

REPORT OF THE JUDICIAL COUNCIL OF THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
ON THE VIRGIN ISLANDS SUPREME COURT



2012



UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

CHAMBERS OF
JUDGE D. BROOKS SMITH

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April 18, 2012

Dear Chief Judge McKee:

In the latter part of 2011, you appointed a Virgin Islands Supreme Court Review Committee of which I am chair. You also appointed Judge Stapleton and Marcy Waldron as committee members, and Toby Slawsky as committee reporter. Our charge was set out in the Revised Organic Act of 1954, which directed that five years after the establishment by the Virgin Islands legislature of an appellate court, our court's Judicial Council would "submit reports to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives . . . as to whether [the appellate court] has developed sufficient institutional traditions to justify direct review by the Supreme Court of the United States from all such final decisions." 48 U.S.C. § 1613.

The five year anniversary of the Virgin Islands Supreme Court's formal exercise of its judicial authority occurred on January 29, 2012. With that date in mind, our committee began our review in late 2011 by familiarizing ourselves with the rules and internal operating procedures established by the Virgin Islands Supreme Court. We then gathered and read the opinions, both precedential and nonprecedential, authored by that Court.

In mid-December of 2011, the committee traveled to the islands of St. Thomas and St. Croix. We personally met with the Chief Justice and Associate Justices of the Supreme Court, the Court's Clerk and its Administrative Director. In addition, we met with some of the judges of the Superior Court, and officials from the executive and legislative branches of the Virgin Islands government. We also had an opportunity to meet with a cross-section of the Virgin Islands Bar Association and to receive comments from them on the performance of the Supreme Court. We also toured the Supreme Court's physical facilities and watched a demonstration of its courtroom technology. Upon returning to the mainland, we conducted additional interviews and met in Washington, D.C. with the Virgin Islands' Delegate to the U.S. House of Representatives.

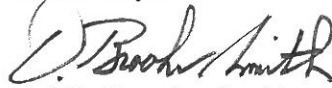
Having completed our review of the performance of the Virgin Islands Supreme Court during its first five years, our committee is pleased to present its report to the

Judicial Council. Our report concludes that the Virgin Islands Supreme Court has developed sufficient institutional traditions to justify direct review of its final decisions by the United States Supreme Court. Accordingly, the committee recommends that the relevant committees of Congress consider legislation providing that the Supreme Court of the Virgin Islands enjoy the same relationship with the Supreme Court of the United States as do the highest courts of the several States.

In an effort to expedite the submission of the Third Circuit Judicial Council's report to the relevant Committees of Congress, I have copied this letter and the report to the members of the Judicial Council. The committee welcomes the comments and suggestions of the Judicial Council members and requests that any such comments be submitted by the close of business on **Friday April 27, 2012**. Should a member of the Judicial Council not wish to comment or submit suggestions, a lack of response will be deemed a vote to approve the report and recommendation to the relevant Committees of Congress.

Please let me know if you or any member of the Council have any concerns that the committee should further address. Thank you.

Sincerely,

A handwritten signature in cursive script, appearing to read "D. Brooks Smith".

/s/ D. Brooks Smith

U.S. Circuit Judge

**REPORT OF
THE JUDICIAL COUNCIL OF THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
ON THE VIRGIN ISLANDS SUPREME COURT TO
THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
AND THE HOUSE COMMITTEE ON NATURAL RESOURCES**

In accordance with 48 U.S.C. § 1613, the Judicial Council of the Third Circuit is required to submit a report to both the Senate Committee on Energy and Natural Resources and the House Committee on Natural Resources five years after the establishment of a Virgin Islands Supreme Court. The purpose of the report is to advise Congress as to whether that Court “has developed sufficient institutional traditions to justify direct review by the Supreme Court of the United States from all such final decisions.” This report details the study conducted by the Third Circuit Judicial Council Committee on Virgin Islands Supreme Court Review, describes the performance and progress made by the Virgin Islands Supreme Court during its first five years, and recommends that Congress provide by statute that the Virgin Islands Supreme Court enjoy the same relationship with the Supreme Court of the United States as do the highest courts of the fifty states.

I.

To fully appreciate the work and performance of the judiciary in the U.S. Virgin Islands, it is helpful to understand some of its history. For purposes of this Report, the Revised Organic Act of 1954, as amended, is the starting point. 48 U.S.C. §§ 1541 - 1645. Subchapter V of the 1954 Act pertains to the Judicial Branch of the Virgin Islands’

government. 48 U.S.C. §§ 1611-1616. Section 21 of the Act established the District Court of the Virgin Islands and vested judicial power in that court and “such appellate court and lower local courts as . . . established by local law.” 48 U.S.C. § 1611(a).

