

GAO

Testimony

Before the Committee on Natural Resources,
Subcommittee on Insular Affairs, House of
Representatives

For Release on Delivery Expected
at 2:00 p.m. EST
Thursday, September 18, 2008

AMERICAN SAMOA

Issues Associated with Some
Federal Court Options

Statement of William O. Jenkins, Jr., Director
Homeland Security and Justice Team



Madame Chairwoman and Members of the Subcommittee:

I am pleased to be here today to discuss Federal Court Options for American Samoa. 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 a GAO report, which was issued on June 27, 2008.⁴

My statement is based on our June 2008 report, which examined the unique judicial structure of American Samoa and identified the issues associated with establishing a federal court in American Samoa. Specifically, we discussed (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

¹ For purposes of this testimony, we discuss four insular areas—American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the U.S. Virgin Islands, which are all jurisdictions under U.S. sovereignty. In this testimony, we sometimes refer to American Samoa as a U.S. territory, although there has not been enacted an organic act, which would define its relationship to the United States.

² H.R. 4711, 109th Cong. (2006).

³ Legislature of American Samoa, Report and Record of the Joint Legislative Public Hearing on the Issues of Federal District Court Authorization Transfer of Constitution Review Authority (Pago Pago, American Samoa: Feb. 23-24, 2006). These hearings were conducted in the Samoan language and translated into English.

⁴ GAO, *American Samoa: Issues Associated with Potential Changes to the Current System for Adjudicating Matters of Federal Law*, [GAO-08-655](#) (Washington, D.C.: June 27, 2008).

and structure for adjudicating matters of federal law in American Samoa; (3) 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 conducted our prior 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.

Summary

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—principally criminal cases—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 prior studies and information gathered for our June 2008 report, 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,⁵ (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.

Background

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. According to American Samoa Department

⁵ The district courts in U.S. insular areas are Article IV courts, as they were established pursuant to Article IV of the U.S. Constitution, which provides that “the Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States....” Because Article I of the U.S. Constitution provides that Congress has power “to constitute tribunals inferior to the Supreme Court,” and because many tribunals established by Congress were created pursuant to Article I, district courts in U.S. insular areas are also sometimes called Article I courts.

of Commerce data, in 2005, the population of American Samoa was about 65,500.⁶ Unlike residents born in CNMI, Guam, and USVI, residents born in American Samoa are nationals of the United States, but many become naturalized U.S. citizens.⁷ Like residents of the other insular areas, residents of American Samoa have many of the rights of citizens of the 50 states, but cannot vote in U.S. national elections and do not have voting representation in the final approval of legislation by the full Congress. According to Census Bureau data for 2000, the median household income in American Samoa was \$18,200, less than half of the U.S. median household income of almost \$41,000.

American Samoa does not have an organic act that formally establishes its relationship with the United States. Two deeds of cession were initially completed between Samoan chiefs, or *matai*, and the United States in 1900 and 1904⁸ and ratified by the federal government in 1929.⁹ In these deeds, the United States pledged to promote peace and welfare, to establish a good and sound government, and to preserve the rights and property of the people. The U.S. Navy was initially responsible for federal governance of the territory. Then, in 1951, federal governance was transferred to the Secretary of the Interior, which continues today. The Secretary exercises broad powers with regard to American Samoa, including “all civil, judicial, and military powers” of government in American Samoa.¹⁰ American Samoa has had its own constitution since 1960, and since 1983, the local American Samoa constitution may only be amended by an act of Congress.¹¹

⁶ This estimate includes U.S. citizens, U.S. nationals, and foreigners. Neither the U.S. Census Bureau nor the American Samoa Department of Commerce provides data on the number of all U.S. citizens in American Samoa. In 2000, U.S. Census Bureau data indicated that about 32,470 of the total population of 57,291 were born in American Samoa, and thus U.S. nationals. However, the Census Bureau data do not report the number of U.S. nationals who have become U.S. citizens.

⁷ A U.S. national is either a citizen or someone who “owes permanent allegiance to the United States.” 8 U.S.C. § 1101(a)(21), (22). Citizenship is derived either from the Fourteenth Amendment to the Constitution (“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States”) or from a specific statute that confers citizenship on the inhabitants of an area that, although not a state, is under the sovereignty of the United States. No such legislation conferring citizenship has been enacted for American Samoa.

⁸ Samoan *matai* signed the Cession of Tutuila and Aunu’u in 1900 and the Cession of Manu’a Islands in 1904. Later, in 1925, the U.S. acquired Swain’s Island. 43 Stat. 1357 (1925).

⁹ 45 Stat. 1253 (1929) (codified at 48 U.S.C. § 1661).

¹⁰ 48 U.S.C. § 1661(c); Exec. Order No. 10,264, 16 Fed. Reg. 6419 (1951).

¹¹ 48 U.S.C. § 1662a.

The American Samoa Constitution provides for three separate branches of government—the executive, the legislative, and the judicial. Since 1977, a popularly elected Governor heads the American Samoa executive branch for 4-year terms.¹² Nearly 40 American Samoa departments, offices, and other entities within the executive branch of the American Samoa government provide public safety, public works, education, health, commerce, and other services. The Governor has responsibility for appointing the Attorney General, Director of Public Safety, and other executive branch agency leaders. The legislature, or *Fono*, is comprised of 18 senators and 20 representatives. Each of the senators is elected in accordance with Samoan custom by the city councils of the counties that the senator represents. Each of the representatives is popularly elected from the representative districts. American Samoa exercises authority over its immigration system through its own locally adopted laws. In fiscal year 2007, a total of almost \$105 million in federal funds were provided from a variety of federal agencies, including the Departments of the Interior, Education, Agriculture, Transportation, and Health and Human Services. Specifically, DOI provided funds that same year in the amount of \$22.9 million for American Samoa government operations, including the High Court of American Samoa. In addition to these federal funds, a portion of the funding for American Samoa government operations comes from local revenues.

American Samoa Judiciary

The American Samoa judiciary, as provided in the American Samoa Constitution and American Samoa Code, consists of a High Court and a local district court under the administration and supervision of the Chief Justice.¹³ The High Court consists of four divisions—the trial division; the family, drug, and alcohol division; the land and titles division; and the appellate division.¹⁴ The trial division, which consists of the Chief Justice, the Associate Justice, and associate judges, is a court of general jurisdiction, empowered to hear, among other things, felony cases and civil cases in which the amount in controversy exceeds \$5,000. The Chief Justice and the Associate Justice are appointed by the U.S. Secretary of the Interior and are required to be trained in the law. There are six associate judges, who are appointed by the Governor and are not required to have formal legal training. The associate judges are *matai*, or chiefs, and they preside over

¹² The Governor may serve two consecutive 4-year terms but is only eligible for a third term after one full term has intervened. Am. Samoa Code Ann. § 4.0107.

¹³ Am. Samoa Const. art. III; Am. Samoa Code Ann. tit. 3.

¹⁴ In 2006, the High Court of American Samoa had a total of 607 cases filed, which included 162 criminal cases, 112 civil actions, 15 appellate cases, 11 *matai* (chief) title cases, and 27 land cases. The family, drug, and alcohol division had a total of 21 cases.

cases in the High Court, playing a more significant role in deciding issues of *matai* titles and land. There is one local district court judge, who is appointed by the Governor and must also have formal legal training, who hears matters, such as misdemeanor criminal offenses and civil cases in which the matter in controversy does not exceed \$5,000.¹⁵ The Chief and Associate Justices, and the local district and associate judges hold office for life with good behavior.¹⁶ The American Samoa judiciary has a public defender, probation officers, translators, and marshals. Since the 1970s the Secretary of the Interior has appointed federal judges, usually from the Ninth Circuit, to serve temporarily as Acting Associate Justices in the appellate division of the High Court of American Samoa.¹⁷

American Samoan Customs and Traditions

American Samoan customs and traditions have an influence over the local legal system. The distinctive Samoan way of life, or *fa'a Samoa*, is deeply imbedded in traditional American Samoa history and culture. *Fa'a Samoa* is organized around the concept of extended family groups—people related by blood, marriage, or adoption—or *aiga*. Family members acknowledge allegiance to the island leader hierarchy comprised of family leaders, or *matai* (chiefs). *Matai* are responsible for the welfare of their respective *aiga* and play a central role in protecting and allocating family lands. About 90 percent of land in American Samoa is communally owned and controlled by *matai*, and there are limits in American Samoa law regarding the transfer of property.¹⁸ The concept of *fa'a Samoa* extends to the governance structures in American Samoa and, thus, most high-ranking government officials, including judges, are *matai*. Further, Samoan

¹⁵ In 2006, the district court of American Samoa had a total of 7,689 cases filed.

¹⁶ The Chief Justice and Associate Justice may be removed by the Secretary of the Interior for cause. The district and associate judges may be removed by the Chief Justice for cause.

¹⁷ See Am. Samoa Const. art. III, § 3; Am. Samoa Code Ann. § 3.0220. Three justices and two associate judges are needed for an appellate division session. According to a judicial official, since at least one of the justices has been involved with the lower court trial that justice cannot sit on the appeals. Therefore, federal judges travel to American Samoa to sit on appellate division sessions, which are held about once a year.

¹⁸ The primary categories of land in American Samoa are freehold land, individually owned native land, and family-owned communal land. Freehold land, or lands included in court grants prior to 1900, may be alienated to a person who has less than one-half native blood. However, individually owned land and communal land, which is theoretically under the control of the *matai* (or chiefs), may be alienated only to persons with more than one-half native blood, and such land may be alienated to a person with any nonnative blood only if the person (1) was born in American Samoa, (2) is a descendent of a Samoan family, (3) lives with Samoans as a Samoan, (4) has lived in American Samoa for more than 5 years, and (5) has officially declared an intention to remain in American Samoa for life. The alienation of communal land also requires the consent of the Governor. Am. Samoa Code Ann. § 37.0204.

law allows for a custom of *ifoga*, or ceremonial apology, whereby if a member of one family commits an offense against a member of another family, the family of the offender proceeds to the headquarters of the family of the offended person and asks for forgiveness. After appropriate confession of guilt and ceremonial contrition by the offending family, the family offended against can forgive the offense. If the offender is convicted in court, the court may reduce the sentence of the offender if it finds that an *ifoga* was performed.

