

SYMPOSIUM INTRODUCTION

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On Friday, March 18, 2016, the *Stetson Law Review* hosted a day-long symposium on the topic, “Effective Advocacy in a Territorial Jurisdiction: The Repudiation of the Restatements in the Virgin Islands and Emerging Issues of Political Status in the Territorial and Insular Jurisdictions of the United States.” The Symposium was inspired by a development in the common law of the Virgin Islands that is not particularly well-known outside the jurisdiction, so I have described it briefly below.

From 1957 until the creation of the Supreme Court of the Virgin Islands a decade ago, Section 4 of Title 1 of the Virgin Islands Code dictated that the American Law Institute’s Restatements of the Law would serve as the rules of decision in Virgin Islands courts. In the landmark case of *Banks v. International Rental & Leasing Corp.*,¹ the Virgin Islands Supreme Court held that this provision was no longer valid because it was in irreconcilable conflict with the Supreme Court’s statutory and inherent authority to shape the common law. Subsequent caselaw has established that the Restatements no longer constitute the rules of decision in territorial courts—instead, all common law issues must be addressed as issues of first impression and resolved by employing what has become known as a *Banks* analysis. The *Banks* analysis requires courts applying Virgin Islands law to consider three factors in establishing a common law rule: “[F]irst examining which common law rule Virgin Islands courts have applied in the past; next identifying the rule adopted by a majority of courts of other jurisdictions; and then finally—but most importantly—determining which common law rule is soundest for the Virgin Islands.”²

1. 55 V.I. 967 (V.I. 2011).

2. *Machado v. Yacht Haven U.S.V.I., LLC*, 61 V.I. 373, 380 (V.I. 2014) (citation and internal quotation marks omitted).

The *Banks* line of decisions has been both important and controversial, and more than 150 cases have now been decided employing the *Banks* analysis. Accordingly, as this Symposium was held almost five years after the *Banks* case was decided, the timing seemed right to bring together a group of scholars, practitioners, and judges to discuss some of the emerging issues, not only in *Banks* advocacy, but also in territorial law more generally. The panel brought together not only individuals who had been long-time colleagues and friends, but also scholars and practitioners who shared an interest in some aspect of territorial law but had not previously collaborated or even met.

The Symposium began with a panel that set the stage for the rest of the day's discussion. This first panel was centered on insular law in the United States and the European Caribbean Territories. The issues discussed therein were all related to status, self-determination, and citizenship. The first panel included Professor Carlos Iván Gorrín Peralta of the Inter-American University of Puerto Rico, Dr. Flora Goudappel, Jean Monnet chair of EU trade law in the overseas territories at Erasmus University Rotterdam and interim dean of law at the University of Netherlands Antilles, Curaçao, and Mr. Neil Weare, Esq., President and Founder of the We the People Project. Professor Peralta's work on Puerto Rico and the United States at the Crossroads has been featured in a recent book entitled, "Reconsidering the Insular Cases: The Past and Future of the American Empire,"³ published by the Harvard University Press. Dr. Goudappel specializes in European law in overseas territories, external borders, asylum and migration, and EU citizenship and free movement. Mr. Weare has devoted his professional life to achieving equal rights for Americans in the territories of the United States. He argued his first landmark case while still a law student and in February 2015 argued the case of *Tuaua v. United States*⁴ before the D.C. Circuit, making the case for equal citizenship in U.S. territories.

Representing this first panel is an article by Professor Peralta, entitled, "Past, Present, and Future of U.S. Territories:

3. Carlos Iván Gorrín Peralta, *Puerto Rico and the United States at the Crossroads*, in RECONSIDERING THE INSULAR CASES: THE PAST AND FUTURE OF THE AMERICAN EMPIRE (Gerald L. Neuman & Tomiko Brown-Nagin eds., 2015).

4. 788 F.3d 300 (D.C. Cir. 2015).

Expansion, Colonialism, and Self-Determination.”⁵ His article provides the historical context for the United States’ treatment of its territories from the eighteenth century to the present date, argues that the United States is in violation of its obligations under international law, and sets forth several possible means of going forward more productively.

The second panel focused more specifically on one of the most timely and emergent issues facing non-state areas: voting rights. The panel was entitled, “Voting Rights in the Territories of the United States: Examining the History and Looking to the Future.” This panel featured Mr. Neil Weare, Esq., Mr. J. Russell B. Pate, Esq., President of the Virgin Islands Bar Association, and Mr. Anthony Ciolli, Esq., acting Legal Counsel for the Supreme Court of the Virgin Islands. Mr. Pate started his legal career working for a large plaintiff’s firm helping people who developed cancer from exposure to asbestos and other toxic substances. He then worked with the Federal Public Defender’s Office in Texas practicing criminal defense. Before opening his own law firm in 2010, he worked for an insurance defense firm in St. Thomas. As one of the first employees hired by the V.I. Supreme Court, Mr. Ciolli has participated in building a court of last resort from scratch and helping it involve into a mature institution.

