TROUBLE IN PARADISE? EXAMINING THE JURISDICTIONAL AND PRECEDENTIAL RELATIONSHIPS AFFECTING THE VIRGIN ISLANDS JUDICIARY

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I. INTRODUCTION

"One repays a teacher badly if one always remains nothing but a pupil."[1]

The rich history of the United States Virgin Islands[2] includes Danish and American ownership[3] with influences from many lands.[4] The Virgin Islands' legal history, particularly the

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 J.D., Stetson University College of Law, 2016; B.A., English Literature, University of Central Florida, 2011. Notes and Comments Editor, *Stetson Law Review*. We would both like to thank Professor Kristen David Adams for all her help with this Article. Without her, its publication would not be possible.

1. FRIEDRICH NIETZSCHE, THUS SPOKE ZARATHUSTRA: A BOOK FOR ALL AND NONE 78 (WALTER KAUFMANN TRANS., 1954).

2. The scope of this Article is limited to the territory known specifically as the United States Virgin Islands. However, there exists another set of islands to the east of the United States Virgin Islands, known as the British Virgin Islands, which are part of the British Commonwealth. World Atlas, *British Virgin Islands*, WORLDATLAS.COM, http://www.worldatlas.com/webimage/countrys/namerica/caribb/vg.htm (last visited Feb. 28, 2017); Bernard C. Pattie, *Legal System in the United States Virgin Islands*, NEW.ONEPAPER.COM, http://new.onepaper.com/vibarherald/?v=d&i=&s=Bar+Info:Law+Review+%26+Articles&p=48799 (last visited Feb. 28, 2017). Within this Article, the United States Virgin Islands will be referred to as the Virgin Islands or VI.

3. The Library of Congress, *U.S. Took Ownership of the Virgin Islands*, AMERICASLIBRARY.GOV, http://www.americaslibrary.gov/jb/jazz/jb_jazz_virgin_1.html (last visited Feb. 28, 2017).

4. *See* PROJECT INTROSPECTION – VI DEP'T OF EDUCATION, EUROPEAN AND AFRICAN INFLUENCES ON THE CULTURE OF THE VIRGIN ISLANDS (1973), *available at* http://webpac.uvi.edu/imls/pi_uvi/european_african_influences_culture.pdf (describing the cultural influences on the West Indies, including influences on language, religion, beliefs and superstitions, folklore, dance, and food). For instance, the West Indies, which historically included the Virgin Islands, "is a mixture of African, Asian, European, and American patterns." *Id.* at 1.

establishment of its courts and the structure of its court system, has transitioned throughout the years and continues to evolve. With its origins in the civil law system,[5] the Virgin Islands' change to a common law system, which began in the early 1900s,[6] has not been without difficulties. In addition to the challenges associated with changing from a civil law system to a common law system, there have also been complications surrounding the jurisdiction between the several courts overseeing the Virgin Islands' judicial system. The most notable difficulty has been the struggle for jurisdiction between the United States Court of Appeals for the Third Circuit and the newly created Virgin Islands Supreme Court;[7] the Virgin Islands Supreme Court and the established Superior Court of the Virgin Islands;[8] and the Superior Court of the Virgin Islands and the District Court of the Virgin Islands.[9]

Given territories' unique nature—sharing in some of the benefits of nationhood while being denied others[10]—legal struggles have become commonplace.[11] For instance, there has been much debate between territories and the United States regarding the interpretation and application of the Territorial Clause.[12] In a case concerning the Northern Mariana Islands, the

5. Pattie, *supra* note 2. These civil law origins are discussed in more detail in Part II.

6. This transition began in 1917 with the Third Circuit's jurisdiction over the Virgin Islands. *See* Federal Judicial Center, *infra* note 42 (providing the historical timeline of the Third Circuit).

7. *See infra* Part IV(B)(1) (detailing the jurisdiction between the Third Circuit and the Virgin Islands Supreme Court).