Past Proposals to Establish a Federal Court in American Samoa

The issue of establishing a federal court in American Samoa is not new. This issue has arisen within the larger question of defining the political status of American Samoa and its relationship with the United States. For example, in the 1930s, Congress considered legislation that would provide an avenue of appeal from the High Court of American Samoa to the U.S. District Court of Hawaii, during its deliberation of an organic act for American Samoa. However, this initiative was not enacted by Congress. Further, since 1969, there have been three American Samoa commissions convened to study the future political status of American Samoa. These commissions have studied, among other things, the necessity of an organic act.¹⁹ The most recent commission's report, published in January 2007, did not recommend any changes in American Samoa's political status as an unorganized and unincorporated territory of the United States, with the intent that American Samoa could continue to be a part of the United States and also have the freedom to preserve Samoan culture.²⁰ In addition, in the mid-1990s, the Department of Justice (DOJ) proposed legislative options for changing the judicial structure of American Samoa, including establishing a federal court within the territory. These proposals were developed in response to growing concerns involving white-collar crime in American Samoa, which were detailed in a December 1994 DOJ crime assessment report.²¹ However, while the House

¹⁹ There have been three political status study commissions created in American Samoa to study alternative forms of future political status open to American Samoa. The first commission report was completed in 1970 and submitted to the American Samoa Legislature; the second report was published by the Office of the Delegate at Large to Washington D.C. in 1975; and the third report was published in January 2007 and presented to the executive, legislative, and judicial branches of government.

²⁰ *Final Report, The Future Political Status Study Commission of American Samoa* (Jan. 2, 2007). An unorganized territory is one for which the federal government has not provided self-government by enacting an organic act or mutual agreement, such as a covenant. An unincorporated territory is one that has not become fully incorporated into the United States.

²¹ *American Samoa White Collar Crime Assessment*, a Special Report to the U.S. Department of the Interior, U.S. Department of Justice and American Samoa Government (December 1994, redacted version).

Committee on Resources held hearings on the DOJ report in August 1995, and judicial committees studied various legislative options, Congress did not take any actions on the proposals. Then, in February 2006, the Delegate from American Samoa introduced legislation in the U.S. Congress to establish a federal court in American Samoa and later that month, the American Samoa *Fono* held a joint legislative public hearing to solicit public comments on the bill.²² No congressional actions were taken on the bill and the Delegate from American Samoa withdrew the legislation after he and others requested the June 2008 GAO report.

Differences between Article IV Courts in Insular Areas and Article III Courts

The federal courts in the insular areas of CNMI, Guam, and USVI were established under Article IV of the Constitution, whereas U.S. district courts elsewhere in the United States were established under Article III of the Constitution.²³ Article IV courts are similar to Article III courts, but differ in terms of specific jurisdiction and tenure of the judges. Article IV courts generally exercise the same jurisdiction as Article III courts and may also exercise jurisdiction over local matters. Article IV judges are appointed by the President, with the advice and consent of the Senate, serve terms of 10 years, and can be removed by the President for cause. Article III judges are appointed by the President, with the advice and consent of the Senate, and serve with Article III protections of life tenure for good behavior and immunity from reductions in salary. Article IV judges hear both federal and bankruptcy cases, whereas Article III courts generally have a separate unit to hear bankruptcy cases. An Article III judge can be designated by the Chief Judge of the Circuit Court of Appeals or the Chief Justice of the United States to sit on an Article IV court. However, an Article IV judge can be designated to sit only as a magistrate judge on an Article III court.²⁴

²² H.R. 4711, 109th Cong. (2006).

²³ Article III of the U.S. Constitution provides that “the judicial power of the United States, shall be vested in one supreme court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times receive for their services a compensation which shall not be diminished during their continuance in office.”

²⁴ A U.S. magistrate judge is a judicial officer of the district court and is appointed by majority vote of the district judges of the court to exercise jurisdiction over matters assigned by a statute as well as those delegated by the district judges. A full-time magistrate judge serves a term of 8 years. Duties assigned to magistrate judges by district court judges vary from court to court. Magistrate judges may handle certain pre-trial and post trial matters, as well as jury or nonjury civil trials with the consent of the parties and misdemeanor trials with the consent of the parties. District judges must preside over cases involving felony charges.

The Federal Courts in CNMI, Guam, and USVI

The federal courts in CNMI, Guam, and USVI were established at different times, but developed in similar ways. The District Court for the Northern Mariana Islands was established in 1977 as specified in the 1975 agreement, or covenant, between the Northern Mariana Islands and the United States.²⁵ The District Court of Guam was established when the federal government passed an Organic Act for Guam in 1950.²⁶ The District Court of the Virgin Islands, as it currently exists, was established by an Organic Act in 1936.²⁷ Each of these federal courts initially had jurisdiction over federal, as well as local, issues. Over time, however, the federal courts were divested of jurisdiction over local issues, with the exception of the District Court of the Virgin Islands, which maintains jurisdiction over cases involving local offenses that have the same underlying facts as federal offenses.²⁸ Similarly, each of the federal courts had appellate jurisdiction over the local trial courts until the local government established a local appellate court. CNMI, Guam, and USVI have all established local Supreme Courts, so that the federal courts no longer have appellate jurisdiction over local cases. As such, the jurisdiction of each of the three federal courts currently resembles that of district courts of the United States, which include federal question jurisdiction, diversity jurisdiction, and the jurisdiction of a bankruptcy court.²⁹ Decisions of the District Court for the Northern Mariana

²⁵ Pub. L. No. 95-157, 91 Stat. 1265 (1977); Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, Pub. L. No. 94-241, § 401, 90 Stat. 263 (1976).

²⁶ Pub. L. No. 630, 64 Stat. 384 (1950).

²⁷ Pub. L. No. 749, §§ 28, 29, 49 Stat. 1807, 1814 (1936).

²⁸ Federal law provides that the district court has concurrent jurisdiction with the local courts over local offenses that are “of the same or similar character or part of, or based on, the same act or transaction or two or more acts or transactions connected together or constituting part of a common scheme or plan, if such act or transaction or acts or transactions also constitutes or constitute an offense or offenses against one or more statute over which the District Court of the Virgin Islands has jurisdiction....” 48 U.S.C. § 1612(c). As such, if an individual engages in conduct that violates both federal law and local law, that individual may be charged with both the federal and local offense in the District Court of the Virgin Islands. For example, if an individual, while engaged in the trafficking of firearms, kills another person with premeditation, that individual may be charged in the District Court of the Virgin Islands with both the federal offense of firearms trafficking and the local offense of murder.

²⁹ The original jurisdiction of U.S. District Courts is provided in federal law and includes, for example, federal question jurisdiction, which is jurisdiction over civil cases arising under the U.S. Constitution, an act of Congress, or a treaty, and diversity jurisdiction, which is jurisdiction over civil cases filed based on the “diversity of citizenship” of the litigants, such as between citizens of different states or between U.S. citizens and those of another country, in which the matter in controversy has a sum or value that exceeds \$75,000.

Islands and the District Court of Guam may be appealed to the U.S. Court of Appeals for the Ninth Circuit, and decisions of the District Court of the Virgin Islands may be appealed to the U.S. Court of Appeals for the Third Circuit. An Article IV judge—two Article IV judges in the case of the Virgin Islands—sits on each of the federal courts and is appointed by the President with the advice and consent of the Senate, for a term of 10 years, but may be removed by the President for cause.

Unlike Other Insular Areas, Matters of Federal Law in American Samoa Are Adjudicated in U.S. District Courts in Hawaii or the District of Columbia

Unlike other insular areas, such as CNMI, Guam, and USVI, American Samoa does not have a federal court. As a result, federal law enforcement officials have pursued violations of federal criminal law arising in American Samoa in the U.S. district courts in Hawaii or the District of Columbia. In the absence of a federal court in American Samoa, federal law has provided federal jurisdiction to the High Court of American Samoa in areas such as food safety and shipping issues, which is quite narrow compared to the comprehensive federal jurisdiction granted to federal courts in other insular areas.

American Samoa's Local Judicial Structure Differs from Local Judicial Structures in CNMI, Guam, and USVI

With regard to its local judicial structure, American Samoa is different from other U.S. insular areas. The judicial system in American Samoa consists only of local courts that handle limited federal matters, whereas the judicial system in CNMI, Guam, and USVI are composed of local courts and federal courts that operate independently from each other. Also, whereas the justices of the High Court in American Samoa are appointed by the Secretary of the Interior, the judges of the local courts in CNMI, Guam, and USVI are appointed by the Governors of each insular area. Further, although decisions of the appellate division of the High Court of American Samoa have been appealed to the Secretary of the Interior, federal law provides that, 15 years after the establishment of a local appellate court, decisions of the local appellate courts in CNMI, Guam, and USVI may be appealed to the U.S. Supreme Court.³⁰ As stated earlier, because there is no federal court in American Samoa, matters of federal law arising in American Samoa have generally been adjudicated in either the District of Hawaii (Honolulu, Hawaii) or the District of Columbia (Washington, D.C.).

³⁰ In 2004, 7 years before the expiration of the 15 years after the establishment of the Supreme Court of Guam, Congress repealed the provision providing the Ninth Circuit with temporary appellate jurisdiction over decisions of the Supreme Court of Guam. Pub. L. No. 108-378, § 2, 118 Stat. 2206, 2208 (2004).

Federal Criminal Cases Arising in American Samoa Are Generally Heard in Hawaii and the District of Columbia

With regard to criminal matters, although federal criminal law extends to American Samoa, questions surrounding the proper jurisdiction and venue of cases have posed complex legal issues when violations of federal law occurred solely in American Samoa.³¹ However, since a 2001 precedent-setting case involving human trafficking,³² DOJ prosecutors told us that some of the legal issues regarding jurisdiction and venue that had been unsettled in the past have been resolved. For example, federal law provides that the proper venue for a criminal case involving a federal crime committed outside of a judicial district is: (1) the district in which the defendant is arrested or first brought; or (2) if the defendant is not yet arrested or first brought to a district, in the judicial district of the defendant's last known residence; or (3) if no such residence is known, in the U.S. District Court for the District of Columbia.³³

Prior to this 2001 case, most cases arising in American Samoa were brought in the U.S. District Court for the District of Columbia. In this 2001 case, prosecutors used the “first brought” statute to establish venue in the District of Hawaii, since the defendant was arrested and “first brought” to Hawaii and then indicted in the District of Hawaii. Based on the facts and arguments presented, the Ninth Circuit upheld this application of the “first brought” statute.³⁴ Following this case, most defendants who have been charged with committing federal offenses in American Samoa have been charged in one of two venues—the U.S. district courts in Hawaii or the District of Columbia, because there is no federal court in American Samoa.³⁵ In 2006 and 2007, DOJ attorneys prosecuted defendants in the U.S. district courts in both Hawaii and the District of Columbia for civil rights violations and public corruption cases arising in American

³¹ See U.S. Const. art. III, § 2 (“Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed”).

³² *United States v. Lee*, 159 F. Supp. 2d 1241 (D. Haw. 2001).

³³ 18 U.S.C. § 3238. With respect to a federal criminal offense committed by an American Samoan within one of the federal judicial districts, rather than within American Samoa, venue is proper in the judicial district where the crime was committed pursuant to federal law.

³⁴ *United States v. Lee*, 472 F.3d 638 (9th Cir. 2006).