Although the District Court of the Virgin Islands is an Article I court, the Act provided that court would have the jurisdiction of an Article III District Court of the United States. 48 U.S.C. § 1612(a). In addition to possessing the judicial power to adjudicate diversity actions, cases involving a federal question, and bankruptcy actions, the Act granted the District Court, *inter alia*, “general original jurisdiction” over local causes of action not specifically vested by local law in the local courts. 48 U.S.C. § 1612(b). The District Court also possesses concurrent jurisdiction over Virgin Islands criminal offenses. *Id.* § 1612(c).

The Revised Organic Act contemplated that the legislature of the Virgin Islands would establish both an “appellate court and lower local courts.” 48 U.S.C. § 1611(a). But by 1954, local law had yet to establish an appellate court. As a result, pursuant to 48 U.S.C. § 1613a(a), the District Court of the Virgin Islands sat from time to time as an appellate division to exercise appellate jurisdiction over the decisions of the local courts. Appellate review of District Court decisions was available as of right in the United States Court of Appeals for the Third Circuit. 48 U.S.C. § 1613a(c).

The lower courts of the Virgin Islands have had several designations over the years. On October 29, 2004, the Virgin Islands legislature designated the Superior Court of the Virgin Islands as the court of local jurisdiction. 4 V.I. Code Ann. § 2. It has

original jurisdiction in all local civil and criminal actions. 4 V.I. Code Ann. §76; *see also Parrott v. Government of the Virgin Islands*, 230 F.3d 615, 620-22 (3d Cir. 2000).

On the same date that the legislature designated the Superior Court as the court of local jurisdiction, it also established, pursuant to its authority under § 21 of the Revised Organic Act, 48 U.S.C. § 1611(a), the Supreme Court of the Virgin Islands “as the highest court of the Virgin Islands,” in which “shall be reposed the supreme judicial power of the Territory.” 4 V.I. Code Ann. § 21. This legislation created the tiered local court system contemplated by the Revised Organic Act, with the Superior Court serving as the first instance court and the Supreme Court of the Virgin Islands as the local “court of last resort.” 4 V.I. Code Ann. § 2. On January 29, 2007, the Virgin Islands Supreme Court began to formally exercise its judicial authority.

The creation of this local appellate court triggered a change in the judicial review available for the decisions of the Superior Court. The appellate division of the District Court would no longer exercise appellate jurisdiction over cases adjudicated by the Superior Court. Instead, all appeals from the Superior Court would be heard by the Supreme Court of the Virgin Islands. 48 U.S.C. § 1613a(d).

With the judicial authority of the Virgin Islands Supreme Court now fully in place, judicial review by an Article III court of decisions of the local courts is no longer a matter of right. Instead, the Revised Organic Act provides that discretionary review by a writ of certiorari of a final decision of the Virgin Islands Supreme Court may be granted by the United States Court of Appeals for the Third Circuit. 48 U.S.C. § 1613. The Third Circuit’s jurisdiction to grant discretionary review over final decisions of the Virgin

Islands Supreme Court is, however, only temporary. The Act specifies that discretionary review by the Court of Appeals exists for the “first fifteen years following the establishment” of the Virgin Islands Supreme Court or until “it has developed sufficient institutional traditions to justify direct review by the Supreme Court of the United States from all such final decisions,” whichever is sooner. *Id.*

As noted, the statute that occasions this report intended that the Supreme Court of the Virgin Islands would ultimately have the same relationship with the Supreme Court of the United States that the highest courts of the several States have with that Court. 48 U.S.C. § 1613.¹ Accordingly, its final judgments should ultimately be subject to certiorari review by the U.S. Supreme Court. As with judgments of the highest courts of the several States, that review would be infrequent given the percentage of certiorari petitions actually granted. Moreover, as with judgments of the highest courts of the

¹ 48 U.S.C. § 1613 provides in part:

The relations between the courts established by the Constitution or laws of the United States and the courts established by local law with respect to appeals, certiorari, removal of causes, the issuance of writs of habeas corpus, and other matters or proceedings shall be governed by the laws of the United States pertaining to the relations between the courts of the United States, including the Supreme Court of the United States, and the courts of the several States in such matters and proceedings: *Provided*, That for the first fifteen years following the establishment of the appellate court authorized by section 1611(a) of this title, the United States Court of Appeals for the Third Circuit shall have jurisdiction to review by writ of certiorari all final decisions of the highest court of the Virgin Islands from which a decision could be had. The Judicial Council of the Third Circuit shall submit reports to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives at intervals of five years following the establishment of such appellate court as to whether it has developed sufficient institutional traditions to justify direct review by the Supreme Court of the United States from all such final decisions.

several States, to the extent its judgments would rest on a determination of local law issues, there would be no review – decisions of local law by the Virgin Islands Supreme Court would be “binding” on the reviewing court. *Pichardo v. Virgin Islands Comm’r of Labor*, 613 F.3d 87 (3d Cir. 2010).