8. *See infra* Part IV(B)(2) (describing the jurisdiction between the Virgin Islands Supreme Court and the Superior Court of the Virgin Islands).

9. *See infra* Part IV(B)(3) (outlining the jurisdiction between the Superior Court of the Virgin Islands and the District Court of the Virgin Islands).

10. *See* Jon M. Van Dyke, *The Evolving Legal Relationships Between the United States and Its Affiliated U.S.-Flag Islands*, 14 U. HAW. L. REV. 445, 468–71 (1992) (outlining the benefits, such as the extension of most constitutional rights, and the drawbacks, such as a lack of complete autonomy, that affect territories and their residents).

11. The United States currently possesses fourteen territories: American Samoa, Baker Island, Guam, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Islands, Navassa Island, Northern Mariana Islands, Palmyra Atoll, Puerto Rico, Wake Island, and the Virgin Islands. United States Department of State, *Dependencies and Areas of Special Sovereignty*, U.S. DEP'T OF STATE (Nov. 29, 2011), http://www.state.gov/s/inr/rls/10543.htm.

12. U.S. CONST. art. IV, § 3, cl. 2. The Territorial Clause reads, "The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State." *Id.*

court reinforced the Territorial Clause's application to the Northern Mariana Islands while also stating that the Covenant[13] between the United States and the territory "define[s] the boundaries" of the relationship.[14] The applicability of the Territorial Clause was questioned again in another case. The court reiterated that the Commonwealth of Puerto Rico was still subject to the Territorial Clause, even though it was granted the right of local self-government by Congress.[15] Cases like these—contesting power and authority over the territories—abound,[16] and the Virgin Islands are no exception.[17] Presumably, such controversies arise because of the territories' unique position within the governmental and legal landscape: not states, yet not completely without autonomy.[18]

This Article covers the early history of the Virgin Islands courts in Part II, beginning with the United States' purchase of the island group from Denmark. It then discusses, in Part III, the more recent history of the Virgin Islands courts, starting with the

13. The Covenant is a ten-article document that "define[s] the political relationship between the [Northern Mariana Islands] and the United States." Northern Mariana Islands v. Atalig, 723 F.2d 682, 685 (9th Cir. 1984).

14. United States *ex rel.* Richards v. Leon Guerrero, 4 F.3d 749, 754 (9th Cir. 1993). This case concerned the administration of a federal audit of the Northern Mariana Islands. *Id.* at 750–51.

15. United States v. Sánchez, 992 F.2d 1143, 1152–53 (11th Cir. 1993). This case concerned the effect of the dual sovereignty doctrine on applying the double jeopardy clause. *Id.* at 1149. Interestingly, this issue was recently decided by the Supreme Court of the United States. *See* Puerto Rico v. Sanchez Valle, 136 S. Ct. 1863, 1868 (2016) (holding that the United States and Puerto Rico cannot both prosecute a defendant for the same crime "because the oldest roots of Puerto Rico's power to prosecute lie in federal soil").

16. Report to the Chairman, Committee on Resources, House of Representatives: U.S. Insular Areas–Application of U.S. Constitution, GAO/OGC-98-5 7 (Nov. 1997), *available at* http://www.gao.gov/archive/1998/og98005.pdf. Many of the cases contesting the territories' power, specifically the extent to which the United States Constitution and the United States Congress control the territories' actions and abilities, arose during the 1990s. *See id.* (stating that "[s]everal court decisions during the last 6 years [for a report published in 1997] have addressed the applicability of constitutional provisions to individual insular areas").

17. *See infra* Part IV (describing the contests for jurisdictional authority between the Third Circuit and the Virgin Islands courts).

