



VIRGIN ISLANDS
BAR ASSOCIATION

August 30, 2024

The Honorable Joseph R. Biden
President of the United States
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

The Honorable Kamala D. Harris
Office of the Vice President
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

2024 OFFICERS

Marjorie Whalen
President

J. Russell. B. Pate, Jr.
President-Elect

Adriane J. Dudley
Treasurer

Charlotte Sheldon
Secretary

Dwyer Arce
Immediate-Past President

Shari D'Andrade
ABA Delegate

2024 BOARD OF
GOVERNORS

Andrew L. Capdeville

Carol G. Hurst

Daniel Cevallos

Michael Francisco

Hinda Carbon
Executive Director

**Resolution by The Virgin Islands Bar Association for Nomination of a
Virgin Islands jurist on the Third Circuit Court of Appeals.**

Dear President Biden:

With the upcoming retirement of Judge Kent Jordan in January of 2025, you have the opportunity to nominate a Virgin Islander to the Third Circuit Court of Appeals. The Virgin Islands had the legendary William Hastie as its jurist on the Third Circuit from 1950 to 1971. However, upon Judge Hastie's retirement, his seat has been occupied by numerous jurists from the other States in the Third Circuit.

These other States have the lobbying power of two U.S. Senators, while the United States Virgin Islands is voiceless with a non-voting Delegate only in the House. Your predecessor, President Harry S. Truman, used his own forward-looking moral imperative to nominate William Hastie as a Virgin Islands jurist so that Virgin Islanders would have a voice and representation on the Third Circuit. Additionally, Hastie was the first African-American to serve on a federal appellate court. You now have the same opportunity and imperative to fill the vacancy and confer a judicial seat to the United States Virgin Islands.

The Founding Fathers were concerned with the legitimacy of Government. Thomas Paine and Thomas Jefferson declared power flows up from the People, not down from the King. Therefore, to be legitimate, government should be composed of the exact People it governs. Yet the Virgin Islands have no representative on the Third Circuit, despite its rulings directly impact the daily life of Virgin Islanders. This is the exact problem that the Thirteen Colonies had with Great Britain, no representation in Parliament and no ability to select their own judges. This is antithetical to the ideals and principles of American Democracy that every citizen is a stake-holder in democracy and should have a voice and representation in every branch of government.

A rope is the strongest when weaved from many cords. The Third Circuit will benefit from the diverse life experience of a Virgin Islands jurist. Fairness and justice would be best served by reserving one seat on United States Court of Appeals for the Third Circuit for an attorney or judge from the Virgin Islands. Our sitting federal District Court judges would be an excellent choice for nomination. However, there are also over 17 local judges and justices who have exemplary records of judicial service in the Virgin Islands, who would be excellent choices too. Further, the Virgin Islands Bar Association is comprised of hundreds of members, many who would meet the high ethical and practical legal standards for service on the Third Circuit.

The American Bar Association (ABA) approved by unanimous vote a Resolution in 2014 noting the historical problems with lack of representation on the Circuit Courts of Appeal for the Territories. This Resolution #10A from August 12, 2014, is enclosed. The Virgin Islands Bar Association has unanimously voted to continue, for the tenth year, to support the American Bar Association's Resolution 10A. In sum, we respectfully request you nominate a Virgin Islander to the Third Circuit.

Dr. Martin Luther King, Jr., reminded us that "the arc of the moral universe is long, but it bends toward justice." The U.S. Virgin Islands has now been a part of the United States for 107 years, since 1917. And since the retirement of Judge Hastie, the United States Virgin Islands has been waiting patiently for 53 years for one of its own to have a say in dispensing justice in the Third Circuit. As good neighbors and colleagues, Delaware, New Jersey and Pennsylvania, should welcome the inclusion of a Virgin Islands jurist to their collective wisdom.

Sincerely,



President-Elect, Virgin Islands Bar Association

Approved by unanimous vote of the Board of
Governors of the USVI Bar Association on
August 23, 2024

Enclosure

By Carbon Copy:

U.S. Senate

Hon. Charles E Schumer
Leader

Hon. Mitch McConnell
Leader

Hon. Richard J. Durbin
Judiciary

Hon. Lindsey Graham
Judiciary

U.S.V.I. Officials

Hon. Albert Bryan,
Governor

Rep. Stacy Plaskett,
House Delegate

Hon. Novelle Francis
Senate President

U.S.V.I. Judges

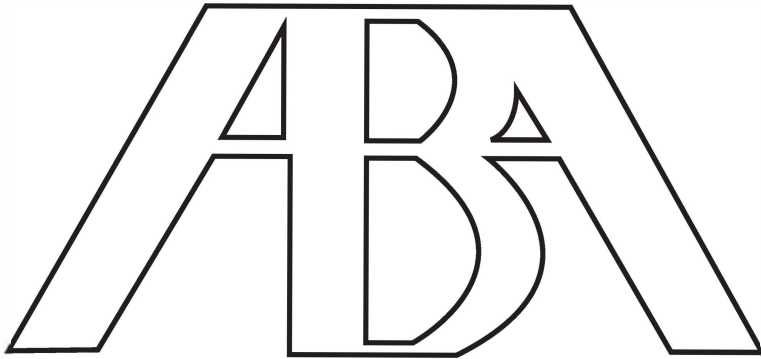
Hon. Michael A. Chagares,
Chief Justice, Third Circuit

Hon. Robert A. Molloy
Chief Judge, District Court

Hon. Rhys Hodge
Chief Justice, Supreme Court

**Resolutions with Reports
to the House of Delegates**

AMERICAN BAR ASSOCIATION



2014 ANNUAL MEETING • BOSTON, MASSACHUSETTS • AUGUST 11-12, 2014

NO RESOLUTION PRESENTED HEREIN REPRESENTS THE POLICY OF THE ASSOCIATION UNTIL IT SHALL HAVE BEEN APPROVED BY THE HOUSE OF DELEGATES. INFORMATIONAL REPORTS, COMMENTS AND SUPPORTING DATA ARE NOT APPROVED BY THE HOUSE IN ITS VOTING AND REPRESENT ONLY THE VIEWS OF THE SECTION OR COMMITTEE SUBMITTING THEM.