³⁵ Although venue for most cases arising in American Samoa has been established pursuant to the “first brought” statute, venue may otherwise be proper in a district in which part of the offense was committed. For example, in *United States v. Ofoia*, eight residents of American Samoa were charged in the U.S. District Court for the Middle District of Georgia with defrauding AFLAC, which is headquartered in Georgia. *United States v. Ofoia*, No. 4:03-cr-011 (M.D. Ga. filed Feb. 28, 2003).

Samoa.³⁶ DOJ prosecutors told us that their approach is adjusted depending on the facts of each case, legal challenges presented, and prosecutorial resources available.

Proper Federal Venue May Not Exist for the Adjudication of Certain Federal Civil and Bankruptcy Matters

With regard to certain federal civil matters, 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 may be no proper federal venue, meaning there may be no federal court that may hear the case.³⁷ However, some civil cases have been brought against the Secretary of the Department of the Interior (DOI) alleging that the Secretary's administration of the government of American Samoa violated the U.S. Constitution.³⁸ In such cases, the U.S. District Court for the District of Columbia has been the appropriate forum, given that DOI is headquartered in Washington, D.C.

Bankruptcy relief is not available in American Samoa since federal law has not explicitly extended the U.S. Bankruptcy Code to American Samoa, and there is not a federal court in American Samoa in which bankruptcy claims may be adjudicated.³⁹ However, U.S. bankruptcy courts may exercise jurisdiction over petitions for relief filed by American Samoan entities under certain circumstances, such as if the entities reside or do business in a judicial district of the United States and the court finds that exercising jurisdiction would be in the best interest of the creditors and the debtors.

³⁶ For example, in the District of Hawaii, the Criminal Section of DOJ's Civil Rights Division prosecuted several individuals involved in a sex trafficking operation in American Samoa. *United States v. Kuo*, No. 1:06-cr-524 (D. Haw. filed Oct. 4, 2006); *United States v. Kuo*, No. 1:07-cr-225 (D. Haw. filed May 10, 2007). In the District of Columbia, the Public Integrity Section of the DOJ's Criminal Division initiated proceedings against two government officials in American Samoa, charging, among other things, fraud and bribery. *United States v. Sunia*, No. 1:07-cr-225 (D.D.C. filed Sept. 6, 2007).

³⁷ *See* 28 U.S.C. § 1391.

³⁸ *See, e.g.,* *Corp. of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Hodel*, 637 F. Supp. 1398 (D.D.C. 1986), *aff'd by* 830 F.2d 374 (D.C. Cir. 1987); *Majhor v. Kempthorne*, 518 F. Supp. 2d 221 (D.D.C. 2007).

³⁹ A bankruptcy court is an operating unit of the district court.

The Federal Jurisdiction of American Samoa’s High Court is Very Limited Compared to Federal Courts in Other Insular Areas

Despite the absence of a federal court in American Samoa, federal law provides that the local court—the High Court of American Samoa—has limited federal civil jurisdiction. However, the federal jurisdiction of the High Court of American Samoa is very limited compared to comprehensive federal jurisdiction in federal courts located in CNMI, Guam, and USVI. In particular, federal law has explicitly granted the High Court of American Samoa federal jurisdiction for certain issues, such as food safety, protection of animals, conservation, and shipping issues.

Although the High Court does not keep data on the number of federal cases it handles, the Chief Justice of the High Court told us that, on occasion, these federal matters, particularly maritime cases,⁴⁰ have taken a significant amount of the court’s time. The Chief Justice noted that the piecemeal nature of the High Court’s federal jurisdiction sometimes creates challenges. For example, although the High Court has jurisdiction to hear certain maritime cases, the High Court does not have the authority under certain federal statutes to enjoin federal court proceedings or to transfer a case to a federal court. Such a situation may lead to parallel litigation in the High Court and a federal court.⁴¹

In addition to the limits of federal jurisdiction, there are differences in the way federal matters are heard in the High Court compared to the federal courts in other insular areas. For example, whereas the Secretary of the Interior asserts authority to review High Court decisions under federal law, the U.S. Courts of Appeals have appellate review of decisions of the federal courts in CNMI, Guam, and USVI. Also, as stated earlier, whereas the Justices of the High Court of American Samoa are appointed by the Secretary of the Interior, the judges of the federal courts in CNMI, Guam, and USVI are appointed by the President, with the advice and consent of the U.S. Senate.

⁴⁰ Maritime law is the body of law governing maritime commerce and navigation, the transportation at sea of persons and property, and marine affairs in general.

⁴¹ See 46 U.S.C. § 30511; 28 U.S.C. § 1404(a). For example, in a 2003 maritime case, a plaintiff filed actions based on the same incident in both the U.S. District Court for the Southern District of California and the High Court of American Samoa. 7 Am. Samoa 3d 139 (2003).

Proposals for Changing the Current System of Adjudicating Matters of Federal Law in American Samoa Remain Controversial

While various proposals to change the current system of adjudicating matters of federal law in American Samoa have been periodically discussed and studied, controversy remains regarding whether any changes are necessary and, if so, what options should be pursued. In the mid-1990s, various proposals to change the current system were studied by judicial committees and federal officials. Issues that were raised at that time, such as protecting American Samoan culture and traditions, resurfaced during our interviews with federal and American Samoa government officials, legal experts, and in group discussions and public comments we received. Reasons offered for changing the existing system focus primarily on the difficulties of adjudicating matters of federal law arising in American Samoa, along with the goal of providing American Samoans with more direct access to justice in their place of residence. 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.

Concerns with White-Collar Crime Led to Discussions in the Mid-1990s on Changing the System for Adjudicating Matters of Federal Law in American Samoa

The issue of changing the system for adjudicating matters of federal law in American Samoa has been raised in the past in response to a government audit and subsequent reports, which cite problems dating back to the 1980s. These reports cited problems with deteriorating financial conditions, poor financial management practices, and vulnerability to fraudulent activities in American Samoa.⁴² In March 1993, the newly elected Governor of American Samoa requested assistance from the Secretary of the Interior to help investigate white-collar crime in American Samoa in response to a projected \$60 million deficit uncovered by a DOI Inspector General audit.⁴³ As a result of this request, a team from DOJ spent 3 months assessing the problem of white-collar crime in American Samoa and completed its report in December 1994.⁴⁴ The report concluded that white-collar crime—in particular, public corruption—was prevalent in American Samoa and provided details on the difficulties with

⁴² GAO, *American Samoa: Inadequate Management and Oversight Contribute to Financial Problems*, GAO/NSIAD-92-64 (Washington, D.C.: Apr. 7, 1992). U.S. Department of the Interior, Office of Inspector General, *American Samoa: Top Leadership Commitment Needed to Break the Cycle of Fiscal Crisis*, Report No. P-IN-AMS-0117-2003 (Washington, D.C.: September 2005).

⁴³ In March 1993, Governor Richard Lutali of American Samoa wrote a letter to the Secretary of the Interior, Bruce Babbitt, to request that, pursuant to 48 U.S.C. § 1666, Federal Bureau of Investigation (FBI) agents and a DOJ prosecutor be detailed to the American Samoa Government to investigate and prosecute public integrity and other white-collar crimes.

⁴⁴ Department of Justice, *American Samoa White Collar Crime Assessment: A Special Report to the U.S. Department of the Interior, U.S. Department of Justice and American Samoa Government*, (December 1994, redacted version).

enforcing federal law in American Samoa. The report discussed three possible solutions: (1) establishing a district court in American Samoa, (2) providing the U.S. District Court of Hawaii with jurisdiction over certain matters of federal law arising in American Samoa, or (3) providing the High Court of American Samoa with federal criminal jurisdiction.

By August 1995, the U.S. Congress held hearings on the 1994 DOJ report and possible alternatives to provide for the prosecution of federal crimes arising in American Samoa. At the hearing, some American Samoa government officials opposed suggestions for changing the judicial system in the territory and views were expressed regarding increased federal presence, the desire to retain self-determination over the judicial structure, and the need to protect and maintain the *matai* title and land tenure system in American Samoa. The American Samoa Attorney General at that time testified that his office and the Department of Public Safety had created a Joint Task Force on Public Corruption that investigated and prosecuted several white-collar offenses, including embezzlement, bribery, fraud, public corruption, forgery, and tax violations.⁴⁵

For several months following the 1995 congressional hearings, different legislative options were studied by judicial committees within Congress and federal officials. One bill was drafted that would have given the U.S. District Court of Hawaii limited jurisdiction over federal cases arising in American Samoa. The bill proposed that one or more magistrate judges may sit in American Samoa, but district judges of the U.S. District Court of Hawaii would presumably preside over trials in Hawaii. The bill was opposed by some federal judicial officials citing an unfair burden that would be placed on the District of Hawaii, as well as on defendants, witnesses, and juries due, in part, to the logistical difficulties in transporting them between American Samoa and Hawaii.⁴⁶ By 1996, the proposed legislation was revised to establish an Article IV court in American Samoa with full staff accompaniments and limited federal jurisdiction that would exclude cases that would put into issue the office or title

⁴⁵Statement of A.P. Lutali, Governor of American Samoa, accompanied by Malaetasi M. Togafau, Attorney General, and R. Wendell Harwell, Territorial Auditor, before the House Resources Subcommittee on Native American and Insular Affairs, *Hearing on the U.S. Department of Justice Assessment on White Collar Crime in American Samoa* (Washington, D.C.: Aug. 3, 1995).

⁴⁶Pacific Islands Committee of the Judicial Council of the Ninth Circuit, *Report of the Pacific Islands Committee on Federal Jurisdiction in American Samoa* (Aug. 23, 1995) and *Supplemental Report of the Pacific Islands Committee, American Samoa Legislation* (Dec. 15, 1995).

of *matai* and land tenure.⁴⁷ While DOJ sent the legislation to the President of the Senate and Speaker of the House in October 1996, it was never introduced into the 104th Congress or in subsequent congressional sessions.

Concerns about Human Trafficking and Federal Grant-Related Corruption Have Heightened Law Enforcement Focus on American Samoa

While the mid-1990's legislative proposals were primarily concerned with white-collar crime in American Samoa, different types of criminal activities have more recently emerged. Prior to 1999, FBI officials told us that allegations of criminal activity in American Samoa were investigated by agents based in its Washington, D.C. field office and, due to the distance and costs involved, very few investigations were initiated. Around mid-1999, FBI began to assign Hawaii-based agents to investigations in American Samoa in response to increasing reports of criminal activity. Then, due to growing caseload and a crime assessment, in December 2005, FBI opened a resident agency in American Samoa. According to an FBI official, other than a National Park Service fish and wildlife investigator affiliated with the National Park of American Samoa, the FBI agents were the first federal law enforcement agents to be stationed in American Samoa. FBI's increased activities over the past 8 years, and establishment of a resident agency, have targeted a growing number of crimes in American Samoa, including public corruption of high-ranking government officials, fraud against the government, civil rights violations, and human trafficking. Among the most notable was *U.S. v. Lee*, which was the largest human trafficking case ever prosecuted by DOJ, as reported in 2007.⁴⁸ This 2001 case involved about 200 Chinese and Vietnamese victims who were held in a garment factory. In 2003, Lee was convicted in the U.S. District Court of Hawaii of involuntary servitude, conspiring to violate civil rights, extortion, and money laundering. Another federal case in 2006 resulted in guilty pleas from the prison warden and his associate for conspiring to deprive an inmate of rights, by assaulting him and causing him bodily injury.⁴⁹

⁴⁷ The jurisdiction was limited to civil and criminal proceedings that were (1) brought by the United States or an officer or an agency thereof arising under the laws of the United States or seeking to collect a debt pursuant to the Federal Debt Collection Procedures Act of 1990, or (2) designated to transmit requests for international judicial assistance arising from foreign judicial proceedings pursuant to treaties or other international agreements to which the United States is a party and which extend to American Samoa.