18. The mostly patchwork, and sometimes haphazard, mention of territorial application in many federal laws does not ease any issues. An example of this is the implementation of the Affordable Care Act in the territories. Jason Millman, *The Administration Just Took Obamacare Away from the Territories*, WASH. POST (July 17, 2014), https://www.washingtonpost.com/news/wonk/wp/2014/07/17/the-administration-just-took-obamacare-away-from-the-territories/. Because of the inconsistent mention of the territories within the Act, insurers must "comply with the law's major market reforms," but residents are not required "to get coverage" and "subsidies [are not provided] to help [residents] afford coverage." *Id.*

establishment of the Virgin Islands Supreme Court in 2004. Part IV continues by examining the interplaying binary relationships between the courts, including the District Court, Superior Court, Virgin Islands Supreme Court, and the Third Circuit. The Article concludes by highlighting trends and observations in recent caselaw and recommending possible solutions for overcoming the unresolved issues within the Virgin Islands judicial relationships.

II. THE EARLY HISTORY OF THE VIRGIN ISLANDS COURTS (1917–2004)

The Virgin Islands has been occupied or inhabited by the Arawaks, Caribs, Spaniards, Danish, Africans, and British.[19] However, in 1916, the United States acquired the Virgin Islands from Denmark,[20] although the land was not formally transferred until March 31, 1917.[21] This acquisition was the catalyst to a judicial transformation in the Virgin Islands. The convention between Denmark and the United States, proclaimed by President Woodrow Wilson on January 25, 1917,[22] made no mention of the form and function of the Virgin Islands judicial system.[23] However, within two months of the proclamation, the Act of March 3, 1917,[24] was passed. This Act stated, in section II, that:

19. Luther Harris Evans, *Virgin Islands: Islands, Caribbean Sea*, BRITANNICA.COM, http://www.britannica.com/place/Virgin-Islands (last updated Oct. 22, 2009).

20. United States Department of State, *Purchase of the United States Virgin Islands, 1917*, U.S. DEP'T OF STATE, http://2001-2009.state.gov/r/pa/ho/time/wwi/107293.htm (last visited Feb. 28, 2017) [hereinafter Department of State]. The Danish occupied the U.S. Virgin Islands from 1666–1801, 1803–1807, and 1815–1917. Evans, *supra* note 19.

21. Department of State, *supra* note 20. The United States paid twenty-five million dollars in gold coins for the Virgin Islands. *Id.*

22. Convention Between the United States and Denmark, Etc., U.S.-Denmark, Aug. 4, 1916, 39 Stat. 1706, *available at* https://www.doi.gov/sites/doi.gov/files/migrated/oia/about/upload/vitreaty.pdf.

23. *Id.* (covering the cession of land and property, military control, telephone operations, bank operations, payment for the territory, effect of convention on Danish citizens, pending judicial proceedings, and copyright); *see also* Carty v. Beech Aircraft Corp., 679 F.2d 1051, 1053 (3d Cir. 1982) ("The convention between the United States and Denmark proclaimed by the President on January 25, 1917 did not address the issue of the judicial system to be in effect in the Virgin Islands."). It is also interesting to note that full U.S. citizenship rights were not bestowed upon those born in the Virgin Islands until 1932. Department of State, *supra* note 20.

24. Pub. L. No. 64-389, 39 Stat. 1132 (codified as 48 U.S.C. §§ 1391–1396; § 1391 repealed 1966).

> [U]ntil Congress shall otherwise provide, . . . local laws [in effect at the time of proclamation of the Convention] shall remain in force and effect in said islands, and the same shall be administered by the civil officials and through the local judicial tribunals established in said islands . . . . The jurisdiction of the judicial tribunals of said islands shall extend to all judicial proceedings and controversies in said islands to which the United States or any citizen thereof may be a party.[25]

This Act remedied the gap in the convention, making it clear that local law and local tribunals continued to govern the Virgin Islands.