**RESOLUTIONS WITH REPORTS
TO THE HOUSE OF DELEGATES**

**Hynes Convention Center
Grand Ballroom, Level 3
Boston, Massachusetts
August 11 – 12, 2014**

TABLE OF CONTENTS

| | <u>PAGE</u> |
|---|--------------------|
| Preliminary Calendar | 1 |
| Officers and Members of the Board of Governors..... | 3 |
| Committees of the House of Delegates | 5 |

REPORTS OF OFFICERS

ITEM NO.

| | |
|--|----|
| Report of the President..... | 1 |
| Report of the Treasurer | 2* |
| Report of the Executive Director | 3 |
| Report of the Committee on Scope and Correlation of Work | 4 |

RESOLUTIONS WITH REPORTS

ITEM NO.

| | |
|---|--------------------|
| Report of the Scope Nominating Committee..... | 8 |
| Virgin Islands Bar Association Section of State and Local Government Law | 10A |
| Proposed Amendments to the Constitution and Bylaws | 11-1 through 11-15 |
| Report of the Standing Committee on Constitution and Bylaws..... | 11A |
| Commission on Disability Rights Section of Intellectual Property Law Section of International Law | 100 |

Resolutions with Reports numbered 10A, 100 through 115, 177B, 300, 400A and 400B can be found in this book. Proposals to amend the Association's Constitution and Bylaws are numbered 11-1 through 11-15 and also can be found in this book. Any additional Resolutions with Reports submitted by state and/or local bar associations will be numbered in the "10" series. Late Resolutions with Reports will be numbered in the "300" series. These reports will be distributed at the opening session of the House of Delegates meeting. Informational Reports can be found on the ABA's website at http://www.americanbar.org/groups/leadership/house_of_delegates/2014-boston-annual-meeting.html (click on *Informational Reports*).

*This report can be found with the Blue Late Report and Supplemental Materials to be distributed at the opening session of the House of Delegates meeting.

**The Chair of the House of Delegates,
Robert M. Carlson, Presiding**

Presentation of Colors

Invocation

1. Report of the Committee on Credentials and Admissions
Reginald M. Turner, Jr., Michigan

Approval of the Roster
2. Report of the Committee on Rules and Calendar
Hilarie Bass, Florida

Approval of the Final Calendar
3. Report of the Secretary
Hon. Cara Lee T. Neville, Minnesota

Approval of the Summary of Action
4. Statement by the Chair of the House of Delegates
Robert M. Carlson, Montana
5. Statement by the President
James R. Silkenat, New York
6. Statement by the Treasurer
Lucian T. Pera, Tennessee
7. Statement by the Executive Director
Jack L. Rives, Illinois
8. Presentation of Resolutions with Reports which any State or Local Bar
Association wishes to bring before the House of Delegates
9. Presentation of Proposals to Amend the Association's Constitution and Bylaws
11-1 through 11-15
10. Presentation of Resolutions with Reports of Sections, Committees and Other
Entities
100-115 Resolutions with Reports
300 Late Resolutions with Reports
177B Board of Governors
400A-B Resolutions with Reports on Archiving

ADJOURNMENT

**AMERICAN BAR ASSOCIATION
2013-2014
BOARD OF GOVERNORS**

OFFICERS

| | |
|---------------------------|---|
| President | James R. Silkenat, New York, NY |
| President-Elect | William C. Hubbard, Columbia, SC |
| Chair, House of Delegates | Robert M. Carlson, Butte, MT |
| Secretary | Hon. Cara Lee T. Neville, Minneapolis, MN |
| Treasurer | Lucian T. Pera, Memphis, TN |
| Immediate Past President | Laurel G. Bellows, Chicago, IL |
| Executive Director | Jack L. Rives, Chicago, IL |

BOARD OF GOVERNORS

| | |
|---------------------------|---|
| President | James R. Silkenat, New York, NY |
| President-Elect | William C. Hubbard, Columbia, SC |
| Chair, House of Delegates | Robert M. Carlson, Butte, MT |
| Secretary | Hon. Cara Lee T. Neville, Minneapolis, MN |
| Secretary-Elect | Mary T. Torres, Albuquerque, NM |
| Treasurer | Lucian T. Pera, Memphis, TN |
| Treasurer-Elect | G. Nicholas Casey, Jr., Charleston, WV |
| Immediate Past President | Laurel G. Bellows, Chicago, IL |
| First District | 2014 Joseph J. Roszkowski, Cumberland, RI |
| Second District | 2014 Josephine A. McNeil, West Newton, MA |
| Third District | 2015 Thomas R. Curtin, Morristown, NJ |
| Fourth District | 2014 Allen C. Goolsby III, Richmond, VA |
| Fifth District | 2015 William T. Coplin, Jr., Demopolis, AL |
| Sixth District | 2014 Robert L. Rothman, Atlanta, GA |
| Seventh District | 2016 Stephen E. Chappellear, Columbus, OH |
| Eighth District | 2016 Eduardo R. Rodriguez, Brownsville, TX |
| Ninth District | 2015 John S. Skilton, Madison, WI |
| Tenth District | 2016 Joseph B. Bluemel, Kemmerer, WY |
| Eleventh District | 2016 Jimmy Goodman, Oklahoma City, OK |
| Twelfth District | 2014 Thomas A. Hamill, Overland Park, KS |
| Thirteenth District | 2016 John C. Schulte, Missoula, MT |
| Fourteenth District | 2015 Laura V. Farber, Pasadena, CA |
| Fifteenth District | 2015 Kenneth G. Standard, New York, NY |
| Sixteenth District | 2015 Timothy W. Bouch, Charleston, SC |
| Seventeenth District | 2015 Paul T. Moxley, Salt Lake City, UT |
| Eighteenth District | 2016 Robert T. Gonzales, Baltimore, MD |
| Judicial Member-at-Large | 2015 Hon. Jodi B. Levine, Oklahoma City, OK |

BOARD OF GOVERNORS (cont.)

| | | |
|-------------------------------|------|--|
| Section Members-at-Large | 2014 | Charles A. Collier, Jr., Los Angeles, CA |
| | 2014 | Barbara Mendel Mayden, Nashville, TN |
| | 2015 | Kenneth W. Gideon, Washington, DC |
| | 2015 | Timothy B. Walker, Centennial, CO |
| | 2016 | Pamela C. Enslin, Kalamazoo, MI |
| | 2016 | David R. Poe, Washington, DC |
| Minority Members-at-Large | 2014 | Harold D. Pope III, Southfield, MI |
| | 2015 | Michael E. Flowers, Columbus, OH |
| Women Members-at-Large | 2014 | Sandra R. McCandless, San Francisco, CA |
| | 2016 | Marcia M. Ridings, London, KY |
| Young Lawyer Members-at-Large | 2014 | Michael Pellicciotti, Olympia, WA |
| | 2015 | William Ferreira, Morristown, NJ |
| Law Student Member-at-Large | 2014 | James C. Manning, Charlottesville, VA |