⁴⁸ See *United States v. Lee*, 159 F. Supp. 2d 1241 (D. Haw. 2001).

⁴⁹ *United States v. Kelemete*, No. 1:06-cr-116 (D. Haw. filed Mar. 1, 2006).

In December 2004, we found that American Samoa’s failure to complete single audits,⁵⁰ federal agencies’ slow reactions to this failure, and instances of theft and fraud limited accountability for 12 key federal grants supporting essential services in American Samoa.⁵¹ We recommended, among other things, that the Secretary of the Interior coordinate with other federal agencies to designate the American Samoa government as a high-risk grantee until it completed all delinquent single audits. In June 2005, DOI designated the American Samoa government as a high-risk grantee. The American Samoa government subsequently completed all overdue audits and made efforts to comply with single audit act requirements. Later, in December 2006, we reported that insular area governments, including American Samoa, face serious economic, fiscal, and financial accountability challenges and that their abilities to strengthen their economies were constrained by their lack of diversification in industries, scarce natural resources, small domestic markets, limited infrastructure, and shortages of skilled labor.⁵² Again, we cited the long-standing financial accountability problems in American Samoa, including the late submission of the reports required by the Single Audit Act, the inability to achieve unqualified (“clean”) audit opinions on financial statements, and numerous material weaknesses in internal controls over financial reporting and compliance with laws and regulations governing federal grant awards.⁵³ We made several recommendations to the Secretary of the Interior, including increasing coordination activities with officials from other federal grant-making agencies on issues such as late single audit reports, high-risk designations, and deficiencies in financial management systems and practices. DOI agreed with our recommendations, but we have not yet assessed its progress toward implementing them.

⁵⁰ Recipients that expend \$500,000 or more a year in federal awards under more than one federal program are required by the Single Audit Act to undergo a single audit. Single audits are audits of the recipient organization—the government in the case of insular areas—that focus on the recipient’s internal controls and its compliance with laws and regulations governing federal awards. 31 U.S.C. § 7501-7507; Office of Management and Budget Circular No. A-133, *Audits of States, Local Governments, and Non-Profit Organizations*.

⁵¹ GAO, *American Samoa: Accountability for Key Federal Grants Needs Improvement*, GAO-05-41 (Washington, D.C.: Dec. 17, 2004).

⁵² GAO, *U.S. Insular Areas: Economic, Fiscal, and Financial Accountability Challenges*, GAO-07-119 (Washington, D.C.: Dec. 12, 2006).

⁵³ A material weakness is a significant deficiency, or a combination of significant deficiencies, that result in more than a remote likelihood that a material misstatement of the financial statements will not be prevented or detected. A significant deficiency is a control deficiency, or combination of control deficiencies, that adversely affects the entity’s ability to initiate, authorize, record, process, or report financial data reliably in accordance with generally accepted accounting principles such that there is more than a remote likelihood that a misstatement of the entity’s financial statements that is more than inconsequential will not be prevented or detected.

In addition to these GAO reviews, FBI and various inspector general agents have conducted a broad investigation into federal grant-related corruption in American Samoa, which yielded guilty pleas in October 2005 from four former American Samoa government officials, including the Director of Procurement, the Director of the Department of Education, the Director of the Department of Health and Social Services, and the Director of the School Lunch Program. Additionally, recent audits and investigations by the Inspector General offices of the Departments of Homeland Security, Education, and the Interior indicate that the American Samoa government has inadequate controls and oversight over federal funds, that federal competitive bidding practices have been circumvented, and that American Samoan officials have abused federal funds for personal benefit. For example, in September 2007, officials from the U.S. Department of Education designated the American Samoa government as a high-risk grantee due to serious internal control issues raised in previous single audits, and cited a number of underlying fiscal and management problems. Due to the department's concerns about the American Samoa government's ability to properly administer and provide services with its funds, the department imposed several special conditions, including restrictions on the drawdown of grant funds. Also, the American Samoa legislature, or Fono, has been assisting federal agencies in their efforts to investigate public corruption and other crimes. Specifically, in early 2007, the Fono established a Senate Select Investigative Committee to review and investigate any unlawful, improper, wasteful, or fraudulent operations involving local and federal funds or any other misconduct involving government operations within all departments, boards, commissions, committees, and agencies of the American Samoa government. An official stated the committee reviews and investigates complaints, holds senate hearings with relevant witnesses, and can refer cases to either the American Samoa Attorney General or FBI for investigation and prosecution.

Reasons Offered for Changing the Current System Focus Principally on the Difficulties of Adjudicating Matters of Federal Law and Greater Access to Justice

As was the case in the 1990s, and was repeated in the interviews we conducted and e-mail comments we received, the reasons offered for changing the American Samoa judicial system principally stem from challenges associated with adjudicating matters of federal law arising in American Samoa and the desire to provide American Samoans with greater access to justice. Federal law enforcement officials have identified a number of issues that limit their ability to pursue matters of federal law arising in American Samoa. These include logistical challenges related to American Samoa's remote location. Proponents of changing the judicial system of American Samoa also cite reasons, such as providing American Samoans more direct access to justice as in other insular areas, serving as a possible deterrent to crime, and providing a means to alleviate the shame, embarrassment, and costs associated with being taken away to be tried more than 2,000 miles from American Samoa. While the main areas of concern

Logistical Challenges Related to American Samoa's Remote Location

in the mid-1990s and in our discussions were related to criminal matters arising in American Samoa, there were also concerns regarding civil matters, such as federal debt collection, although these were not addressed in much detail.

Without a federal court in American Samoa, investigators and federal prosecutors whom we interviewed said they were limited in their ability to conduct investigations and prosecute cases due to logistical obstacles related to working in such a remote location. In addition to high travel costs, and infrequent flights into and out of American Samoa, DOJ officials said they face difficulties involving effective witness preparation and difficulties communicating with agents during a small window of time each day (due to the 7-hour time difference between Washington, D.C. and American Samoa). In some cases, search warrants or wiretaps were not used by the prosecutors to the extent that they would have been if American Samoa were in closer proximity to Washington, D.C. or Honolulu, Hawaii.⁵⁴ Federal prosecutors told us that far fewer witnesses have been called to testify in front of the grand jury, given the burden of high travel costs from American Samoa. Federal prosecutors also told us that they must rely on witness observations and summaries from federal agents stationed in American Samoa rather than meet key witnesses face to face before bringing charges or issuing subpoenas, as they would typically do. Further, according to DOJ officials, the cost related to managing these cases has limited the number of cases they are able to pursue. Federal law enforcement agents told us that a federal court located in American Samoa could bring additional investigative and prosecutorial resources so that they would be able to pursue more cases. Although some have suggested that judicial and prosecutorial resources from the judicial districts of CNMI and Guam be deployed to American Samoa, the high travel costs and logistical obstacles would not be any less, given that there are no direct flights between American Samoa and Guam or between American Samoa and CNMI.

More Direct Access to Federal Court and Parity with Other Insular Areas

Another key reason offered for changing the system for adjudicating matters of federal law in American Samoa is that a federal court would provide residents with more direct access to justice and the ability to more easily pursue cases in the federal court system. Currently, the ability to adjudicate federal cases exists

⁵⁴ There is also some legal uncertainty about the current ability of federal judges to issue search warrants for property in American Samoa because it is outside of a federal judicial district. A proposed change to the Federal Rules of Criminal Procedure, to be effective in December 2008, would authorize a magistrate judge in a district in which activities related to the crime under investigation may have occurred or in the District of Columbia to issue a search warrant for property in American Samoa.

only in very limited cases through the High Court, at a significant cost of time and money to travel to U.S. District Courts in Hawaii or Washington, D.C.; or not at all, in the case of some civil matters and bankruptcy. Proponents state that the establishment of a federal court would provide American Samoa parity with other insular areas, such as CNMI, Guam, and USVI, which have federal courts. Further, a legal expert said that a federal court in American Samoa would provide the community with an opportunity to see first hand how parties can come together to resolve their differences with regard to federal matters. For example, some have asserted that if public corruption trials were held in American Samoa, they would act as a deterrent to others contemplating fraudulent behavior; increase accountability with regard to government spending; and provide satisfaction in witnessing wrong doers brought to justice. Some stated in the February 2006 public hearing held by the Fono⁵⁵ and in e-mail comments we received that they have felt shame and embarrassment when defendants are taken to distant courts and in our group discussions, it was stated that American Samoa is perceived by others as unable to render justice to its own residents. Further, some officials have noted the significant costs that defendants' families must bear in traveling great distances to provide support during trials. This burden is exacerbated by the comparatively low family incomes in American Samoa, which, as stated earlier, are less than half of the U.S. median household income, according to 2000 Census Bureau data.

Finally, some people we met with stated that the current system of holding federal criminal trials outside of American Samoa subjects defendants to possible prejudices by jurors in other locations. They cited the relative unfamiliarity of the judges and jurors in Washington, D.C. or Honolulu, Hawaii regarding American Samoan cultural and political issues and suggested that American Samoans would receive a fairer trial in American Samoa than in these locations. This issue had also been discussed in the mid-1990s. For example, in his testimony during August 1995 congressional hearings, the then-Governor of American Samoa stated that the people of American Samoa have the ability to deliver just verdicts based on the evidence presented. He noted that for almost 20 years prior, the trial division of the High Court had successfully conducted six-person jury trials as

⁵⁵ Legislature of American Samoa, *Report and Record of the Joint Legislative Public Hearing* (Feb. 23-24, 2006).

evidence that American Samoan customs and family loyalties had not prevented effective law enforcement.⁵⁶

Comments from Group Discussions and E-mail Responses Reflect Some of the Same Reasons Offered for Changing the Current System

Views in support of changing the current system were also reflected in some comments made during the group discussions we held in American Samoa and in some of the e-mail responses we received. Some members of the public expressed discontent over the significant costs associated with American Samoan defendants and their families having to travel to Hawaii or Washington, D.C. for court matters and they expressed the importance of having a jury of their peers deciding their cases. Other members of the public and a local community group expressed their belief that a federal court in American Samoa may act as a deterrent for the abuse of federal funds and public corruption, and provide opportunities for American Samoans to pursue federal legal matters, such as bankruptcy. While there was no consensus opinion, certain members of the local bar association mentioned that having a federal court could be beneficial for economic development, by attracting qualified attorneys and court staff to American Samoa. Additionally, one member stated that a federal court may lighten the workload and reduce the backlog of the High Court by taking over its federal maritime and admiralty matters.