The current political structure of the Virgin Islands includes an elected governor and lieutenant governor,[26] a unicameral legislature comprised of a Senate,[27] and a court system.[28] The Virgin Islands also has an elected delegate to Congress with limited voting power,[29] has an appointed U.S. attorney,[30] and is a separate United States custom zone.[31] Additionally, there are currently four political parties in the Virgin Islands: the Virgin Islands Democratic Party, the Green Party of the U.S. Virgin Islands, the Independent Citizens' Movement, and the Republican Party of the U.S. Virgin Islands.[32] While these

25. *Id.* § 2, 39 Stat. at 1132–33.

26. Revised Organic Act, *infra* note 57, at § 11. The governor appoints all executive branch positions. United States Department of Justice, *infra* note 31.

27. Revised Organic Act, *infra* note 57, at § 5(a)–(b).

28. Revised Organic Act, *infra* note 57, at § 21.

29. 48 U.S.C. § 1711 (2012); GovTrack, *Virgin Islands Senators, Representatives, and Congressional District Maps*, GOVTRACK.US, https://www.govtrack.us/congress/members/VI (last visited Feb. 28, 2017). The current delegate is Stacey Plaskett. United States House of Representatives, *United States Congressman Stacey Plaskett Representing United States Virgin Islands*, PLASKETT.HOUSE.GOV, https://plaskett.house.gov (last visited Feb. 28, 2017).

30. Revised Organic Act, *infra* note 57, at § 27.

31. United States Department of Justice, *About the District: USAO-VI*, U.S. DEP'T OF JUSTICE (June 23, 2015), http://www.justice.gov/usao-vi/about-district (stating that "[t]he district contains separate customs zones"); *see* 19 U.S.C. § 1401(h) (1980) (stating that, in reference to the rest of the Tariff Act of 1930 that discusses tariffs and customs, "[t]he term 'United States' includes all Territories and possessions of the United States except the Virgin Islands. . . ."). Being recognized as a separate customs zone means that the Virgin Islands can tax goods coming from the United States. U.S. Virgin Islands, *Other USVI Taxes*, USVI.NET, http://www.usvi.net/information/business-opportunities-corporations-taxes-tax-incentives-and-tax-planning-in-the-u-s-virgin-islands/other-usvi-taxes/ (last visited Feb. 28, 2017).

32. Ron Gunzburger, *U.S. Virgin Islands*, POLITICS1.COM, http://www.politics1.com/vi.htm (last updated Jan. 3, 2017).

arrangements signal that the Virgin Islands has been granted some autonomy, the Inspector General of the United States Department of the Interior still controls and oversees government functions.[33]

A. The Beginning of the Virgin Islands Legal System

The Virgin Islands legal system was modeled on the European civil law system—a reflection of its previous Danish ownership.[34] The characteristic feature of civil law systems is their reliance on civil codes;[35] many European countries have a civil code and nearly every Central and South American country utilizes a civil code.[36] The codes seek to provide "a comprehensive, authoritative collection of rules covering all the principal subjects of law," while also maintaining a system that is broad and general enough to encompass any necessary adaptations and remain relevant for any set of facts.[37] Notably, in comparison to the common law system of stare decisis,[38] civil law judges are not bound by prior decisions.[39] Because stare decisis does not apply and the code is authoritative, civil law judges deductively approach cases and controversies, moving from general principles—found in the civil code—to a specific resolution by applying those general principles to the facts of each case or

33. Revised Organic Act, *infra* note 57, at § 17.

34. Pattie, *supra* note 2. Civil law systems may be defined "as those that accepted Justinian's *Corpus Juris Civilis* in whole or in part as law of the land or as directly highly persuasive. . . ." RUDOLF B. SCHLESINGER ET AL., COMPARATIVE LAW: CASES-TEXT-MATERIALS 13 (6th ed. 1998). Modern civil-law systems, though, are based heavily on the French civil code (also known as *Code civil français*). G. ALAN TARR, JUDICIAL PROCESS AND JUDICIAL POLICYMAKING 7 (6th ed. 2013).