COMMITTEES OF THE HOUSE OF DELEGATES

ADVISORY COMMITTEE TO THE CHAIR OF THE HOUSE OF DELEGATES

MEMBERS: Philip S. Anderson, Little Rock, AR
Martha W. Barnett, Tallahassee, FL
Laurel G. Bellows, Chicago, IL
Allen E. Brennecke, Clemons, IA
Alfred P. Carlton, Jr., Raleigh, NC
L. Stanley Chauvin, Jr., Louisville, KY
N. Lee Cooper, Birmingham, AL
Robert J. Grey, Jr., Richmond, VA
William C. Hubbard, Columbia, SC
Linda A. Klein, Atlanta, GA
Karen J. Mathis, Denver, CO
J. Michael McWilliams, Baltimore, MD
H. Thomas Wells, Jr., Birmingham, AL
Stephen N. Zack, Miami, FL

CREDENTIALS AND ADMISSIONS

CHAIR: Reginald M. Turner, Jr., Detroit, MI
VICE-CHAIR: Pamila J. Brown, Ellicott City, MD
MEMBERS: C. Elisia Frazier, Pooler, GA
Paula H. Holderman, Chicago, IL
H. Ritchey Hollenbaugh, Columbus, OH
Pamela J. Roberts, Columbia, SC
Donald D. Slesnick II, Coral Gables, FL

DRAFTING POLICIES AND PROCEDURES

CHAIR: Pamela A. Bresnahan, Annapolis, MD
VICE-CHAIR: Mark I. Schickman, San Francisco, CA
MEMBERS: Alice A. Bruno, New Britain, CT
Suzanne E. Gilbert, Orlando, FL
Kenneth E. Young, Charlotte, NC

ISSUES OF CONCERN TO THE LEGAL PROFESSION

CHAIR: Patricia Lee Refo, Phoenix, AZ
VICE-CHAIR: Paula E. Boggs, Sammamish, WA
ADVISOR: Robert E. Hirshon, Ann Arbor, MI
MEMBERS: Wade H. Baxley, Dothan, AL
David W. Clark, Jackson, MS
James M. Durant III, APO, AE
Maryann E. Foley, Anchorage, AK
Ernestine Forrest, Los Angeles, CA
Robert B. Frieberg, Beresford, SD
I. S. Leevy Johnson, Columbia, SC
James A. Kawachika, Honolulu, HI
Richard M. Macias, Los Angeles, CA
J. Anthony Patterson, Jr., Kalispell, MT
Margaret D. Plane, Salt Lake City, UT
Estelle H. Rogers, Washington, DC
Andrew M. Schpak, Portland, OR
Darcee S. Siegel, North Miami Beach, FL
Charles J. Vigil, Albuquerque, NM
William K. Weisenberg, Columbus, OH

RESOLUTION AND IMPACT REVIEW

CHAIR: Jose C. Feliciano, Cleveland, OH
VICE-CHAIR: Paula J. Frederick, Atlanta, GA
MEMBERS: Kim J. Askew, Dallas, TX
Sara S. Beezley, Girard, KS
Dale W. Cottam, Cheyenne, WY
Lee A. Deihns III, Atlanta, GA
James Dimos, Indianapolis, IN
Deborah A. Ferguson, Boise, ID
Damon L. Gannett, Billings, MT
Harry S. Johnson, Baltimore, MD
Margaret K. Masunaga, Kealahou, HI
John L. McDonnell, Jr., San Francisco, CA
Steven M. Richman, Cherry Hill, NJ
Carlos A. Rodriguez-Vidal, San Juan, PR
Jonathan W. Wolfe, Livingston, NJ

RULES AND CALENDAR

CHAIR: Hilarie Bass, Miami, FL
MEMBERS: Deborah Enix-Ross, New York, NY
Alan O. Olson, Des Moines, IA
Christina Plum, Milwaukee, WI
David K.Y. Tang, Seattle, WA

SELECT COMMITTEE OF THE HOUSE

CHAIR: Palmer Gene Vance II, Lexington, KY
VICE-CHAIR: Christel E. Marquardt, Topeka, KS
REPORTER: Jaime Hawk, Spokane, WA
MEMBERS: Aurora Austriaco, Chicago, IL
Stephen J. Curley, Stamford, CT
Bernice B. Donald, Memphis, TN
Charles Eppolito III, Philadelphia, PA
Marilyn J. Harbur, Salem, OR
Sheila S. Hollis, Washington, DC
Loren Kieve, San Francisco, CA
Amie C. Martinez, Lincoln, NE
Randolph J. May, Potomac, MD
Leslie Miller, Tucson, AZ
Frank X. Neuner, Jr., Lafayette, LA
James P. Nolan, Annapolis, MD
Robert D. Oster, Lincoln, RI
Michael Perez, Alexandria, VA
Gregory L. Ulrich, Grosse Pointe Woods, MI
Karol Corbin Walker, Newark, NJ

STEERING COMMITTEE OF THE NOMINATING COMMITTEE

CHAIR: Beverly J. Quail, Denver, CO
VICE-CHAIR: Joseph D. O'Connor, Bloomington, IN
MEMBERS: Michelle A. Behnke, Madison, WI
Clark A. Cooper, Birmingham, AL
Ann M. Courtney, Portland, ME
Tracy A. Giles, Roanoke, VA
Trudy Halla, Minneapolis, MN
Barbara J. Howard, Cincinnati, OH
Barbara Kerr Howe, Towson, MD
Larry C. Hunter, Boise, ID
Ruth V. McGregor, Phoenix, AZ
Randall D. Noel, Memphis, TN
Maury B. Poscover, St. Louis, MO
Manuel A. Quilichini, San Juan, PR
Michael H. Reed, Philadelphia, PA
Mark Johnson Roberts, Portland, OR
Lawrence E. Stevens, Salt Lake City, UT
Joe B. Whisler, Kansas City, MO
David B. Wolfe, Livingston, NJ