Reasons Offered Against Changing the Current Judicial System Focus Principally on Preserving the Culture and Traditions of American Samoa and Concerns about Juries

One of the key reasons offered against changing the current judicial system is the concern that a federal court would impinge upon Samoan culture and traditions. The most frequent concerns raised were related issues— that the system of *matai* chiefs and the land tenure system could be jeopardized. In raising these issues, some cited the deeds of cession which specify that the United States would preserve the rights and property of the Samoan people. Further, some law enforcement officials we met with also opposed a change to the current system for prosecuting federal cases arising in American Samoa because they were concerned that, given the close familial ties in American Samoa, it would be difficult to obtain convictions from local jurors.

Preservation of Local Culture and Traditions

During the February 2006 Fono hearings,⁵⁷ in e-mail comments we received, and in statements by American Samoa government officials we interviewed, concerns

⁵⁶ American Samoa code provides that a person charged with an offense carrying a maximum punishment of over 6 months of imprisonment shall be tried by a jury unless he personally waives this right in writing or in open court. The law also provides that the petit jury shall be comprised of six persons, the jury verdict must be unanimous, and *voir dire* of prospective jurors shall be conducted by the court. Am. Samoa Code Ann. § 3.0232.

⁵⁷ Legislature of American Samoa, *Report and Record of the Joint Legislative Public Hearing* (Feb. 23-24, 2006).

were voiced that the establishment of a federal court in American Samoa could jeopardize the *matai* and land tenure system of American Samoa. As noted above, *matai* hold positions of authority in the community; for example, only *matai* may serve as senators in the American Samoa legislature, and *matai* control the use and development of the communal lands and allocate housing to their extended family members. The land tenure system of American Samoa is such that the majority of the land in American Samoa is communally owned, and the sale or exchange of communally owned land is prohibited without the consent of the Governor. Also prohibited is the sale or exchange of communally owned and individually owned property to people with less than one-half Samoan blood.⁵⁸ American Samoa government officials assert that the land tenure system fosters the strong familial and community ties that are the backbone of Samoan culture and that limits on the transfer of land are important to preserve the lands of American Samoa for Samoans and protect the Samoan culture.

Currently, cases regarding *matai* titles and land issues, such as disputes over the rightful successor to a *matai* or land use or improvements, are heard by the land and titles division of the High Court of American Samoa. This division is composed of the Chief Justice and Associate Justice, as well as associate judges, who are appointed based on their knowledge of Samoan culture and tradition. Pursuant to the federalist structure of the U.S. judiciary, if a federal court were established in American Samoa, most cases arising under local law, such as *matai* and land disputes, would likely continue to be heard by the local court. However, some American Samoa officials stated that they are concerned that if a federal court was established in American Samoa, a federal judge, without the requisite knowledge of Samoan culture and tradition, would hear land and title cases. They stated that they would like to keep *matai* title and land tenure issues within the jurisdiction of the High Court.

Another concern that was raised by government officials and residents of American Samoa is that the presence of a federal court in American Samoa may generate constitutional challenges to the *matai* and land tenure system. Though such challenges may currently be brought in existing venues, some voiced concerns that the establishment of a federal court in American Samoa may make such challenges less costly and, perhaps, more likely.

In general, many residents of American Samoa said they value their culture and traditions and think that the *matai* and land tenure systems in American Samoa

⁵⁸ The ethnic limitations apply to communal lands and individually owned native lands, but not freehold lands.

are critical components of the *fa'a Samoa*. The following quote from the Secretary of Samoan Affairs summarizes the position we heard from many during our visit to American Samoa:

To this day, our native land tenure system remains at the very core of our existence: our culture, our heritage and our way of life. Without our native land tenure system, our *matai* or chieftain system will fade over time—along with our language, our customs and our culture....we, as a people, have an overriding desire to keep the fabric of our society (i.e., our Samoan culture) intact. No other U.S. state or territory enjoys the total and complete preservation of its people's culture as American Samoa. I fear that the imposition of a federal court system in American Samoa may have a destructive impact on our culture.⁵⁹

Concerns about Juries

Some have raised concerns regarding the establishment of a federal jury system, given the potentially small pool of U.S. citizens in American Samoa and the extended family ties among American Samoans. Federal law provides that federal jurors must be U.S. citizens.⁶⁰ As discussed earlier, American Samoans are U.S. nationals, not U.S. citizens, although they may apply and become U.S. citizens. Neither the U.S. Census Bureau nor the American Samoa Department of Commerce provides data on the number of U.S. citizens in American Samoa. Thus, the proportion of the American Samoa adult population who are U.S. citizens is unknown. If the number of U.S. citizens is fairly small, then the pool from which to select federal jurors would be fairly small without a statutory change. In addition, law enforcement officials have speculated that extended family ties in American Samoa may limit the government's ability to successfully prosecute cases. Specifically, they raised the issue of jury nullification—the rendering of a not guilty verdict even though the jury believes that the defendant committed the offense—as a potential problem that may occur if jury trials were held in American Samoa, due to the influence of familial ties or other societal pressures on jurors. Federal law enforcement officials we met with added that some witnesses involved in testifying against others in previous federal criminal cases have relocated outside of American Samoa and have lost their jobs and housing as a result of their participation in cases. These officials stated that they believe that similar societal pressures will be imposed on jurors if trials were held in American Samoa. These officials concluded that the current

⁵⁹ Letter from the Secretary of Samoan Affairs, American Samoa Government, to GAO, dated October 12, 2007.

⁶⁰ 28 U.S.C. §§ 1861-1878.

Comments from Group
Discussions and E-mail Responses
Reflect Some of the Same
Reasons Offered Against
Changing the Current System

system of federal criminal trials taking place away from American Samoa is the best way to get unbiased juries.⁶¹

Views expressing opposition to changing the current system were also reflected in some comments we received from the group discussions we held in American Samoa and from e-mail responses. Some members of the public expressed concerns over an increased federal presence in American Samoa and the potential legal challenges which could be brought regarding the land tenure system and *matai* title traditions. Further, some expressed concerns about non-Samoans filing discrimination lawsuits over their inability to own land. Some stated that the current system operates well and they did not see a need for change. Others expressed opposition to a federal court in American Samoa due to their concerns about impartial jurors. They stated that if a federal court were established in American Samoa, jurors may not be able to be impartial because of the close relations through family, culture, church, government, or business. Finally, others expressed concerns about the U.S. government pushing and imposing its will on American Samoa, and their belief that changes to the current system should come not from the federal government but from American Samoans themselves.

Scenarios for
Establishing a Federal
Court in American
Samoa or Expanding
the Federal Jurisdiction
of the High Court of
American Samoa Have
Varied Support and
Unresolved Issues

Based on our review of legislative proposals considered during the mid-1990s, testimonies and reports, and through discussions with legal experts and American Samoa and federal government officials, we identified three potential proposals, or scenarios, if a change to the judicial system of American Samoa were to be made. These scenarios are (1) establishing an Article IV district court in American Samoa, (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. Each scenario would require a statutory change and present unique operational issues to be addressed. To the extent possible, we cited written documents and knowledgeable sources in the discussion of these issues. See appendix I for detailed information on our scope and methodology.

⁶¹ A federal law enforcement official suggested that rather than establishing a federal court in American Samoa, one option would be to designate the U.S. District Court of Hawaii as the proper venue for federal cases arising in American Samoa and provide the U.S. District Court of Hawaii with additional resources to handle such cases. As such, cases arising in American Samoa would be heard by district judges and juries in Hawaii.

Three Scenarios Present Different Structures and Operational Issues to Be Resolved

Based on our review of past legislative proposals, testimonies, and reports, and through discussions with legal experts and American Samoa and federal government officials, we identified three potential scenarios for establishing a federal court in American Samoa or expanding the federal jurisdiction of the High Court of American Samoa:

1. establishing an Article IV district court in American Samoa,
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.

These scenarios are similar to those discussed in the 1990s, and are described in more detail in attachment I. Each scenario would require a statutory change and each presents unique operational issues that would need to be resolved prior to implementation. Some issues to be resolved include determining:

- what jurisdiction would be granted to the court;
- what type of courthouse facility and detention arrangements would be needed and to what standards, including security standards; and
- what jury eligibility requirements would apply.

Scenario 1: Establishing an Article IV District Court in American Samoa

The original structure of this scenario came from draft legislation submitted by DOJ to the Speaker of the U.S. House of Representatives and the President of the U.S. Senate in October 1996, which proposed the creation of a new federal court in American Samoa.⁶² The legislation specified that the court would have limited jurisdiction that would exclude matters pertaining to *matai* title and land tenure issues. Under this scenario, federal law would authorize a federal court structure that most closely resembled federal courts in CNMI, Guam, and USVI. It would include an Article IV district court with a district judge, court clerk, and support staff. Below is a description of the key issues under this scenario.

Jurisdiction: The statute creating the Article IV district court would specify the court's jurisdiction. It could be limited to criminal cases only, or may or may not

⁶² At that same time, the Judicial Conference of the United States' position was that if Congress determined to establish federal judicial jurisdiction in American Samoa, and to commit sufficient resources to create such jurisdiction, the conference would endorse the creation of an Article I district court in American Samoa.

include bankruptcy, federal question, and diversity jurisdiction. American Samoa officials and others whom we interviewed were divided on whether the law establishing a district court in American Samoa should explicitly exclude *matai* and land tenure issues from the court's jurisdiction. Another possibility is that, as in other insular area federal courts, the federal jurisdiction of the court could grow over time. For example, while the District Court of Guam began with jurisdiction over cases arising under federal law in 1950, subsequent federal laws expanded its jurisdiction to include that of a district court of the United States, including diversity jurisdiction, and that of a bankruptcy court.

Appeals process: The process for appealing decisions would be the same as in other Article IV district courts. Appeals would first go to the U.S. Court of Appeals for the Ninth Circuit and then to the U.S. Supreme Court.

Judges: The judge would be appointed in the same manner as federal judges for the other insular areas, who are appointed by the President, with the advice and consent of the Senate, for 10-year terms.