Congress concluded, however, that there should be a transition period during which final judgments of the Virgin Islands Supreme Court would be subject to certiorari review by the Third Circuit Court of Appeals applying a deferential standard of review where issues of local law are concerned. *Id.* at 98 (“[T]he degree of deference we . . . afford to a territorial supreme court allows for reversal on matters of local law only when ‘clear or manifest error is shown.’” (quoting *Haeuser v. Dep’t of Law*, 368 F.3d 1091, 1099 (9th Cir. 2004))). While Congress did not expressly state that such deference must be given, the text of 48 U.S.C. § 1613 assumes that the Virgin Islands Supreme Court “will have the freedom to develop its own ‘traditions’ which in turn undoubtedly entails the creation of legal precedent as well.” *Id.* (quoting *Haeuser*, 368 F.3d at 1099). Nevertheless, the supervision provided by the Third Circuit Court of Appeals during this transition period would exceed in frequency and kind that which would be provided by the U.S. Supreme Court at the period’s end.

The transition period established by Congress was to last for a maximum of fifteen years. If, however, at the end of five years the Virgin Islands Supreme Court had already “developed sufficient institutional traditions to justify [the reduced supervision of] direct review by the Supreme Court of the United States,” the transition period could end at that time. 48 U.S.C. § 1613. And if five years provided insufficient time for institutional

development, further review would take place after ten years. This committee's congressionally assigned task is to make a recommendation as to whether the Virgin Islands Supreme Court, after five years of exercising its judicial authority, has developed a jurisprudence, as well as procedures and supportive institutional structures, to warrant an end to the supervision provided during the statutory transitional period.

II.

Pursuant to the statutory directive to submit a report to Congress addressing the appropriateness of review by the United States Supreme Court of the final decisions and orders of the Virgin Islands Supreme Court, Chief Judge Theodore A. McKee of the United States Court of Appeals for the Third Circuit, appointed a Virgin Islands Supreme Court Review Committee to study the question. The committee is comprised of: U.S. Circuit Judge D. Brooks Smith, chair; U.S. Circuit Judge Walter K. Stapleton; and Marcia M. Waldron, Clerk of the Third Circuit Court of Appeals. Chief Judge McKee serves as *ex officio* member. The committee appointed Toby Slawsky, the Third Circuit Executive, as Reporter and Advisor.

Prior to a visitation with the Virgin Islands Supreme Court and others on the U.S. Virgin Islands familiar with the court's work and reputation, the committee familiarized itself with the local judiciary's structure, judicial selection process, and funding. The committee accessed the Virgin Islands Supreme Court website, which contains links to the Court's rules and internal operating procedures. The committee reviewed all of the precedential decisions issued by the Virgin Islands Supreme Court since its inception, together with a sampling of its non-precedential opinions. Members also reviewed all of

the petitions filed seeking a writ of certiorari to the Virgin Islands Supreme Court from the Third Circuit. In addition, the committee reviewed the Rules and Procedures established for practice in the Virgin Islands.

In December of 2011, the committee traveled to St. Thomas and St. Croix. During a nearly week-long visit, the committee met with numerous judges, court officials and territorial elected officials, including some located on St. Croix. The onsite visit commenced with a meeting between the committee and Chief Justice Rhys S. Hodge and Justices Ive Arlington Swan and Maria M. Cabret of the Virgin Islands Supreme Court. Members of the committee toured the Supreme Court's facility in St. Thomas, and were provided with a demonstration of the Court's state-of-the-art courtroom technology. The committee also conferred with the Court's Administrative Director Glenda Lake and Clerk of Court Veronica Handy, Esquire. The committee also met with most of the active judges of the Virgin Islands Superior Court, as well as several senior and retired members of the bench.

The committee's review included meetings with several officials from the Executive Branch of the Virgin Islands: Governor John P. DeJongh, Jr.; Lieutenant Governor Gregory R. Francis; and Attorney General Vincent F. Frazier. The committee also interviewed four of the fourteen Senators of the Virgin Islands unicameral Legislature, including members of the Judiciary Committee.

Interviews were not limited to government officials. The committee met with Hinda Carbon, the Executive Director of the Virgin Islands Bar Association, and also hosted an open forum and luncheon during which more than 50 members of the Virgin

Islands Bar Association had an opportunity to comment on the performance of the Supreme Court. Although a face-to-face meeting with the Territorial Public Defender could not be arranged during the on-site visit, the committee conducted a lengthy telephone conference with Chief Public Defender Debra Smith-Watlington and Public Defender Kelechukwu Onyejekwe.

The committee held meetings with Chief Judge Curtis V. Gomez of the District Court of the Virgin Islands, as well as Magistrate Judges Ruth Miller, George W. Cannon, Jr., and Geoffrey Barnard. Finally, the Honorable Donna M. Christensen, Virgin Islands Delegate to the United States House of Representatives, received the committee in her office in Washington, D. C., and shared her views on the performance of the Virgin Islands Supreme Court during its first five years of operation.

III.