TECHNOLOGY AND COMMUNICATIONS

CHAIR: Frank H. Langrock, Middlebury, VT
VICE-CHAIR: Daniel A. Schwartz, Hartford, CT
ADVISOR: Thomas C. Grella, Asheville, NC
MEMBERS: William R. Bay, St. Louis, MO
Lisa J. Dickinson, Spokane, WA
Herbert B. Dixon, Jr., Washington, DC
Bonnie E. Fought, Hillsborough, CA
James S. Hill, Bismarck, ND
Kay H. Hodge, Boston, MA
Andrew Joshua Markus, Miami, FL
Michael M. Miller, Minneapolis, MN
Gregory L. Pemberton, Indianapolis, IN
Deborah Perluss, Seattle, WA
Jennifer A. Rymell, Fort Worth, TX
John E. Thies, Urbana, IL
Richard L. Travis, Sioux Falls, SD

TELLERS

CHAIR: Min Ki Cho, Orlando, FL
VICE-CHAIR: Roula Allouch, Covington, KY
MEMBERS: Christina Cullom, Springfield, IL
Jennifer G. Daugherty, Minneapolis, MN
Joseph Zeidner, Audubon, PA

AMERICAN BAR ASSOCIATION

**THE VIRGIN ISLANDS BAR ASSOCIATION
SECTION OF STATE AND LOCAL GOVERNMENT LAW**

REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

- 1 RESOLVED, That the American Bar Association urges Congress to amend 28 U.S.C. § 44(c) to
2 insert the phrase “and territory” after the phrase “each state”, so that all states and territories
3 within the jurisdiction of the federal courts of appeal may be represented on its bench; and
4
5 FURTHER RESOLVED, That the American Bar Association urges the President of the United
6 States to nominate judges of federal courts of appeal that are representative of the geographic
7 areas over which they exercise jurisdiction and, notwithstanding the lack of a statutory mandate,
8 to nominate a Virgin Islands judge or attorney to the United States Court of Appeals for the
9 Third Circuit to the current vacancy for which a nominee has not been named, and to nominate a
10 Guam or Northern Mariana Islands judge or attorney to the next vacancy on the United States
11 Court of Appeals for the Ninth Circuit.

REPORT

*That which has been characterized as “government of the people, by the people and for the people” is as eternally difficult a business as it is an exciting and inciting idea.*¹

William Henry Hastie, Governor of the Virgin Islands of the United States of America (1946-49), Judge of the United States Court of Appeals for the Third Circuit (1949-76).

*The practice in filling circuit vacancies has been to replace each with a nominee from the same State from which his or her predecessor was nominated. . . .*²

Patrick Leahy (D-VT), United States Senator (1975-Present), Chair, Senate Committee on the Judiciary (2007-Present).

BACKGROUND

Qualifications and Appointment Procedure

Each of the federal district courts is assigned to one of 12 regional federal courts of appeal, and hears appeals from the district courts located within its circuit. Pursuant to section 44 of title 28 of the United States Code, the only residency requirement for court of appeals judges, outside of the District of Columbia, is that the judge “be a resident of the circuit for which appointed at the time of his appointment and thereafter while in active service,” and that there “be at least one circuit judge in regular active service appointed from the residents of each state in that circuit.”³

Although particular seats on the courts of appeal are ostensibly not assigned to any particular state or territory, it has been a long-standing practice for the President of the United States to consult with “home-state” senators when a vacancy arises.⁴ This tradition started as an informal senatorial courtesy, but later became institutionalized through the “blue-slip” procedure, in which the Senate Committee on the Judiciary takes no action on a judicial nominee unless both “home-state” senators return a slip of paper certifying that they do not object to the

¹ William Henry Hastie, *Dedicatory Ceremony at Independence Hall*, 426 ANNALS 1, 1 (1976).

² *Hearing on Ninth Circuit Nominee Owens Postponed*, METROPOLITAN NEWS-ENTERPRISE (Oct. 23, 2013), <http://www.metnews.com/articles/2013/owen102313.htm>.

³ 28 U.S.C. § 44(c).

⁴ Orrin G. Hatch, *At Last a Look at the Facts: The Truth About the Judicial Selection Process. Each is Entitled to His or Her Own Opinion, But Not to His Own Facts*, 11 GEO. MASON L. REV. 467, 476-76 (2003).

10A

nomination.⁵ For purposes of this procedure, the “home-state” senators are often determined by ascertaining the residency of the court of appeals judge who previously held the seat, which has occasionally led to conflict if a judge moved his chambers after confirmation.⁶ Thus, attempts to “transfer” a court of appeals judgeship from one state to another are rarely successful, although not unprecedented.⁷

Court of Appeals Judgeships: Appointments From Outside the Contiguous 48 States

Jurisdictions outside of the contiguous United States have been particularly susceptible to having seats transferred or simply having no representation at all. Although Hawai’i was assigned to the United States Court of Appeals for the Ninth Circuit in 1900 and achieved statehood in 1959, Hawai’i was unrepresented on the Ninth Circuit until April 23, 1971, with the appointment of Herbert Choy by President Richard M. Nixon.⁸ Similarly, while Alaska was assigned to the Ninth Circuit in 1948 and became a state in 1959, Alaska had no representation on the Ninth Circuit until 1980, when President Jimmy Carter appointed Robert Boochever.⁹

Perhaps most notably, Hawai’i and Alaska both completely lost their representation on the Ninth Circuit when those initial judges assumed senior status. Rather than nominating an Alaskan judge or attorney to succeed Judge Boochever when he assumed senior status in 1986, President Ronald Reagan appointed an Oregon attorney, Diarmuid O’Scannlain.¹⁰ While Alaska’s lack of representation was relatively brief, in that President George H.W. Bush subsequently nominated Alaskan judge Andrew Jay Kleinfeld to the Ninth Circuit in 1991,¹¹ Hawai’i was without a Ninth Circuit judge for more than two decades. When Judge Choy assumed senior status in 1981, President Reagan appointed Melvin Brunetti, a Nevada attorney, to replace him,¹² and no attempt was made to appoint another Hawai’ian to the Ninth Circuit. Significantly, the failure to replace Judge Choy with a fellow Hawai’i resident is precisely what

⁵ Caprice L. Roberts, *Discretion & Deference in Senate Consideration of Judicial Nominations*, 51 U. LOUISVILLE L. REV. 1 (2012).

⁶ *Ninth Circuit Nominee*, *supra* note 2.

⁷ Rachel Brand, *Judicial Appointments: Checks and Balances in Practice*, 33 HARV. J.L. PUB. POL’Y 47, 51 (2010).

⁸ Hatch, *supra* note 4, at 50 n.11.

⁹ Alaska Court System, Remembering Judge Boochever, <http://courts.alaska.gov/boochever.htm>.