35. SCHLESINGER ET AL., *supra* note 34, at 13.

36. JOHN HENRY MERRYMAN & ROGELIO PÉREZ-PERDOMO, THE CIVIL LAW TRADITION: AN INTRODUCTION TO THE LEGAL SYSTEMS OF EUROPE AND LATIN AMERICA 2–3 (3d ed. 2007). There are numerous civil law influences in the United States, which are particularly apparent in Louisiana and Puerto Rico. SCHLESINGER ET AL., *supra* note 34, at 15–17.

37. FRANK A. SCHUBERT, INTRODUCTION TO LAW AND THE LEGAL SYSTEM 216 (7th ed. 2000).

38. MELVIN ARON EISENBERG, THE NATURE OF THE COMMON LAW 47 (1988) (noting in its discussion of common law models that stare decisis is an "institutional principle"). The doctrine of stare decisis states that, "[W]hen a question of law has once been settled by a judicial decision, [that decision] forms a precedent [that] is not afterward to be departed from or lightly overruled, even though it may seem archaic." 79 A.L.R.2d 1126 (1961) (footnote omitted).

39. DOV M. GABBY ET AL., APPROACHES TO LEGAL RATIONALITY 179 (2010).

controversy.[40] Ideally, this syllogistic method allows for flexibility and adaptation by avoiding precedential decisions and applying deductive logic, but avoids arbitrary results by the same mechanism.[41]

While the Virgin Islands legal system started as a civil law system, it began to shift in the early 1900s. In 1917, the Virgin Islands became part of the Third Circuit.[42] In 1921, the codes of St. Thomas, St. John, and St. Croix established the police courts.[43] In the 1921 Municipal Code, it was stated that "[t]he common law of England as adopted and understood in the United States shall be in force in this District, except as modified by this [code]."[44] Then, with the 1957 passage of the Virgin Islands Code Title 1, Section 4,[45] the Virgin Islands adopted the Restatements as its de facto common law whenever there was an absence of local law addressing the issue.[46] This effectively allocated judicial power to the American Law Institute.[47] Such reliance on the

40. James G. Apple & Robert P. Deyling, *A Primer on the Civil-Law System (selected excerpts)* 2 (1995), *available at* http://www.fjc.gov/public/pdf.nsf/lookup/Intl0640.pdf/$file/Intl0640.pdf.

41. *See id.* (describing the process by which civil law judges come to legal conclusions).

42. Federal Judicial Center, *History of the Federal Judiciary*, FED. JUD. CENTER, http://www.fjc.gov/history/home.nsf/page/courts_coa_circuit_03.html (last visited Feb. 28, 2017). *See also* Michael Hinkelman, *How the Virgin Islands and Philly Ended Up in Same Circuit*, ARTICLES.PHILLY.COM (Jan. 17, 2011) (on file with *Stetson Law Review*) (outlining one theory as to how the Third Circuit came to preside over the Virgin Islands). It is odd, geographically speaking, that the Third Circuit, located in Philadelphia, Pennsylvania, supervised the Virgin Islands courts. The likely theory behind this includes the influence of a Delaware senator, according to one law professor. *Id.* For more information on this theory, see Robert M. Jarvis, *"A Peculiar Niche": Admiralty Law in the United States Virgin Islands*, 26 J. MAR. L. & COM. 157 (1995).

43. Superior Court of the Virgin Islands, *infra* note 72.

44. Title IV, ch. 13, § 6, of the 1921 Codes for Municipality of St. Thomas and St. John and Municipality of St. Croix.

45. 1 V.I. CODE ANN. § 4 (2014) (repealed 2004). The statute states that:

> The rules of the 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.

Id. For more discussion on the use of the Restatement as common law in the Virgin Islands, see Kristen David Adams, *The Folly of Uniformity? Lessons from the Restatement Movement*, 33 HOFSTRA L. REV. 423 (2004).