The Revised Organic Act of 1954 contemplated that the Virgin Islands would establish an appellate court by local law. In 2004, the Virgin Islands Legislature passed legislation bringing the creation of a local appellate court closer to realization. 4 V.I. Code Ann. § 21. In establishing the Virgin Islands Supreme Court as the “highest court of the Virgin Islands,” the Legislature specified that the Supreme Court would be composed of a Chief Justice and two associate justices. *Id.* § 21(a). The justices, pursuant to statute, would be appointed by the Governor of the Virgin Islands, “with the advice and consent of the Legislature[.]” 4 V.I. Code Ann. § 22(a). Familiarity with the Virgin Islands local law is assured as the statute specifies that no person may be appointed a justice of the Supreme Court unless he or she, for the ten years preceding his

or her nomination, was “an active member of the Virgin Islands Bar Association and . . . engaged in the active practice of the law in the Virgin Islands . . . or . . . employed as an attorney or judge by the Government of the Virgin Islands or United States in the Virgin Islands[.]” 4 V.I. Code Ann. § 22(b)(2). In addition, the Legislature, *inter alia*, prohibited justices during their term of service from engaging in the practice of law, conducting any law business, or accepting any public appointment or employment from which they would receive compensation. *Id.* § 22(g).

Former Governor Charles W. Turnbull, Ph.D., appointed the first members of the Virgin Islands Supreme Court, justices who continue to serve to this day. The three members of the Court have varied backgrounds, with experience as law clerks, as lawyers in various facets of private practice, as public servants involved with civil law and criminal matters as either prosecutor or public defender, and as judges of the Superior Court of the Virgin Islands (and its predecessor, the Territorial Court of the Virgin Islands).

Governor Turnbull appointed Rhys S. Hodge as the first Chief Justice. Chief Justice Hodge began his legal career as a law clerk for the Chief Judge of the District Court of the Virgin Islands in the late 1970s. Thereafter, he opened his own law office. After twenty-one years in private practice, Chief Justice Hodge was appointed as a judge of the Superior Court in June of 2000. He served as the Presiding Judge of that Court effective July 1, 2006, and on July 19, 2006, Governor Turnbull nominated him to be Chief Justice of the Supreme Court.

Associate Justice Maria Cabret started her professional career as a teacher in the public school system in Frederiksted, St. Croix. She later earned a law degree, then worked as a judicial law clerk. Before entering private practice as a litigator, Justice Cabret worked with legal services and served as an attorney with the territorial public defender's office. In 1987, she was appointed to the Territorial Court of the Virgin Islands, and later became the Administrative Judge of that Court. In 1999, Judge Cabret was designated as the Presiding Judge of the Territorial Court and its successor, the Superior Court. During her term as Presiding Judge, she oversaw the computerization of that court. She took senior status in 2006, and later accepted Governor Turnbull's appointment as an Associate Justice of the Virgin Islands Supreme Court.

Associate Justice Ive Arlington Swan began his legal career in 1970 with the Virgin Islands Department of Law. Over a ten year period with the Department, he worked on both criminal and civil matters. In 1978, he became the Attorney General of the Virgin Islands. In 1981, Justice Swan entered private practice, handling both criminal and civil matters. He was nominated to be a judge on the Territorial Court of the Virgin Islands in 1987. While serving on that Court and its successor, the Superior Court, Governor Turnbull appointed Swan as an Associate Justice of the Virgin Islands Supreme Court.

The professional backgrounds of the Chief Justice and the Associate Justices demonstrate that each was well-qualified for appointment to the Supreme Court. The justices have worked in a very collegial manner, and their collective work ethic is

testament to their commitment to serving the People of the Virgin Islands and the rule of law.

Despite the commitment of the justices to the speedy administration of justice, there are occasions when a member of the Court must recuse from a case. The problem this poses for a Court with only three justices is obvious. The Legislature did consider this eventuality, however, and provided that the “Chief Justice may appoint any judge of a court of record in the Virgin Islands or any senior or retired justice to sit as a designated justice” on “any specific cases that a regular justice of the Court is unable to hear for any reason[.]” 4 V.I. Code Ann. § 24(a). Thus, the People of the Virgin Islands are assured a resolution of any controversy before it “by a majority of the justices of the Court.” 4 V.I. Code Ann. § 21(a).

IV.

Under Virgin Islands statutory law, the American Law Institute’s Restatements and common law decisions of the state and federal courts of the United States play an important role in the jurisprudence of the Virgin Islands Supreme Court. Section 4 of Title 1 of the Virgin Islands Code provides:

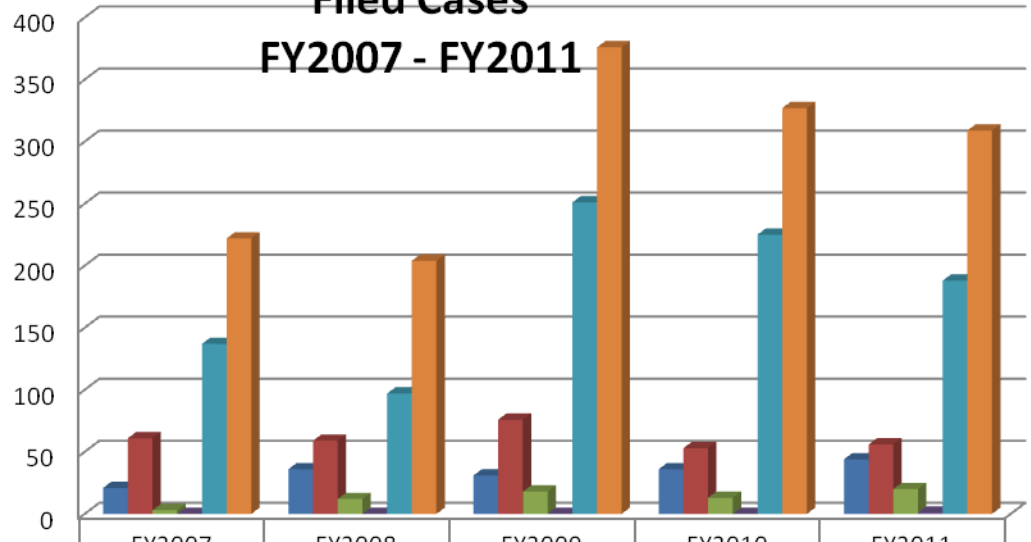
The rules of common law, as expressed in the restatements of the law approved by the American Law Institute, and to the extent not so expressed, as generally understood and applied in the United States, shall be the rules of decision in the courts of the Virgin Islands in cases to which they apply, in the absence of local laws to the contrary.

The Supreme Court of the Virgin Islands remains, however, “the supreme judicial power of the Territory,” *see* 4 V.I. Code Ann. § 21. Section 4 serves a gap-filling function “in the absence of local laws” and does not delegate to the American Law Institute or the

judiciary of other jurisdictions the authority to shape the common law of the Territory. *Banks v. International Rental and Leasing Corp.*, 2011 WL 6299025, *6, __ V.I. __ (V.I. S. Ct. 2011). That authority rests solely with the Virgin Islands Supreme Court as it fashions the “local laws” of the Territory. *Id.* That Court, however, looks to the *Restatements* and common law jurisprudence of the States for guidance in exercising that authority. *Id.* at *6-7.

While appeals and thus dispositions were, of course, few and far between in the months immediately following its creation, the Virgin Islands Supreme Court rapidly acquired a substantial case load and was soon issuing an impressive number of dispositions. Table One shows the number of cases filed from 2007 to 2011. Table Two sets forth its record of dispositions.

Supreme Court of the Virgin Islands Filed Cases FY2007 - FY2011



■ Criminal	21	36	31	36	44
■ Civil	61	59	76	53	56
■ Writs	3	12	18	13	20
■ Certified Question	0	0	0	0	1
■ Bar Governance	137	97	251	225	188
■ Total	222	204	376	327	309

Table One²

² “Bar Governance” cases in Table One and Table Two include such matters as applications for regular, special and *pro hac vice* admissions to the Bar, and CLE requests, as well as disciplinary proceedings.