¹⁰ Federal Judicial Center, Biographical Directory of Federal Judges O’Scannlain, Diarmuid Fionntain, <http://www.fjc.gov/servlet/nGetInfo?jid=1803&cid=999&ctype=na&instate=na>.

¹¹ Notably, Judge Kleinfeld’s nomination to the Ninth Circuit is credited, at least in part, to the fact that Judge Boochever immediately moved his chambers from Alaska to California upon assuming senior status, which provided “Alaska senators a compelling argument for a new judge in their state during the Bush administration.” Jennifer E. Spreng, *The Icebox Cometh: A Former Clerk’s View of the Proposed Ninth Circuit Split*, 73 WASH. L. REV. 875, 941 n 314 (1998).

¹² Federal Judicial Center, Biographical Directory of Federal Judges Brunetti, Melvin T., <http://www.fjc.gov/servlet/nGetInfo?jid=294&cid=999&ctype=na&instate=na>.

caused Congress to amend section 44(c) of title 28 to specify that at least one active federal court of appeals judge be a resident of each state within the circuit.¹³ As a result of that legislation, Hawai'i attorney Richard Clifton became the second resident of Hawai'i to serve on the Ninth Circuit upon his appointment by President George W. Bush in 2002.

The situation for United States territories is even bleaker. Unlike states, which constitute their own sovereigns under our federalist system, territories lack any separate sovereignty, and are thus subject to plenary control by Congress.¹⁴ Except for American Samoa, which lacks a federal district court, the inhabited territories are each assigned to a geographic circuit, with Puerto Rico belonging to the First Circuit, the Virgin Islands being a part of the Third Circuit, and Guam and the Northern Mariana Islands both allocated to the Ninth Circuit.¹⁵ The Virgin Islands and Puerto Rico have been more fortunate than Guam and the Northern Mariana Islands; while Guam and the Northern Mariana Islands have never had any representation on the Ninth Circuit bench, a Virgin Islander and a Puerto Rican have respectively served on the Third Circuit and First Circuit.

William Henry Hastie achieved many milestones in his long, distinguished career of public service, including becoming the first African American federal judge, the first African American Governor of the Virgin Islands, and the first African American federal court of appeals judge.¹⁶ That last milestone occurred on October 21, 1949, when President Harry S. Truman appointed Judge Hastie to a newly authorized judgeship on the Third Circuit. Judge Hastie served as an active judge on the Third Circuit, including as Chief Judge, until he assumed senior status on May 31, 1971, and continued to serve in that capacity until his death on April 14, 1976.

Although rightfully celebrated as one of the pioneers of the civil rights movement, it is often forgotten that, upon his appointment to the Third Circuit, Judge Hastie also became the first judge or lawyer from a United States territory to sit on the federal court of appeals to which that territory is assigned.¹⁷ Drawing on his experience as both a Virgin Islands judge and

¹³ See 143 CONG. REC. 3223 (1997) (statement of Rep. Abercrombie).

¹⁴ “Congress shall have the Power to dispose of and make all needful Rules and Regulations respecting the Territory and other Property belonging to the United States; and nothing in the Constitution shall be construed as to Prejudice any Claims of the United States, or of any particular State.” U.S. Const. art. IV, sec. 3. See also *Binns v United States*, 194 U.S. 486, 491 (1904) (“It must be remembered that Congress, in the government of the territories as well as the District of Columbia, has plenary power, save as controlled by the provisions of the Constitution”).

¹⁵ 28 U.S.C. § 41.

¹⁶ See Mark Tushnet, *Being First*, 37 STAN. L. REV. 1181, 1182-83 (1985) (reviewing GILBERT WARE, WILLIAM HASTIE: GRACE UNDER PRESSURE (1985)). Incidentally, despite being appointed by President Franklin D. Roosevelt to the District Court of the Virgin Islands in 1937, thus becoming the first African American federal judge, Judge Hastie does not have the distinction of serving as the first African American federal district court judge, given that the District Court of the Virgin Islands was – and remains to this day – an Article IV court despite exercising traditional Article III jurisdiction. See Mary L. Clark, *One Man's Token is Another Woman's Breakthrough? The Appointment of the First Women Federal Judges*, 49 VILL. L. REV. 487, 492 n.30 (2004).

¹⁷ In fact, for virtually all of Judge Hastie's active service, the Virgin Islands, an insular territory, had greater representation on the federal courts of appeal than Alaska and Hawai'i, despite the latter jurisdictions achieving statehood in 1959.

10A

Governor of the Virgin Islands, Judge Hastie ensured that the citizens of the Virgin Islands possessed a voice on the federal court that, during his period of service, acted as the *de facto* court of last resort for the Virgin Islands.¹⁸ But as with Judge Boochever and Judge Choy, a fellow Virgin Islander did not succeed Judge Hastie on the Third Circuit bench; rather, President Richard M. Nixon appointed a New Jersey judge, James Rosen, to the position.¹⁹ Today, the Virgin Islands remains without representation on the Third Circuit, even though the number of appeals originating in the Virgin Islands are roughly comparable to those originating from Delaware,²⁰ a jurisdiction which has two active and two senior judges on the Third Circuit.²¹

Only one territory, Puerto Rico, is presently represented on any federal court of appeals. Juan Torruella, a judge of the United States District Court for the District of Puerto, was appointed by President Reagan on October 3, 1984, to a newly-authorized judgeship on the United States Court of Appeals for the First Circuit.²² Judge Torruella remains an active judge on that court to this date, and served as its Chief Judge from 1994 to 2001. However, given that section 44(c) of title 28 of the United States Code only mandates there “be at least one circuit judge in regular active service appointed from the residents of each *state* in that circuit,” there is no guarantee that Judge Torruella, upon his retirement, will be succeeded by another Puerto Rican judge—notwithstanding the fact that appeals from Puerto Rico have historically accounted for approximately 30 to 40 percent of the First Circuit’s traditional appellate case load.²³

THE NEED FOR TERRITORIAL REPRESENTATION ON THE COURTS OF APPEAL

Judge Kleinfeld, in written testimony to the Commission on Structural Alternatives for the Federal Courts of Appeals, explained how the homogeneity of the composition of Ninth Circuit—the vast majority of whom hale from California—adversely affects the quality of appellate decisions:

¹⁸ Until the establishment of the Supreme Court of the Virgin Islands in January 2007, the Virgin Islands did not have a fully developed local judicial system, with decisions of the local trial courts appealable as of right to the District Court of the Virgin Islands with a further appeal as of right permitted to the Third Circuit. See *Edwards v HOVENSA, LLC*, 497 F.3d 355, 361 n.3 (3d Cir. 2007) (summarizing historical relationship between Virgin Islands Judiciary and the federal courts).

