ties. During the mid-1990s, several proposals for changing the current system for adjudicating matters of federal law were studied and many of the issues discussed at that time, such as protecting local culture and traditions, were also raised during our study.

Based on these studies and information gathered for this chapter, we identified three principal scenarios for change, if a change to the current system were made: (1) establishing a district court in American Samoa pursuant to Article IV of the U.S. Constitution,⁴ (2) establishing a district court in American Samoa that would be a division of the District of Hawaii, or (3) expanding the federal jurisdiction of the High Court of American Samoa. Key issues associated with implementing any of these scenarios include the need for enacting a statutory change and overcoming operational challenges, such as what jurisdiction to grant the court and what type of courthouse and detention facility would need to be built under each scenario.

The potential cost elements for establishing a federal court in American Samoa under the first two scenarios include court construction and agency rental costs, as well as personnel and operational costs for judicial and executive branch staff, most of which would be funded by direct appropriations to each federal agency. However, the estimated cost elements for these two scenarios are based on assumptions that could change in actual implementation and the exact details of the jurisdiction, staffing, and physical facilities would have to be determined if, and when, any of the scenarios were adopted. Therefore, the cost elements presented cannot be used for budget purposes and an analysis of cost effectiveness for individual scenarios would be of limited value given the data limitations. Regarding the third scenario, we did not collect cost data because the granting of federal criminal jurisdiction and expanded federal civil jurisdiction to the local High Court would be a unique judicial arrangement, and there is no existing federal structure upon which federal agencies could base cost estimates. However, the controversy surrounding whether and how to create a venue for adjudicating matters of federal law in American Samoa is not principally focused on costs, but on other factors, such as equity, justice, and cultural preservation. Thus policy considerations, other than an analysis of cost effectiveness, are more likely to be the basis for deciding whether and how to establish a court with federal jurisdiction in American Samoa.

In May 2008, we requested comments on a draft of this report from the Administrative Office of the U.S. Courts; the Department of the Interior; the Department of Justice; the General Services Administration; and officials representing the executive, legislative, and judicial branches of the government of American Samoa. The Administrative Office of the U.S. Courts and the Department of Justice provided technical comments which we have incorporated into this chapter as appropriate. In addition to the technical comments received, the Administrative Office of the U.S. Courts, the Department of the Interior, and the Office of the Governor of American Samoa provided official letters for inclusion in this chapter. These letters can be seen in appendixes II, III, and IV, respectively.



Source: GAO, Map Resources (map art).

Figure 1. Map Showing the Location of American Samoa, CNMI, Guam, and USVI

BACKGROUND

As shown in figure 1, of the four insular areas addressed in this chapter, three are located in the Pacific—American Samoa, CNMI, and Guam—and one is located in the Caribbean—the USVI. Each of these insular areas has its own unique culture and historical relationship with the United States. See appendices V, VI, VII, and VIII for detailed descriptions of the history and development of the judicial systems of American Samoa, CNMI, Guam, and USVI, respectively.

American Samoa, the only U.S. insular area in the southern hemisphere, is located about 2,600 miles southwest of Hawaii. American Samoa consists of five volcanic islands and two coral atolls, covering a land area of 76 square miles, slightly larger than Washington, D.C. The capital of American Samoa, Pago Pago, is located on the main island of Tutuila, which is mostly rugged terrain with relatively little level land. Agricultural production is limited by the scarcity of arable land, and tourism is impaired by the island's remote location and lack of tourist-rated facilities. Two tuna canneries constitute the main sources of private sector employment. Most of the economic activity and government operations on Tutuila take place in the Pago Pago Bay area.

According to the American Samoa Department of Commerce data, in 2005 the population of American Samoa was about 65,500.⁵ Unlike residents born in CNMI, Guam, and USVI, residents born in American Samoa are nationals of the United States, but may become naturalized U.S. citizens.⁶ Like