Supreme Court of the Virgin Islands

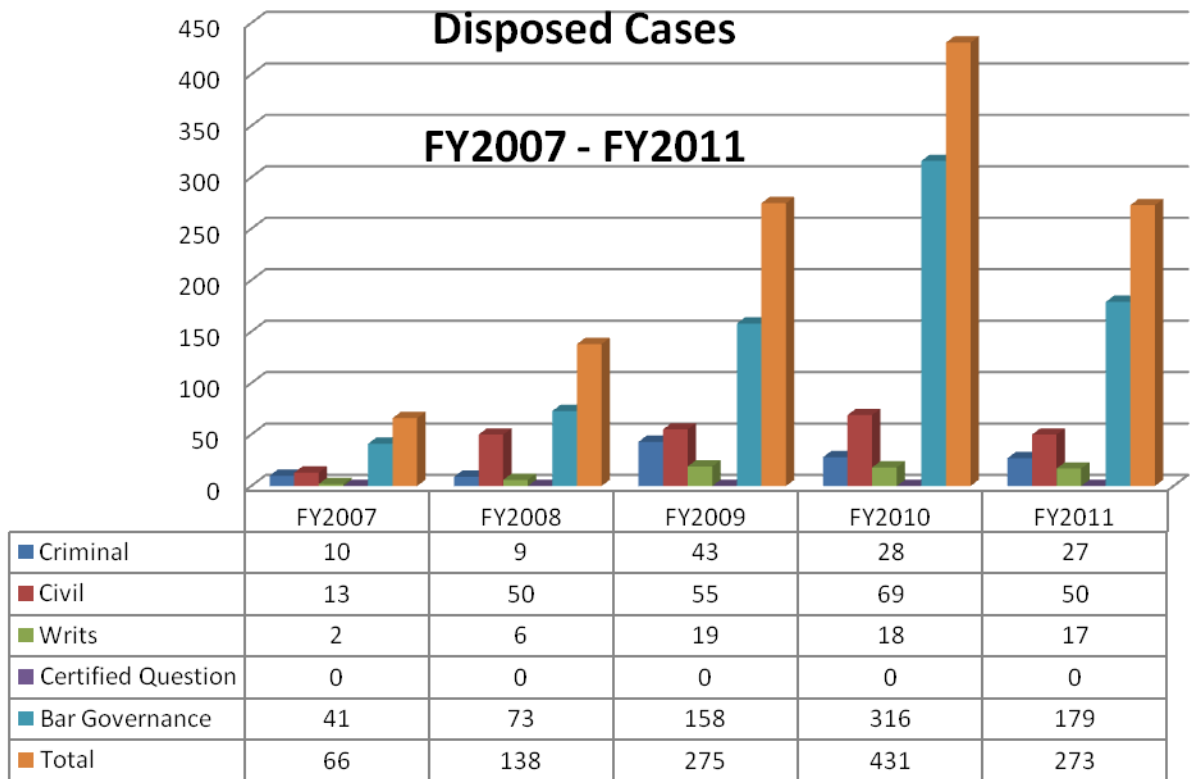


Table Two

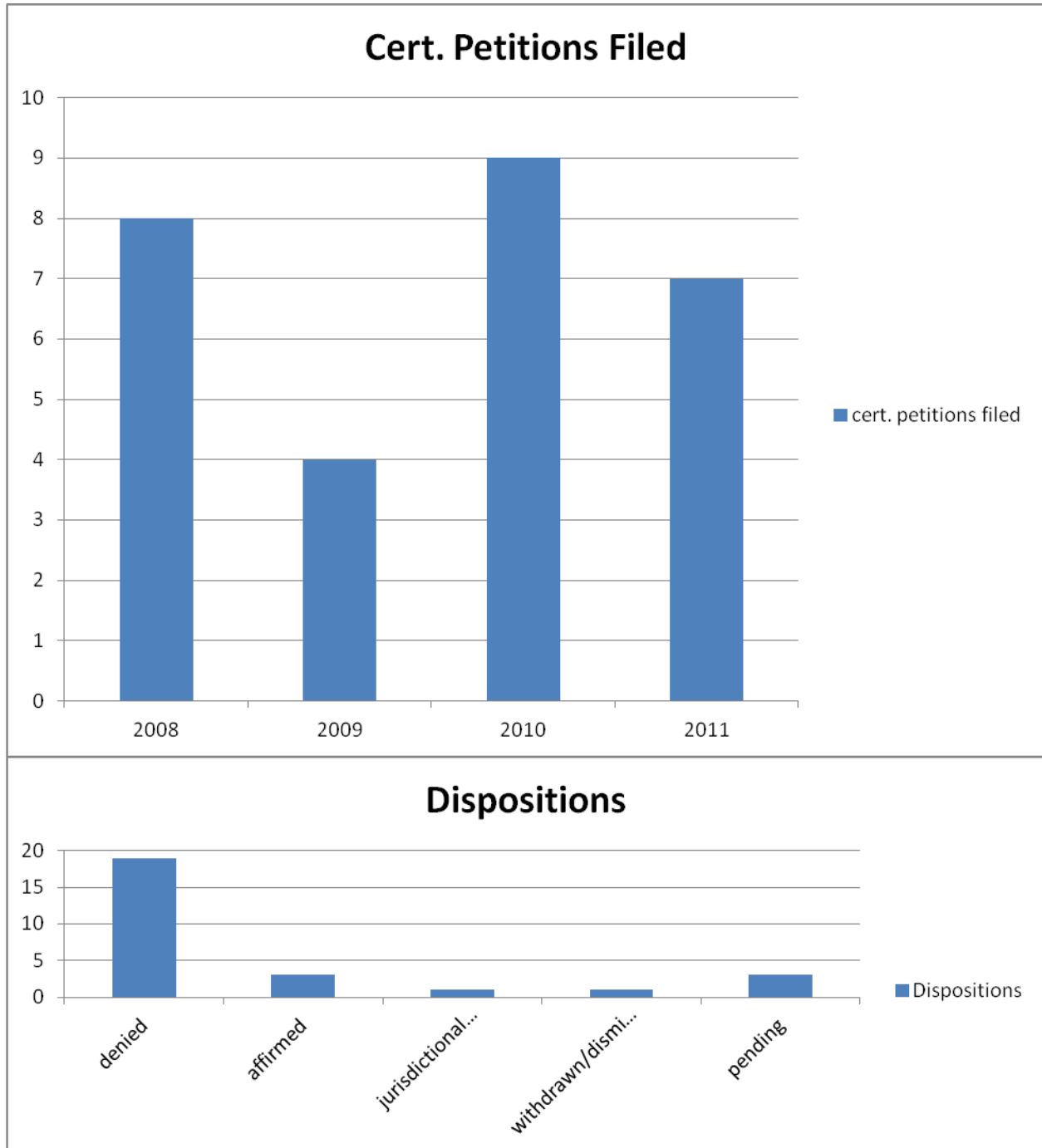
The Supreme Court of the Virgin Islands had issued a total of 152 precedential opinions as of December 31, 2011. The total number of published opinions issued in 2009, 2010 and 2011 – 37, 45 and 40 respectively – accurately reflects the Court’s commendable commitment to its work. The committee has reviewed all precedential opinions of the Virgin Islands Supreme Court issued prior to December 31, 2011, and a representative sample of its unpublished ones. While it does not purport to pass on the merits of any case or cases, based on its review, the committee has concluded that the quality of this body of case law is commensurate with that of the supreme courts of the several States. The Supreme Court is appropriately alert to jurisdictional restraints,