Associated Executive and Judicial Branch staff: Probation and Pretrial services staff, U.S. Attorney and staff, and U.S. Marshals staff would establish stand-alone offices. Defender services could be provided, at least initially, through the Federal Public Defender Organization personnel based in the District of Hawaii and/or Criminal Justice Act (CJA) panel attorneys.⁶³ CJA panel attorneys are designated or approved by the court to furnish legal representation for those defendants who are financially unable to obtain counsel.⁶⁴

⁶³ Federal Public Defender officials we met with said that it is unlikely that a court in American Samoa would reach the minimum 200 appointments per year required to appoint a Federal Public Defender in American Samoa. In addition, these officials also indicated that it is unlikely that, under the CJA provision that adjacent districts may aggregate their appointments to establish eligibility, there would be a sufficient CJA caseload to support opening of a staffed branch office of the Federal Public Defender Organization (headquartered in Honolulu, Hawaii) in American Samoa. In the past, the Federal Public Defender in Hawaii has represented defendants from American Samoa when brought to trial in the U.S. District Court of Hawaii.

⁶⁴ U.S. district courts, with the approval of the judicial council of the circuit, must have a plan for furnishing representation for any person financially unable to obtain adequate representation. Under this plan, a judge can appoint counsel from a federal defender organization authorized by the court or a panel of attorneys designated or approved by the court—called a Criminal Justice Act (CJA) panel—to furnish legal representation for those defendants who are financially unable to obtain counsel. 18 U.S.C. § 3006A. Where a federal defender organization is established, the CJA provides that panel attorneys be appointed in a substantial proportion of the cases (defined by guidelines as approximately 25 percent of the appointments annually in a district).

Scenario 2: Establishing a District Court in American Samoa That Would Be a Division of the District of Hawaii

Physical facilities: Under this scenario, a new courthouse facility would need to be built to provide the courtroom, judge’s chambers, office space for federal court staff, and a holding area for detaining defendants during trials. It is not clear if a detention facility for detaining defendants pretrial and presentencing would need to be built or if a portion of the existing local prison could be upgraded to meet federal standards. According to the U.S. Marshals Service, the current local prison in American Samoa does not meet federal detention standards.

Operational issues: Several judicial officials and experts we met with stated that this scenario is the most straightforward option because it would be modeled after the federal courts in other insular areas, which would place residents of American Samoa in a position that is equitable with residents of the other insular areas. Other judicial officials we met with stated, however, that this is potentially the most costly scenario of the three, given the relatively small caseload expected. However, the Pacific Islands Committee⁶⁵ stated in its 1995 Supplemental Report that new federal courts historically have drawn business as soon as they open their doors, and it is likely that growth in the court caseload would result.⁶⁶

This scenario would create a new division of American Samoa within the District of Hawaii.⁶⁷ There are potentially several arrangements which could be devised to handle court matters. Since the U.S. District Court of Hawaii is an Article III court, a judge assigned to a Division of American Samoa would also presumably be an Article III judge, which would differ from the Article IV courts in CNMI,

⁶⁵ The Pacific Islands Committee is a standing committee of the Judicial Council of the Ninth Circuit with an indefinite liaison responsibility to the Judicial Conference of the U.S. Committee on Federal-State Jurisdiction. The Pacific Islands Committee fulfills the oversight responsibilities of the Ninth Circuit Judicial Council and the Judicial Conference of the United States with respect to the judiciaries of the territories and former trust territories in the Pacific, including American Samoa. The specific responsibilities include assisting in the development and provision for continuing judicial education and court professional training, improvement of the administration of justice in the courts of the northern Pacific, and oversight responsibility for judicial education grants from the U.S. Department of the Interior.

⁶⁶ Although case filings may grow over time, if the case filings in a district court for American Samoa were similar to those in Guam and CNMI, they would be fairly small. For example, according to the Administrative Office for the U.S. Courts, *2007 Annual Report of the Director: Judicial Business of the United States Courts*, 38 civil and 169 criminal cases were filed in Guam in fiscal year 2007. For the same period in CNMI, 47 civil and 28 criminal cases were filed. By comparison, the District of Wyoming had the lowest total case filings of any district in the 50 states in fiscal year 2007, with 289 civil and 312 criminal filings.

⁶⁷ American Samoa would have to be a separate division within the U.S. District Court of Hawaii as a means to maintain separate jury pools between American Samoa and Hawaii.

Guam, and USVI. Another possibility would be to assign an Article IV judge to American Samoa. Regardless of the arrangement, a clerk of the court and support staff would be needed in American Samoa to handle the work of the court.

Jurisdiction: As with scenario 1, the statute creating the division in the District of Hawaii would specify the court's jurisdiction. It could be limited to criminal cases only, or may or may not include bankruptcy, federal question, and diversity jurisdiction.

Appeals process: The process for appealing decisions would be the same as the District of Hawaii, to the U.S. Court of Appeals for the Ninth Circuit and then to the U.S. Supreme Court.

Judges: An Article III or Article IV judge would be appointed by the President, with the advice and consent of the Senate, and serve either a life term with good behavior (Article III) or a 10-year term (Article IV) as is true in Guam, CNMI, and USVI.

Associated Executive and Judicial Branch staff: Probation and Pretrial services, U.S. Attorney, and U.S. Marshals could provide the minimum staff required in American Samoa and share support functions with their offices in the District of Hawaii. Defender services could be provided, at least initially, through Federal Public Defender Organization personnel based in the U.S. District Court of Hawaii and/or CJA panel attorneys.

Physical facilities: As with scenario 1, a new courthouse facility would need to be built to provide the courtroom, judge's chambers, office space for federal court staff, and a holding area for detaining defendants during trials. Also, similar to scenario 1, it is unclear whether a new detention facility would need to be built or if a portion of the existing local prison could be upgraded to meet federal standards.

Operational issues: Some federal and judicial officials we interviewed told us that this scenario may be less costly than scenario 1 because as a division of the District of Hawaii, some administrative functions and resources may be able to be shared with Hawaii. Other federal and judicial officials told us that costs for staff to travel between American Samoa and Hawaii and additional supervisory staff which may be needed in Hawaii may make scenario 2 just as costly, or possibly more costly than scenario 1. Although this scenario would allow for trials to be held in American Samoa, there may be issues to be resolved concerning the status of any judges that would serve in the court and the degree to which resources could or would be shared with the U.S. District Court of Hawaii. For example, some judicial officials have raised questions of equity

about the possibility of Article IV judges being assigned to federal courts in CNMI, Guam, and USVI while an Article III judge was assigned to the federal court in American Samoa.

Scenario 3: Expanding the Federal Jurisdiction of the High Court of American Samoa

This scenario would expand the federal jurisdiction of the High Court of American Samoa rather than establish a new federal court. This would be a unique structure, as local courts typically do not exercise federal criminal jurisdiction. As a result, a number of unresolved issues associated with this scenario would have to be resolved should this scenario be pursued.

Jurisdiction: The jurisdiction of the High Court would be expanded to include additional federal matters, such as federal criminal jurisdiction. This would be a unique structure, as local courts generally do not exercise federal criminal jurisdiction. While there is a history of federal courts in insular areas with jurisdiction over local offenses, there has never been the reverse—a local court with jurisdiction over both local and federal offenses.

Appeals process: The appellate process for federal matters under such a scenario is unclear. The current process for the limited federal cases handled by the High Court has five levels of appellate review: (1) to the Appellate Division of the High Court, (2) to the Secretary of the Interior, (3) to the U.S. District Court for the District of Columbia, (4) to the U.S. Court of Appeals for the District of Columbia Circuit, and (5) to the U.S. Supreme Court. Whether the appeals process would be amended to match that of the federal courts in CNMI, Guam, and USVI would have to be determined.

Judges: The Chief Justice of the High Court stated that the High Court may need an additional judge to handle the increased caseload. Alternatively, in our discussions, Pacific Island Committee members with whom we met suggested that the Secretary of the Interior or the Chief Judge of the Ninth Circuit could designate active and senior district judges within the Ninth Circuit to handle any court workload in American Samoa. They point out that they designated judges from the Ninth Circuit to the District of Guam for over 2 years, when there was an extended judge vacancy. Further, the Ninth Circuit has designated local judges to handle federal matters, when necessary. For example, the judges from the Districts of CNMI and Guam routinely use local Superior Court or Supreme Court judges to handle federal court matters and trials, in cases when they must recuse themselves from a court matter or in the case of a planned or emergency absence. However, Pacific Island Committee members with whom we met stated that presumably federal judges would only handle federal court matters. It was unclear whether High Court justices would handle federal and local court matters and what implications might arise from such a structure.

Associated Executive and Judicial Branch staff: It is unclear whether Probation and Pretrial services, U.S. Attorneys, and U.S. Marshals would be established, since these staff are only provided to a district court. Similarly, the authority under the CJA to authorize a federal defender organization to provide representation or to compensate panel attorneys is vested in the district court. The Department of Justice would need to determine whether it would establish a federal prosecutor position in American Samoa to prosecute certain federal cases in the High Court. There are local Public Defender and Attorney General Offices in American Samoa and the extent to which they could assist with cases is unknown. According to the Chief Justice of the High Court, it is unlikely that the existing probation and pretrial or court security staff would be able to handle an increased workload. Currently the High Court has three probation officers who work part-time as translators for the court, and two marshals, one for each of the High Court's two courtrooms.

Physical facilities: The extent to which federal detention and courtroom security requirements would apply is uncertain. Until this issue is resolved, activities could possibly continue in existing courthouse and detention facilities. However, the High Court justices and clerk said that current courtroom facilities are already used to capacity without the added caseload that federal jurisdiction could bring.

Operational issues: This scenario may be the lowest-cost scenario and may alleviate concerns about the threat to the *matai* and land tenure systems. It is potentially the lowest-cost scenario because some of the existing court facilities and staff may be used. Some leaders within the American Samoa government believe this is the best option and supporters of this scenario note that the High Court has a history of respecting American Samoa traditions and so they have fewer concerns that issues of *matai* titles and land tenure would be in jeopardy. At the same time, as it is unprecedented to give federal criminal jurisdiction to a local court, this scenario could face the most challenges of the three, according to federal judges and other judicial officials. Legal experts with whom we met told us that, because this is a unique arrangement, the High Court and U.S. judiciary may be faced with having to constantly solve unique problems and develop solutions on a regular basis. For example, judicial officials stated that the High Court Justices would have to be cognizant of their roles and responsibilities when shifting from the duties of a local High Court Justice to the duties of a federal judge. A judicial official also noted that the High Court justices may have to become familiar with federal sentencing guidelines, which require a considerable amount of training. In the August 1995 hearing, the DOJ Deputy Assistant Attorney General stated that vesting federal jurisdiction in the High Court runs counter to well-established legislative policy that district courts should have exclusive jurisdiction over certain types of proceedings to which the United States is a party. For example, federal law states that U.S. district courts have

exclusive jurisdiction over all offenses against the criminal laws of the United States⁶⁸ and with respect to the collection of debts owed to the United States, provides for an exclusive debt collection procedure in the courts created by Congress.⁶⁹ Similarly, federal regulatory statutes often provide for enforcement and judicial review in the federal courts.