¹⁹ Federal Judicial Center, Biographical Directory of Federal Judges Rosen, James, http://www.fjc.gov/servlet/nGetInfo?jid=2048&cid=999&ctype=na&instate_na.

²⁰ Administrative Office of the United States Courts, 2010 Annual Report, Sources of Appeals and Original Proceedings, <http://www.uscourts.gov/uscourts/Statistics/JudicialBusiness/2010/appendices/B03Sep10.pdf>.

²¹ Delaware is currently represented on the Third Circuit by active judges Thomas L. Ambro and Kent A. Jordan, as well as senior judges Walter Stapleton and Jane Roth.

²² Federal Judicial Center, Biographical Directory of Federal Judges Torruella, Juan R., http://www.fjc.gov/servlet/nGetInfo?jid=2400&cid=999&ctype=na&instate_na.

²³ United States Court of Appeals for the First Circuit, 2010 Annual Report, <http://www.ca1.uscourts.gov/sites/ca1/files/oce/2010AnnualReport.pdf>.

Much federal law is not national in scope. Quite a lot of federal litigation arises out of federal laws of only local applicability, such as the Bonneville Power Administration laws, the laws regarding Hopi and Navaho relations, the Alaska National Interest Lands Conservation Act, and the Alaska Native Claims Settlement Act. It is easy to make a mistake construing these laws when unfamiliar with them, as we often are, or not interpreting them regularly, as we never do.

Much federal procedure mirrors state procedure in the particular district. For example, Federal Rule of Civil Procedure 4 imports state procedure. Where law is not specified, bar and bench customs in the different localities often fill it in. It is very helpful for judges to know how releases, attorney's fees contracts, and other documents for common transactions, are typically written in a state, so that they know when something is suspicious and when it is ordinary. In diversity cases, we are required to apply state law in federal court.

Yet on our court, ordinarily no judge on the panel has intimate familiarity with the law and practices of the state in which the case arose, unless that state is California. A judge on my court sits in Alaska perhaps once in ten years, and ordinarily never sits in Montana, Idaho, Nevada, or Arizona.

Social conditions also vary, in ways that can color judges' reactions to facts, and disable them from understanding the factual settings of cases not arising in California. For example, judges from Los Angeles have different assumptions about what kind of people have guns than judges from Idaho, Montana, and Alaska, who tend to associate gun ownership with a high proportion, perhaps a considerable majority, of the longtime law-abiding residents of the state. Native Americans have reservations in most states in our circuit, but in Alaska reservations have generally been abolished. It is quite possible for Alaska lawyers not to point this out in a brief because it is so obvious and well known, and for Ninth Circuit judges on a panel and their law clerks, who have never been to Alaska, not to know it.²⁴

These considerations apply with even greater weight to the territories. While federal courts of appeal typically only interpret state law in diversity cases, they must resolve issues of territorial law much more frequently. Unlike the states, where the state supreme court possesses the final word over interpretation of the state constitution, the highest courts of the territories of Puerto Rico, Guam, the Northern Mariana Islands, and the Virgin Islands share concurrent jurisdiction with the federal courts to interpret their respective constitutions or organic acts. This is because territories are not separate sovereigns, but rather derive their sovereignty from the United States; as a result, the constitutions and organic acts of the territories are actually federal statutes which may be freely interpreted by federal courts without providing any deference to the

²⁴ Letter from Andrew J. Kleinfeld to the Commission on Structural Alternatives for the Federal Courts of Appeals (May 22, 1998), <http://www.library.unt.edu/gpo/csafca/hearings/submitted/kleinfel.htm>.

10A

territorial supreme courts.²⁵ Another peculiarity stemming from the fact that the territories and the United States are treated as a “single sovereign” is that, while state criminal prosecutions can never be brought in federal court, violations of both federal and territorial law *must* be simultaneously prosecuted in federal court in order to comply with the Double Jeopardy Clause of the United States Constitution.²⁶ As a result, federal courts of appeal must interpret territorial criminal law on a regular basis, often without any guidance from the territorial supreme court,²⁷ which may lead to surprising decisions.²⁸

Moreover, each territory only became a part of the United States relatively recently—at least in comparison to the 50 states—and as a result has retained its own distinct culture which continues to influence its legal system. Puerto Rico, having been acquired from Spain at the conclusion of the Spanish-American War in 1898,²⁹ maintains Spanish as an official language, and follows the civil law system.³⁰ Guam, also acquired from Spain, operated under nearly-absolute military rule until 1950, and is the only jurisdiction under the United States flag to have actually been invaded and occupied by a foreign power.³¹ The Virgin Islands, purchased from Denmark in 1917,³² has been outside of the United States customs zone since its acquisition,³³ and retains several remnants of European influence, such as by rejecting the American rule on attorney’s fees in favor of the English rule.³⁴ And the Northern Mariana Islands, having negotiated its entry into the United States in 1978 in lieu of becoming an independent nation, is

²⁵ See, e.g., *Guam v Guerrero*, 290 F.3d 1210, 1214 (9th Cir. 2002) (“[D]espite the fact that we are dealing with Guam’s ‘Bill of Rights,’ we cannot ignore the fact that § 1421b(a) is a federal statute dealing with an issue of federal constitutional import, not a local law. As such, we employ a de novo standard of review.”).

²⁶ See, e.g., *Gov’t of the V.I. v Dowling*, 633 F.2d 660, 669 (3d Cir. 1980).

²⁷ See, e.g., *Gov’t of the V.I. v Lewis*, 620 F.3d 359, 364 n.5 (3d Cir. 2010) (determining, in the first instance, whether Virgin Islands law allows for a justification defense).

²⁸ For example, the Third Circuit has repeatedly held that, unlike the laws of Delaware and other states, “Virgin Islands law contains no presumption that an individual lacks a permit to carry a firearm,” and therefore “the Government bears the burden of proof in the Virgin Islands that the defendant had no license for a recovered firearm.” *United States v Lewis*, 672 F.3d 232, 240 (3d Cir. 2012) (citing *United States v Gatlin*, 614 F.3d 374, 378-79 (3d Cir. 2006)). The Supreme Court of the Virgin Islands, however, has expressed some puzzlement at this line of decisions, given longstanding prior case law in Virgin Islands local courts holding the opposite that were simply ignored by the Third Circuit panels, as well as the fact that the pertinent Virgin Islands statutes included language nearly word-for-word identical as statutes from other states in which courts also held the opposite. *People of the V.I. v Murrell*, 56 V.I. 796, 809-10 (V.I. 2012).