respectful of its obligations to apply federal constitutional and statutory law, and ever mindful of its responsibility to develop its own coherent local law jurisprudence. The Court's opinions objectively define the issues before it with precision, thoroughly review the relevant case law, and explain its resolution of those issues in a manner that facilitates appellate review, provides helpful guidelines to trial court judges, and promotes public confidence in the work of the Court.

In December of 2009, cognizant of its status as the "court of last resort" in the United States Virgin Islands, the Virgin Islands Supreme Court promulgated a rule of appellate procedure for the certification of questions of law from a federal court, or "a court of last resort of a state, the District of Columbia or a territory of the United States." V.I. S. Ct. R. App. P. 38. Like the procedure of many of the States, the Virgin Islands rule for certification is limited to questions of law "which may be determinative of the cause then pending in the certifying court and concerning which it appears there is no controlling precedent in the decisions of the [Virgin Islands] supreme court." *Id.* 38(a). The rule sets forth the method of invoking the procedure, and the process by which the Court responds to the question of law for which certification is requested. The Third Circuit certified one question of law to the Virgin Islands Supreme Court in late 2011. The Court accepted the question and commendably resolved the certified issue in a prompt manner in early 2012.

The impressive quality of the case law developed by the Virgin Islands Supreme Court in its first five years is reflected in the statistics relating to the Third Circuit Court

of Appeals' exercise of its certiorari jurisdiction during those years. The following tables show the number of petitions filed and the dispositions of those petitions.



Twenty-eight petitions for certiorari have been filed from 2008 until December 31, 2011. Nineteen, or 68%, of those petitions have been denied. Of the four petitions that were granted, the Supreme Court of the Virgin Islands was affirmed in three; the fourth petition was dismissed as improvidently granted (lack of jurisdiction). One petition was withdrawn by the petitioner, and one was dismissed by the clerk for failure to pay the docketing fee. Three petitions remain pending as of January, 2012. Thus, the Court of Appeals for the Third Circuit has yet to reverse a decision of the Virgin Islands Supreme Court.

As noted above, the committee met during its visit to the Virgin Islands with the Governor, the Attorney General (and members of their staffs), members of the Legislature, judges of the Superior Court, and a representative sample of the membership of the Virgin Islands Bar. While, as one would expect, there were those who disagreed with the results reached by the Supreme Court in particular cases, there was an impressive consensus that it: (1) had substantially decreased the time required for appellate review; (2) had produced a very substantial body of high quality, helpful case law; and (3) by its heightened expectations of others, had raised the performance level of all participants in the judicial process. High marks were given to the performance of the justices during the Court's first five years.

For these reasons and those set forth hereafter, the committee believes that the Supreme Court of the Virgin Islands "has developed sufficient institutional traditions to justify direct review by the Supreme Court of the United States." The committee accordingly suggests that the relevant Committees of the Senate and House may wish to

consider eliminating further quinquennial reviews by the Judicial Council of the Third Circuit and affording review by certiorari to the United States Supreme Court rather than to the Court of Appeals for the Third Circuit.

V.

A. Administrative Services

Since the Supreme Court's first exercise of judicial authority in January 2007, the Court has developed an impressive and dedicated administrative infrastructure under the Administrative Director, including financial service, information technology (IT), human resources, facilities management, judicial security, records management, statistics and judiciary reporting and public information.

B. Information Technology

One of the most impressive features of the Court's administrative development is its information technology department. The Supreme Court has excelled in establishing an up to date, stable and secure IT infrastructure. The Court employs three professionals who are responsible for inter-island communication, e-mail, telephones, data replication, backup and security. Justices and staff are able to work remotely utilizing a remote Virtual Private Network and smart phones.

The Court maintains a user friendly website at www.visupremecourt.org. The website is interactive and includes on-demand videos of court proceedings. All orders and opinions, both published and unpublished, are posted on the site. The public may access the court calendar and electronic docket, download forms, and link to other

references. The very detailed and well-written Annual Reports of the Supreme and Superior Courts are also available.

Effective November 2011, and after a multi-year phased-in process, the Court implemented mandatory electronic filing in counseled cases. The electronic filing process complements the Court's automated Appellate Case Management System and facilitates an electronic Bar Admission process. The Court has also implemented automated financial collection via credit cards and automated its financial and procurement systems.