The second panel is represented by an article by Mr. Weare, entitled, “Equally American: Amending the Constitution to Provide Voting Rights in U.S. Territories and the District of Columbia.”⁶ The article, which includes the text of a proposed constitutional amendment, argues that such an amendment is important as an issue of racial justice and for the purpose of supporting the dignity and political rights of every American, no matter whether he or she lives in a state or one of the non-state areas covered by the proposed amendment.

As we moved from the second panel into the third, the conversation shifted from issues of territorial law and status generally to issues focused on the Virgin Islands. The third panel, entitled, “Living with and Learning from *Banks*: Its History and Meaning for the Common-Law Process, and Best Practices in

5. Carlos Iván Gorrín Peralta, *Past, Present, and Future of U.S. Territories: Expansion, Colonialism, and Self-Determination*, 46 STETSON L. REV. 233 (2017).

6. Neil Weare, *Equally American: Amending the Constitution to Provide Voting Rights in U.S. Territories and the District of Columbia*, 46 STETSON L. REV. 259 (2017).

Banks Advocacy,” included Dean James Huffman, Dean Emeritus of Lewis & Clark Law School, The Honorable Robert A. Molloy of the Superior Court of the Virgin Islands, St. Croix Division, and Mr. Joseph Gasper, Esq., Appellate Law Clerk and Librarian for the Superior Court of the Virgin Islands. Dean Huffman has published numerous books and articles on a wide range of topics including constitutional law, jurisprudence, the evolution of the common law, legal history, and the history of legal education. Judge Molloy previously served as an attorney in the Office of Collective Bargaining and clerked at the Arlington County Circuit Court and in the District Court of the Virgin Islands. Prior to clerking, Mr. Gasper worked as an associate engaged in all areas of litigation practice and as a Special Assistant District Attorney for the Kings County District Attorney’s Office.

Representing the third panel are two articles. Dean Huffman’s article, “A Common Law of and for the Virgin Islands,”⁷ sets forth the common law process as it has existed historically, describing it as a “bottom-up, supply-side, organic process,” and, after examining the implementation of *Banks* thus far in the Virgin Islands, concludes that the courts of the Virgin Islands have, in fact, begun to develop a body of common law that is uniquely of and for the people of the Virgin Islands. Mr. Gasper’s article is entitled, “Too Big to Fail: *Banks* and the Reception of the Common Law in the U.S. Virgin Islands.”⁸ After providing an overview of the past one hundred years of experience in the Virgin Islands as it relates to the reception of the common law, Mr. Gasper calls for the Virgin Islands Supreme Court to clarify *Banks* and explains why and how it should do so. He also examines the possibility of a new reception statute, explaining what the implications of such a statute would be.

The final panel of the day was “*Banks* and the Judiciary: Examining the Jurisdictional Relationships Affecting the Virgin Islands Judiciary, as well as the body of *Banks* jurisprudence.” I was delighted to speak on this panel alongside two excellent students (now graduates) of Stetson University College of Law—Ms. Katrina Womble and Ms. Courtney Cox Hatcher. Before enrolling at Stetson, Ms. Womble worked for the leading liberal

7. James L. Huffman, *A Common Law Of and For the Virgin Islands*, 46 STETSON L. REV. 367 (2017).

8. Joseph T. Gasper II, *Too Big to Fail: Banks and the Reception of the Common Law in the U.S. Virgin Islands*, 46 STETSON L. REV. 295 (2017).

think tank, Center for American Progress, in Washington, D.C. She was also a Research Assistant for the Health Policy Department working on issues related to health care under the Affordable Care Act. Ms. Hatcher worked in the insurance industry prior to enrolling at Stetson.

The fourth and final panel is represented by two articles. Ms. Womble and Ms. Hatcher's article, "Trouble in Paradise? Examining the Jurisprudential and Precedential Relationships Affecting the Virgin Islands Judiciary,"⁹ sets forth a history of the development of the Virgin Islands court system, examines the relationships between the various courts and some challenges that have arisen in those relationships, and closes with a series of recommendations for resolving those challenges. My article, "Living with *Banks*: Trends and Lessons from the First Five Years,"¹⁰ is focused on identifying trends that have emerged in the first almost five years of *Banks* jurisprudence and is intended to serve as a practical resource for attorneys who are seeking to understand how *Banks* is being used.

The Symposium enjoyed robust attendance, not only in person at the College of Law campus in Gulfport, Florida, but also via webcast, where a number of attorneys participated from the Virgin Islands as part of the Virgin Islands Bar Association's quarterly meeting. One of the exciting results of the Symposium is a new, annual online issue of the *Stetson Law Review* that will be devoted to Virgin Islands law and other issues of territorial law. We look forward to this continued collaboration between Stetson University College of Law and the Virgin Islands Bar Association, and hope that many readers of this issue will consider contributing an article.

9. Katy Womble & Courtney Cox Hatcher, *Trouble in Paradise? Examining the Jurisdictional and Precedential Relationships Affecting the Virgin Islands Judiciary*, 46 STETSON L. REV. 441 (2017).

10. Kristen David Adams, *Living with Banks: Trends and Lessons from the First Five Years*, 46 STETSON L. REV. 391 (2017).