Another issue to be resolved is the appointment process for justices of the High Court. While none of the judicial officials with whom we met had concerns about the independence of the current justices, some expressed concerns about the differences in the way judges are appointed—while federal judges are generally appointed by the President, the justices in American Samoa are appointed by the Secretary of the Interior. As such, they suggested that the justices in American Samoa may not be subject to the same vetting process and protected by the same constitutional and statutory provisions—such as salary guarantees—as are district judges.

Potential Cost Elements Subject to Considerable Uncertainties

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. We collected likely cost elements, to the extent possible, for scenario 1 and 2 from the various federal agencies that would be involved in establishing a federal court in American Samoa. We did not collect cost data for scenario 3 because of its unique judicial arrangement and because there was no comparable existing federal court structure upon which to estimate costs. For scenario 1 and 2, AOUSC officials told us that a new courthouse would need to be built. GSA officials told us that court construction and agency rental costs would be comparatively high—about \$80 to \$90 per square foot for a new courthouse, compared to typical federal government rental charges for office space in American Samoa of around \$45 to \$50 per square foot in 2007. Funding sources for the judiciary and DOJ derive primarily from direct congressional appropriations and funding for a federal courthouse in American Samoa would likely be funded similarly. We found the data for scenarios 1 and 2 sufficiently reliable to provide rough estimates of the possible future costs for these scenarios for establishing a federal court in American Samoa, with limitations as noted.

Data Limitations and Assumptions

Because the three court scenarios presented are hypothetical, and the exact details of the jurisdiction, staffing, and physical facilities would have to be determined

⁶⁸ 18 U.S.C. § 3231.

⁶⁹ 28 U.S.C. §§ 3001, 3002(2).

when, and if, a specific scenario were adopted, the estimated costs cannot be aggregated to obtain a precise estimate of the total costs for the scenarios. Rather, the cost data should be viewed as general approximations of the types and magnitude of costs that could be incurred. Recognizing this uncertainty, we collected likely cost elements for each scenario, to the extent possible, from federal agencies that would be involved in establishing a federal court in American Samoa—GSA for construction and rental costs, AOUSC for judicial branch costs, and EOUSA and USMS for executive branch costs.

We collected cost data for scenarios 1 and 2. According to AOUSC, under each of these scenarios a new courthouse would need to be built. We did not estimate costs for bankruptcy courts for either scenario, since, if the district court were to hear bankruptcy cases, it is likely that the district court judge would hear both federal matters and bankruptcy cases, similar to other district judges in CNMI, Guam, and USVI. We did not collect cost data for scenario 3 because, as stated earlier, it would be a unique judicial arrangement and there is no comparable existing federal court structure upon which to estimate costs. The cost data presented cannot be used for budget purposes and an analysis of cost effectiveness would be of limited value given that the data are fragmented. 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. Thus, policy considerations, other than cost effectiveness, are more likely to be the basis for deciding whether and how to establish a court with federal jurisdiction in American Samoa.

Court Construction and Agency Rental Costs Would be Comparatively High

Due to limitations on existing buildings and potential land restrictions—about 90 percent of American Samoan land is communally owned—GSA officials told us that a new courthouse in American Samoa would likely use a build-to-suit lease construction arrangement rather than government-owned construction and that construction and consequent rental costs would be comparatively high. GSA provided initial construction and rental costs for the hypothetical courthouse in American Samoa, based on a floor plan submitted for a proposed new one-judge courthouse in CNMI. According to GSA officials, there are no buildings in American Samoa suitable for use as a federal courthouse. Further, officials from the High Court of American Samoa told us that its two-courtroom High Court building and its one-courtroom local district court building are frequently used to capacity.

Under build-to-lease construction, the government contracts with a private developer to build the courthouse and, in this case, GSA leases the completed building based on the amortization of a 20-year construction loan. GSA would

then rent portions of the building to the tenant federal agencies, such as AOUSC, EOUSA, and USMS. GSA officials gave very preliminary rent estimates of \$80 to \$90 per square foot,⁷⁰ based on requirements similar to an existing build-to-suit lease prospectus for a new courthouse in CNMI.⁷¹ Further, GSA officials told us that federal agencies would be responsible for up-front payments for the particular courthouse governmental features, such as holding cells, and blast protection for security.⁷² GSA officials indicate that the accuracy of the initial American Samoa court construction may vary by as much as -20 to +80 percent, thereby influencing rental costs. The GSA Assistant Regional Administrator for Region IX Pacific Rim stated that there are many factors that could affect construction costs and, therefore, the tenant agencies' rental costs. For example, any cost increases associated with the condition of an unknown site or escalation in construction costs beyond what has been anticipated will have a direct and proportional impact on the rental costs, as well as the up-front costs that agencies may be required to pay.

Preliminary rental costs of \$80 to \$90 per square foot for a new courthouse with specialized building requirements would exceed typical federal government rental charges for offices in American Samoa at the prevailing market rates of \$45 to \$50 per rentable square foot in 2007.

Judicial Branch Costs Include Judges, Court Staff, and Federal Defender

For scenarios 1 and 2, AOUSC officials provided information related to three types of costs

1. district court costs,
2. probation and pretrial services costs, and
3. federal defender costs. :

Scenario 1 Costs

District court costs: For yearly district court costs under scenario 1, AOUSC provided us with district court cost estimates of about \$1.5 million for personnel

⁷⁰ This rental cost was based on an estimated cost of construction of approximately \$56 million, assuming a 20-year amortization of the investment.

⁷¹ The housing plan, developed for the proposed new CNMI courthouse for fiscal year 2009, includes about 68,000 rentable square feet for one courtroom, judge's chambers, and office space for the district court operations, U.S. Probation and Pretrial Services, the U.S. Attorney's Office, and USMS.

⁷² OMB Circular A-11, Appendix B requires that federal agencies fund, with up-front payments, the cost of inherently governmental features of the space they lease.

costs, including the costs of one district court judge and the full-time equivalent salaries of 2 law clerks and 1 secretary, 11 district clerk's office staff, 1 pro se law clerk,⁷³ 1 court reporter, and recruitment and training costs.⁷⁴ Operational costs were estimated at \$0.1 million, which includes judge's law books, stationery, forms, new case assignment and jury management systems, travel, postage and delivery charges, and consumables for both the first year and recurring years. Information technology and other equipment costs were estimated at \$0.1 million. Space and facilities costs ranged between \$2.6 million to \$2.9 million and include necessary alterations and renovations, signage, furnishings, furniture, and estimated GSA rental costs.⁷⁵

Probation and pretrial services costs: For the yearly cost of probation and pretrial services, AOUSC provided us with personnel and benefits costs estimated at \$0.3 million, which includes the full-time equivalent salaries of one Chief Probation Officer, one probation officer, and one administrative support staff. Operational costs were estimated at \$0.1 million, including travel, training, transportation, postage, printing, maintenance, drug dependent offender testing and aftercare, pretrial drug testing, mental health treatment services, monitoring services, DNA testing, notices/advertising, contractual services, supplies, awards, firearms, and protective equipment. Information technology and other equipment costs were estimated at about \$16,000 (i.e., equipment, maintenance, purchase of copy equipment, computer training, phone communications, supplies, computers, phones, data communications equipment, printers, scanner, and computer software).⁷⁶ Space and facilities costs were estimated at \$0.4 million to \$0.5

⁷³ Pro se law clerks assist judges in the management of cases filed by litigants representing themselves.

⁷⁴ Because reliable estimates of the number of civil and criminal cases were not known, AOUSC officials based their estimates on the actual costs obligated in 2007 for the District Court of the Northern Mariana Islands. Further, AOUSC officials stated that some district court costs may vary by caseload.

⁷⁵ GSA officials estimated that a courthouse in American Samoa would require about 32,000 rentable square feet, based on GSA's build-to-suit lease prospectus developed for a new courthouse in CNMI.

⁷⁶ Because the number of civil and criminal cases was unknown, AOUSC officials based their personnel and benefits and operational and information technology cost estimates on a percentage of the actual costs obligated in 2007 from the Probation and Pretrial Services Office in Guam, which is a consolidated operation covering both district courts located in CNMI and Guam. AOSUC officials determined the percentage of resources used to support the District Court for the Northern Mariana Islands as a basis for the estimate of costs for an office in American Samoa.

million, which includes furniture and fixture purchases, as well as GSA rental costs.⁷⁷

Federal Defender costs: AOUSC officials did not estimate costs for a Federal Defender's office, since it is unlikely that the hypothetical court in American Samoa would, at least initially, reach the minimum 200 appointments per year required to authorize a Federal Defender Organization or the number of cases that would warrant the creation of a Federal Public Defender Organization headquartered in the District of Hawaii. The court in American Samoa, as an adjacent district, might be able to share the Federal Public Defender Organization staff based in Hawaii, or the court could rely solely on a CJA panel of attorneys.⁷⁸ The costs to the Federal Public Defender Organization in Hawaii and the costs of reimbursing CJA attorneys would vary based on the caseload of the court.

Scenario 2 Costs

District Court costs: According to AOUSC, the estimated district court costs for scenario 2 could be similar to the estimated costs for scenario 1. An AOUSC official indicated that there may not be a need for a clerk, financial/procurement officer, jury clerk, or information technology specialist in American Samoa under scenario 2, as those functions may be handled out of the District of Hawaii office, leading to some possible reductions in personnel salaries. However, some judicial officials stated that any decrease in staff costs for this scenario may be offset by increased costs for travel between Hawaii and American Samoa. GSA rental costs would be comparable to scenario 1.

Probation and pretrial services costs: Probation and Pretrial Services officials did not provide any cost differences between scenarios 1 and 2.

Federal Defender costs: Either the Office of the Federal Public Defender in Hawaii or a CJA panel may provide defender services in American Samoa under both situations, thereby also not leading to any significant change in cost estimates between scenarios 1 and 2.

⁷⁷ GSA estimated that probation and pretrial services would need about 5,500 rentable square feet for its operations in American Samoa, based on the CNMI build-to-suit lease prospectus.

⁷⁸ See 18 U.S.C. § 3006A.

Executive Branch Costs Include Federal Prosecution and Security Costs

For the Department of Justice, an EOUSA official provided U.S. Attorney's Office cost estimates and a USMS official provided security cost estimates for both scenario 1 and scenario 2.

U.S. Attorney's Office Costs

Scenario 1 costs: EOUSA officials calculated the cost of a U.S. Attorney's office based on a partial first year and a complete second year. Modular personnel costs are \$0.6 million for the first year and \$1.0 million for the second year, which includes one U.S. Attorney, three attorneys, and two support staff. Operational costs ranged from \$0.5 million to \$0.9 million, including travel and transportation, utilities, advisory and assistance services, printing and reproduction, and supplies and materials.⁷⁹ Information technology costs were estimated at \$0.1 million for equipment and the operation and maintenance of equipment. Space and facilities costs range between \$1.3 million and \$1.4 million and include the operation and maintenance of facilities and rent to GSA⁸⁰ and others.