C. Court Facilities & Security

The Supreme Court conducts proceedings on both the islands of St. Thomas and St. Croix. In November 2009, the Court moved into dedicated facilities in St. Thomas with highly functional ample judicial chambers, office space for the Clerk's Office and administrative staff, and a state of the art high-tech courtroom. The courtroom in St. Thomas is equipped with video conferencing technology which facilitates remote appearances by justices and attorneys and internal meetings. All arguments in St. Thomas are videoed and available by streaming on the Court's website. The website also allows viewing of arguments on demand.

In St. Croix, the Court has judicial chambers and limited space for administrative and clerical staff in Frederiksted. Oral arguments in St. Croix are heard at the District Court facility.

Security for the Supreme Court is provided by the Office of the Supreme Court Marshal. The courtroom and court offices in St. Thomas and St. Croix all have screening procedures and cameras and digital recording systems.

D. Human Resources

The Virgin Islands Supreme Court has a staff of 44. The Court has written policies demonstrating that it is a forward looking employer. Written policies cover procurement, technology, personnel matters, alternative work arrangements, and customer service standards. The Court encourages continuing development of its employees through its Knowledge Transfer and Internship programs.

E. Long Range Planning

Working with the National Center for State Courts, the Virgin Islands Supreme Court developed a strategic plan in 2010. The plan establishes performance objectives and performance measures for the next five years. The plan is available on the Court's internet web site.

The Supreme Court of the Virgin Islands is to be commended for having instituted these important structures in such a short period of time.

VI.

The Supreme Court of the Virgin Islands has adopted rules and procedures to insure the prompt and efficient disposition of cases. These include appellate rules, internal operating procedures, and rules governing the appointment of counsel for indigents on appeal. Court Rule 209 instituted rules of judicial discipline and created the Commission on Judicial Conduct to enforce the rules.

Recognizing the importance of maintaining the quality of the Bar, the Court has taken steps to vigorously enforce the rules of the Virgin Islands Bar. Disciplinary rules and procedures are in place and the Court recently hired disciplinary counsel to assist in enforcement proceedings.

VII.

The Virgin Islands is wrestling with the same issues that face all modern courts. The current economic climate presents the same challenging budgetary issues that confront federal and state courts on the mainland. Both the Executive and Legislative branches appear committed to adequately fund the Virgin Islands court system. For its part, the judicial branch recognizes that in difficult economic times all government entities must tighten their belts.

The organization of the administrative structure of the judicial branch is a continuing subject of debate. Like many court systems, the Virgin Islands must weigh the considerable economies that can be realized by a unified court system against the flexibility of separate budgeting and decision making for each of the Territory's courts.

During the committee's visit to the Virgin Islands, numerous members of the legal community suggested that the Legislature should enlarge the Court's membership. Some members of the Legislature have acknowledged that there are benefits to a larger court, but they are quick to add that economic realities make such a proposal unrealistic at the present time. Whatever inconveniences and inefficiencies may arise from the justices' recusals from time to time, the committee is satisfied that the Court is fairly and capably disposing of its caseload on a timely basis.

A few commented that the fact that the Virgin Islands courts were created by the Legislature should be corrected to make the Judicial branch co-equal with the Executive and Legislative branches. This would require either the adoption of a constitution by the Virgin Islands or a Congressional amendment to the Organic Act as was done for Guam.

The foregoing raise policy questions that are beyond the scope of this committee's work. However, we conclude from our meetings and conversations with all three branches and with members of the Bar that the relations among the branches of government and the structures, such as the Judicial Council, that are already in place will enable the Virgin Islanders to come to solutions that fit the political, social, and judicial culture of the Virgin Islands.

VIII.

Conclusion

The committee has prepared the foregoing report after months of work consisting of research, review of Virgin Islands Supreme Court opinions, careful consideration of its rules and internal operating procedures, interviews of the justices themselves, other judges, members of the Virgin Islands Legislature and practicing lawyers. In addition to its intensive week of meetings and interviews in St. Thomas, which included an on-site tour of the Court's state of the art courtroom and a demonstration of its technology, the committee conducted additional interviews in St. Croix and upon return to the Mainland.

Composed as it is of judges and administrators of a United States Court of Appeals, the committee has experience with several state court systems, not only in considering the written opinions of those courts but also in interacting with their

administrative structures and personnel. Based on that experience, and the comprehensive information gathering of our more than four months of study, we conclude that in its first five years of exercising its judicial authority, the Supreme Court of the Virgin Islands “has developed sufficient institutional traditions to justify direct review by the Supreme Court of the United States” of its final decisions.

As one prominent Virgin Islands practitioner put it, the new Supreme Court “has raised the bar” generally for the practice of law within its jurisdiction. Accordingly, we recommend to the Judicial Council of the Third Circuit that it report to the relevant committees of Congress that they consider legislation providing that the Supreme Court of the Virgin Islands enjoy the same relationship with the Supreme Court of the United States as do the highest courts of the several States.