²⁹ Treaty of Paris, Dec. 10, 1898, U.S.-Spain, 30 Stat. 1754 (1898).

³⁰ See *Ortiz-Lebron v United States*, 945 F.Supp.2d 261, 265 (D.P.R. 2013) (collecting cases).

³¹ Hannah M.T. Gutierrez, *Guam’s Future Political Status: An Argument for Free Association with U.S. Citizenship*, 4 ASIAN-PAC. L. & POL’Y J. 122, 126-27 (2003).

³² Convention for Cession of the Danish West Indies, Aug. 4, 1916, U.S.-Denmark, 39 Stat. 1706 (1917).

³³ See *United States v Hyde*, 37 F.3d 116, 121 (3d Cir. 1994).

³⁴ See *Bapiste v Gov’t of the V.I.*, 529 F.2d 100, 102 (3d Cir. 1976).

able to exercise numerous powers that would be easily held unconstitutional if attempted by any other jurisdiction, such as restricting land ownership solely to those of Northern Mariana descent.³⁵ But while each territory's distinct culture and practices should, when appropriate, be considered by a federal court hearing a case originating from the territory, it is simply not possible for a federal judge based in Philadelphia to obtain the same knowledge of the Virgin Islands as a judge who keeps his chambers in St. Thomas, or for a judge who lives in Boston to be as familiar with the Puerto Rican legal community as one based in San Juan.³⁶

Additionally, this knowledge gap cannot be bridged by allowing federal district court judges assigned to the territories to sit on the federal courts of appeals by designation. Although the United States District Court for the District of Puerto Rico became an Article III court in 1966,³⁷ the District Court of Guam, District Court of the Northern Mariana Islands, and District Court of the Virgin Islands, despite their names, all remain Article IV courts. As a result, the Supreme Court of the United States has held that federal district judges in Guam, the Northern Mariana Islands, and the Virgin Islands are prohibited from sitting by designation on a federal court of appeal.³⁸ Consequently, the only way to ensure that all territories are represented on the federal courts of appeal is for the President to nominate, and the Senate to confirm, residents of each territory to positions on the respective court of appeals, as had been previously done with Judge Hastie and Judge Torruella.

Of course, because every federal court of appeals hears cases in panels, with judges typically assigned to panels by random draw, there is no guarantee that—for example—a Virgin Islands judge sitting on the Third Circuit would hear a Virgin Islands case. However, judges from the territories would still be able to influence the decision-making process simply from being on the court, even if not assigned to a particular case. Many courts of appeal, such as the Third Circuit, require that precedential opinions be circulated to the entire court for review, rather than just to the members of the panel,³⁹ which would allow a judge appointed from a territory to inform the panel of an obvious error or misconception before it becomes binding precedent. And in all of the federal courts of appeals any active judge may initiate a vote to have a case heard en banc.⁴⁰

³⁵ *Wabol v Villacrusis*, 958 F.2d 1450, 1462 (9th Cir. 1990).

³⁶ For example, in case originating in the Virgin Islands, the Third Circuit, in an appeal of a trial judge's decision to impose sanctions against an attorney, noted that the attorney "allegedly 'sucked her teeth' (*whatever that means*) at a witness during a deposition." *Saldana v Kmart Corp.*, 260 F.3d 228, 232 (3d Cir. 2001) (emphasis added). Those familiar with the Virgin Islands, however, would be aware that sucking one's teeth "is a local custom which indicates feeling of disgust, anger, disbelief, or imitation." *United States v Canel*, 569 F.Supp. 926, 931 n.3 (D.V.I. 1982)

³⁷ Public Law 89-571, 80 Stat. 764.

³⁸ See *Nguyen v United States*, 539 U.S. 69, 74-76 (2003) (holding Ninth Circuit committed reversible error by permitting judge of the District Court of the Northern Marian Islands to sit by designation on a Ninth Circuit panel).

³⁹ See 3d Cir I.O.P. 5.5.4.

⁴⁰ FED R. APP. PROC. 35(f).

THE ROLE OF THE AMERICAN BAR ASSOCIATION

The American Bar Association, as the national representative of the legal profession, has established goals to further its mission of defending liberty and delivering justice. Specifically, the American Bar Association has made it its objective to “[p]romote full and equal participation in the association, our profession, and the justice system by all persons,” ABA Goal III.1, and to “[w]ork for just laws, including human rights, and a fair legal process.” ABA Goal IV.3. Consistent with its mission, the American Bar Association, on its website promoting its theme for Law Day 2014, “American Democracy and the Rule of Law: Why Every Vote Matters,” states in the very first paragraph that

One of our most cherished national ideals, expressed eloquently by Abraham Lincoln, is “government of the people, by the people, for the people.” It is a principle enshrined in our Nation’s founding documents, from the Declaration of Independence’s assurance that governments derive their powers from the consent of the governed, to the opening three words of the Preamble to the U.S. Constitution, “We the People.”⁴¹

To this end, the American Bar Association has seen fit to advocate for the interests of the territories, such as in 1990, when the House of Delegates passed Resolution 8F to specifically urge President George H.W. Bush to nominate, and the Senate confirm, an appointee to the District Court of the Virgin Islands, which at the time had no full-time active judge for an unacceptably long period of time.⁴²

Unquestionably, several aspects of the relationship between the United States and its territories are inherently undemocratic; for instance, citizens residing in the territories lack the right to vote for President or for any voting members of Congress. However, while some of these inequities may only be remedied through a constitutional amendment or by overturning United States Supreme Court precedent, ensuring that the territories are permanently represented on the federal courts of appeal can be achieved through ordinary legislation.

Under current federal law, it is mandatory that, for the 12 regional circuit courts of appeal, there “bc at least one circuit judge in regular active service appointed from the residents of each state in that circuit.”⁴³ Significantly, this provision was itself adopted in 1997 in direct response to the collective failure of Presidents Reagan, Bush, and Clinton to appoint a Hawai’i judge to the Ninth Circuit after Judge Choy assumed senior status.⁴⁴ Simply amending this provision to insert “and territory” after the words “each state” would be sufficient to ensure that

⁴¹ American Bar Association, Division for Public Education, Law Day 2014, http://www.americanbar.org/groups/public_education/initiatives_awards/law_day_2014.html.