Scenario 2 costs: EOUSA officials calculated U.S. Attorney's office personnel costs for a partial first year and a complete second year. Modular personnel costs rose from \$0.6 million in the first year to \$1.0 million throughout the second year, which includes four attorneys and two support staff. Operational costs remain consistent at \$0.2 million for both the first and second years, reflecting travel and transportation, litigation costs, supplies, and other miscellaneous costs. Information technology and equipment costs were estimated to be approximately \$0.1 million for both years. Yearly rental rates may also be comparable in the initial years. Personnel and operations costs for scenario 2 were estimated to be less than for scenario 1 because scenario 2 does not include a separate U.S. Attorney for American Samoa. Rather, the costs for scenario 2 are based on the estimated costs and personnel the U.S. Attorney for the District of Hawaii would need to support cases that arise in American Samoa.

U.S. Marshals Service Costs

⁷⁹ Because reliable estimates of the number of criminal and civil cases for American Samoa were not known, the U.S. Attorney's Office nonpersonnel cost data for scenario 1 were estimated based on fiscal year 2005 and fiscal year 2006 obligation data for the U.S. Attorney's Office for the District of Guam. This is a small U.S. Attorney's Office and is responsible for the federal district courts in CNMI and Guam. EOUSA officials told us that CNMI district court obligations could not be separated out from Guam obligation data.

⁸⁰ GSA estimated that the U.S. Attorney's Office would need about 15,800 rentable square feet for its operations in American Samoa, based on the CNMI build-to-suit lease prospectus.

Scenario 1 costs: USMS officials estimated that personnel costs were \$0.8 million, based on fiscal year 2008 salaries, benefits, and law enforcement availability pay for all supervisory (one U.S. Marshal, one Chief Deputy, one Judicial Security Inspector) and nonsupervisory (two Deputy Marshals and one administrative) personnel that would be needed.⁸¹ Operational costs were estimated to be \$0.8 million based on fiscal year 2008 standard, nonpersonnel costs for district operational and administrative positions (including vehicles, weapons, protective gear, communications equipment, and operational travel costs), and \$0.7 million for defendant transport (including guard wages, airfare, per diem meals, and lodging).⁸² Information technology and equipment costs were estimated at \$0.6 million for the installation of a computer network and telephone system to all USMS offices, and \$0.2 million for yearly service on the wide-area network to American Samoa.⁸³ Space and facilities costs were estimated between \$1.1 million and \$1.3 million for rent,⁸⁴ plus variable defendant detention facility housing costs.⁸⁵

Scenario 2 costs: With regard to scenario 2, USMS officials estimated that yearly personnel costs would be \$0.5 million. Since a U.S. Marshal, Chief Deputy, and Judicial Security Officer would be shared with the USMS in Hawaii and not be located in American Samoa, personnel costs for this scenario are estimated to be approximately \$0.4 million less than scenario 1. Operational costs (reflecting the standard, nonpersonnel costs for operational and administrative positions) under scenario 2 were estimated to be \$0.5 million, or about \$0.3 million less than scenario 1. The operational cost differential between

⁸¹ Additionally, USMS indicated that it may be necessary to pay incentive bonuses to attract personnel to American Samoa, as well as permanent change of duty station relocation costs.

⁸² Cost data are partially based on prisoner transportation costs in the USMS office in Guam.

⁸³ If radio towers and supporting radio infrastructure do not already exist in American Samoa, then USMS officials said this may result in additional costs.

⁸⁴ Based on GSA's proposed CNMI courthouse floor plan, USMS would be allocated 13,935 rentable square feet. If rent ranged from \$80 to \$90 per square foot, USMS' rent could range between \$1.1 and \$1.3 million.

⁸⁵ If federal defendants were detained pretrial at the Bureau of Prisons' detention facility in Hawaii, there is no charge to USMS for housing. Given the capacity of this facility, USMS officials told us that it may be able to absorb any American Samoan defendants. If necessary, other detention facilities have been available for use (e.g., the San Bernardino County, California jail, the Agana, Guam detention facility, CNMI Department of Corrections, and Guam Penitentiary). Assuming up to 50 American Samoan defendants in USMS custody per year, for an average of 60 days each, the cost of housing at these facilities may range up to \$0.2 million based on fiscal year 2007 costs.

the two scenarios with respect to prisoner transport is unclear.⁸⁶ While the USMS did not specifically address information technology costs and other equipment costs with respect to scenario 2, the same types of costs in scenario 1 would be involved if a computer network and telephone system would need to be established. With respect to space and facilities, if the USMS were housed in the same court building as used for scenario 1, rental costs should be comparable (between \$1.1 million and \$1.3 million.) If, however, under scenario 2, the USMS were housed in an office building rather than a courthouse, then the resulting cost may be lower than scenario 1. Additionally, to the extent that defendants are detained in the same facilities as in scenario 1 (e.g., the Bureau of Prisons detention facility in Hawaii), detention facility costs should be comparable.

Potential Funding Sources Associated with Implementing the Different Scenarios

Funding for the federal judiciary and DOJ agencies derives primarily from direct congressional appropriations to each agency and funding for a federal court in American Samoa would likely be funded similarly. In fiscal year 2006, about 94 percent of the total court salary and expense obligations were obtained through direct judiciary funding. The remaining 6 percent was obtained through offsetting collections, such as fees. In that same year, about 95 percent of the total Probation and Pretrial Services obligations were obtained through direct congressional appropriations.

With regard to DOJ, in fiscal year 2006, 96 percent of the U.S. Attorneys' obligations to support district court activities were obtained through direct congressional appropriations and the remaining 4 percent were obtained through other sources, such as asset forfeitures. In fiscal year 2008, USMS used direct congressional appropriations to cover the expenses for staff hiring, payroll, relocation, personnel infrastructure, rent, and utilities. The Office of the Federal Detention Trustee funds 100 percent of prisoner detention, meals, medical care, and transportation. AOUSC funds 100 percent of the court security officers, magnetometers, and security measures at courthouse entrances.

Concluding Observations

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, given the multiple limitations on available cost data, we are not making any determinations as to whether the current system is more or less costly than the different scenarios for change presented in this report. Rather, our

⁸⁶ Defendant transportation costs may vary depending upon the number of court productions required.

purpose in reporting the issues has been to provide decision makers with information regarding the issues associated with potential scenarios for change. While the cost data are very limited, in the end, the controversy surrounding whether and how to create a venue for adjudicating matters of federal law emanating from 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.

Madame Chairwoman, this completes my prepared statement. I would be happy to respond to any questions you or other Members of the Subcommittee may have at this time.

Attachment I

Table 1: Description of Scenarios for Establishing a Federal Court in American Samoa or Expanding the Federal Jurisdiction of the High Court of American Samoa

	Scenario 1	Scenario 2	Scenario 3
Structure	Federal court modeled on other federal courts in U.S. territories.	District court in American Samoa that is a division of the District of Hawaii.	Unique arrangement granting the High Court federal criminal jurisdiction as well as expanded federal civil jurisdiction.
Judge and court staff	Article IV judge in American Samoa with court clerk and support staff. Judge appointed by President with advice and consent of the Senate.	Article IV or Article III judge in American Samoa with court clerk and support staff. Judge appointed by President with advice and consent of the Senate.	High Court Justices would hear additional federal matters. Additional judge may be required, who may be appointed by the Secretary of the Interior or, as with other federal judges, by the President, with advice and consent of the Senate.
U.S. Attorney	One resident U.S. Attorney with three staff attorneys and support staff.	Share U.S. Attorney with District of Hawaii and staff a satellite office with one Assistant U.S. Attorney, three staff attorneys, and support staff.	May use a federal prosecutor and/or local Attorney General.
Defender Services	Shared federal Public defender with District of Hawaii (using staff based in Hawaii) ^a and/or CJA Panel ^b	Shared federal Public defender with District of Hawaii (using staff based in Hawaii) ^a and/or CJA Panel ^b	Under current law, federal defender services are not provided unless within a judicial district. May be able to use a local public defender.
U.S. Marshals Service	One U.S. Marshal, one chief deputy, one judicial security inspector, two deputy marshals, and one administrative staff.	Share U.S. Marshal with Hawaii and staff a satellite office with supervisory deputy marshal, two deputy marshals, and one administrative staff.	Federal detention and security requirements may not apply. May be able to use a local marshal or law enforcement staff.
Probation and Pretrial Services	One chief probation officer, one probation officer and one administrative staff in American Samoa with shared staff in District of Hawaii for additional support.	One chief probation officer, one probation officer and one administrative staff in American Samoa with shared staff in District of Hawaii for additional support.	Under current law, federal Probation and Pretrial services are not provided unless within a judicial district.
Facilities	New courthouse facility would be needed that can house judge, court staff, U.S. Attorney staff, U.S. Marshal staff, and holding facility. Unclear whether new federal detention center would be needed or whether a portion of the existing local prison could be upgraded.	New courthouse facility would be needed that can house judge, court staff, U.S. Attorney staff, U.S. Marshal staff, and holding facility. Unclear whether new federal detention center would be needed or whether a portion of the existing local prison could be upgraded.	Federal court requirements may not apply. May be able to use existing High Court or District Court facilities. Unclear whether a new prison would be needed or whether a portion of the existing prison could be upgraded.
Jurisdiction	May be jurisdiction of district court and bankruptcy court, or may be more limited.	May be jurisdiction of district court and bankruptcy court, or may be more limited.	Limited jurisdiction, which may grow over time.
Appeals	Appeals to U.S. Court of Appeals for the Ninth Circuit.	Same as District of Hawaii (appeals to U.S. Court of Appeals for the Ninth Circuit).	It is unclear whether and to which tribunal High Court decisions would be appealed.

Source: GAO analysis of relevant federal laws.

^aAccording to Federal Public Defender officials, it is unlikely that a court in American Samoa would reach the minimum 200 appointments per year required to appoint a Federal Public Defender in American Samoa.

^bU.S. district courts, with the approval of the judicial council of the circuit, must have a plan for furnishing representation for any person financially unable to obtain adequate representation. Under this plan, a judge can appoint counsel from a federal defender organization authorized by the court or a panel of attorneys designated or approved by the court—called a Criminal Justice Act (CJA) panel—to furnish legal representation for those defendants who are financially unable to obtain counsel. 18 U.S.C. § 3006A. Where a federal defender organization is established, the CJA provides that panel attorneys be appointed in a substantial proportion of the cases (defined by guidelines as approximately 25 percent of the appointments annually in a district).

Attachment II: GAO Contacts and Acknowledgments

GAO Contacts

For further information about this statement, please contact William O. Jenkins, Jr. at (202) 512-7777 or jenkinswo@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. Staff making key contributions to this statement were Christopher Conrad, Assistant Director, Nancy Kawahara, and Tracey King.

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