⁴² Approved by the ABA House of Delegates (February 1990).

⁴³ 28 U.S.C. § 44(c).

⁴⁴ Brand, *supra* note 7, at 50 n.11.

at least one judge from each territory will serve on the pertinent court of appeals. Given that none of the territories are privileged with a voting representative in either the House of Representative or the Senate, action by the American Bar Association would greatly increase the likelihood of Congress enacting such legislation.

Additionally, the territories' lack of representation could also be immediately remedied by the President nominating residents of the territories to vacancies on the pertinent courts of appeals. As the appointments of Judge Hastie to the Third Circuit and Judge Torruella to the First Circuit illustrate, nothing precludes residents of the territories from serving on the federal courts of appeals. However, this is not an effective long-term solution, given that the territories lack any representation in the Senate—voting or otherwise—and cannot vote for President. In light of the territories' substantially reduced political power relative to the states, there is a significant danger that—in the absence of legislation mandating that at least one judge be a resident of each territory—the seat will simply be transferred from the territory to a state, as was the case when Judge Hastie assumed senior status. Moreover, it is worth noting that the only territorial judges appointed to the courts of appeal—Judge Hastie and Judge Torruella—were both nominated to newly-created judgeships that had not yet been “claimed” by any “home-state” senators, and that simply urging the President to, in effect, “transfer” existing seats to the territories could prove politically difficult. Nevertheless, seats on the federal courts of appeal do not belong to any particular state or territory, and thus nothing, other than informal Senate custom, precludes such a nomination.⁴⁵ Again, as the territories lack any representation in the Senate, the support of the American Bar Association would be critical to ensuring that such nominees could be successfully confirmed.

SUMMARY

The recommended resolutions will enable the American Bar Association to facilitate its long-standing mission of promoting the administration of justice and ensuring that all Americans, regardless of the state or territory in which they reside, are represented on the federal courts of appeals.

Respectfully submitted,

Nycole Thompson
Virgin Islands Bar Association
August 2014

⁴⁵ *Id.* at 51.

GENERAL INFORMATION FORM

Submitting Entity: Virgin Islands Bar Association

Submitted By: Adriane J. Dudley

1. Summary of Resolution(s). The purpose of this resolution is to amend existing federal law, 28 U.S.C. § 44(c), to insert the phrase “and territory” after the phrase “each state,” to ensure that all states and territories within the jurisdiction of the federal courts of appeal are represented on its bench. The resolution also urges, in the interim, that the President nominate, and the Senate confirm, a member of the Virgin Islands Bar to the current vacancy on the United States Court of Appeals for the Third Circuit for which a nominee has not been named, and a member of the Guam or Northern Marianas Island Bars to a future vacancy on the United States Court of Appeals for the Ninth Circuit.

2. Approval by Submitting Entity. Approved by the Virgin Islands Bar Association Board of Governors on April 17, 2014.

3. Has this or a similar resolution been submitted to the House or Board previously?

No

4. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?

The American Bar Association has made it its objective to “[p]romote full and equal participation in the association, our profession, and the justice system by all persons,” ABA Goal III.1, and to “[w]ork for just laws, including human rights, and a fair legal process.” ABA Goal IV.3. Additionally, the ABA has designated “American Democracy and the Rule of Law: Why Every Vote Matters” as its theme for Law Day 2014. Passage of this resolution furthers all of these existing policies, in that it would ensure that all Americans, regardless of the state or territory in which they reside, have a representative from their jurisdiction on their federal court of appeals.

5. If this is a late report, what urgency exists which requires action at this meeting of the House?

N/A

6. Status of Legislation. (If applicable)

N/A

7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.

A copy of the resolution would be distributed to the President of the United States and all members of Congress.

8. Cost to the Association. (Both direct and indirect costs)

None, other than the costs of transmitting the resolution to the President and members of Congress.

9. Disclosure of Interest. (If applicable)

N/A

10. Referrals.

American Bar Association Young Lawyers Division
Standing Committee on Federal Judicial Improvements
Standing Committee on the Federal Judiciary
Commission on Racial and Ethnic Diversity in the Profession

11. Contact Name and Address Information. (Prior to the meeting. Please include name, address, telephone number and e-mail address)

Adriane J. Dudley
Dudley Rich Davis LLP
5194 Dronningens Gade Suite 3
St Thomas, VI 00802
340.776.7474
adudley@dudleylaw.com

12. Contact Name and Address Information. (Who will present the report to the House? Please include name, address, telephone number, cell phone number and e-mail address.)

Adriane J. Dudley
Dudley Rich Davis LLP
5194 Dronningens Gade Suite 3
St Thomas, VI 00802
340.776.7474
adudley@dudleylaw.com

10A

EXECUTIVE SUMMARY

1. Summary of the Resolution

The purpose of this resolution is to amend existing federal law, 28 U.S.C. § 44(c), to insert the phrase “and territory” after the phrase “each state,” to ensure that all states and territories within the jurisdiction of the federal courts of appeal are represented on its bench. The resolution also urges, in the interim, that the President nominate, and the Senate confirm, a member of the Virgin Islands Bar to the current vacancy on the United States Court of Appeals for the Third Circuit for which a nominee has not been named, and a member of the Guam or Northern Marianas Island Bars to a future vacancy on the United States Court of Appeals for the Ninth Circuit.

2. Summary of the Issue that the Resolution Addresses

All federal district courts, including those based in United States territories, are assigned to one of the 12 regional federal courts of appeals. Under federal law, it is required that there “be at least one circuit judge in regular active service appointed from the residents of each state in that circuit.” However, no such provision requires that there be one circuit judge in active service appointed from the territories that are assigned to that circuit. As a result, since their establishment, only two judges hailing from the territories have ever been appointed to a federal court of appeals.

3. Please Explain How the Proposed Policy Position will address the issue

The resolution will address this issue by amending existing law to require that there “be at least one circuit judge in regular active service appointed from the residents of each state *and territory* in that circuit.” Until such legislation is passed, the resolution urges the President to nominate, and the Senate to confirm, a Virgin Islands attorney or judge to the current vacancy on the Third Circuit, and a Guam or Northern Marianas Islands attorney or judge to the next vacancy on the Ninth Circuit.

4. Summary of Minority Views

No minority views were expressed when the Virgin Islands Bar Association considered this issue.