46. Adams, *supra* note 45, at 429.

47. Banks v. Int'l Rental & Leasing Corp., 55 V.I. 967, 980 (V.I. 2011).

Restatements, even today, is rare[48] because the Restatements are model laws, known for their persuasive authority.[49] When the Virgin Islands Supreme Court began exercising its appellate jurisdiction in 2007, this "blind reliance" on the Restatements was no longer justifiable.[50] Instead, the Virgin Islands Supreme Court clarified that "the [Virgin Islands] Legislature did not intend for section 4 of title 1 [of the Virgin Islands Code] to compel this Court to mechanically apply the most recent Restatement."[51] Now, when local law is silent on an issue, the courts may deviate from the Restatements altogether, rely on prior versions of the Restatements,[52] or use the Restatements as persuasive authority, rather than binding authority, when local law is silent on an issue.[53]

The Virgin Islands legal system changed tremendously within the first few decades of its transition to a common law system. While the previously discussed codes undoubtedly played a key role in that transformation, the Organic Acts of the Virgin Islands ushered in further changes—among all three branches of Virgin Islands government and for the Virgin Islands' residents.

B. The Organic Acts of the Virgin Islands

In 1936, the Organic Act of the Virgin Islands (the 1936 Act) was enacted.[54] Where there were previously three subjudicial district courts created under the judicial codes of 1920 and 1921, the 1936 Act consolidated the courts into a single court with two divisions: one for the St. Croix municipality and one for the St. Thomas/St. John municipality.[55] Importantly, the United States Bill of Rights was extended to Virgin Islands residents under the

48. Adams, *supra* note 45, at 425 ("The Virgin Islands are one of only two jurisdictions (the other being the Commonwealth of the Northern Mariana Islands) in which the Restatements have been adopted as de facto common law, by statute." (footnote omitted)).

49. *Id.* at 426.

50. *Id.*

51. *Banks*, 55 V.I. at 976 (addressing whether local laws included precedent from the Virgin Islands Supreme Court and whether section 4 of the Virgin Islands Code precluded the Court from deviating from the most recent Restatement).

52. *Id.* at 976–77.

53. Gov't of the V.I. v. Connor, 60 V.I. 597, 600 (V.I. 2014).

54. 48 U.S.C. §§ 1391–1409 (1936), *repealed by* Pub. L. No. 89-554, § 8(a), 80 Stat. 643.

55. 48 U.S.C. § 1405a; 2 GRAEME R. NEWMAN, JANET P. STAMATEL & HUNG-EN SUNG, CRIME AND PUNISHMENT AROUND THE WORLD 340 (2010).

1936 Act.[56] However, the 1936 Act was deemed inefficient and "unnecessarily cumbersome,"[57] and after nearly two decades it was clear that it needed an overhaul. That overhaul came in 1954 when the 1936 Act was revised and amended,[58] with Congress' passing of the Revised Organic Act (the Revised Act).[59] Generally, the Revised Organic Act restructured all three branches of the Virgin Islands government[60] by "abolishing the two existing municipalities with [its] separate municipal councils and joint legislative assembly."[61] It also delegated the handling of local laws to the secretary of the Department of the Interior and proclaimed that the Revised Act would serve as the constitution for the Virgin Islands, titled as the Virgin Islands Code.[62] While the Revised Act does serve as the Virgin Islands constitution, the Virgin Islands legislature may amend the Virgin Islands Code without congressional support or involvement.[63]

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56. *Id.* While it is clear that the Revised Organic Act "expresses congressional intent to make the federal Constitution applicable to the Virgin Islands to the fullest extent possible," solely "the most fundamental constitutional rights extend." Revised Organic Act, *infra* note 57, at § 3, ann. 1. For example, the Eleventh Amendment was excluded. *Id.*

57. Revised Organic Act of 1954, July 22, 1954, ch. 558, § 1, 68 Stat. 497, ann. 1, *available at* https://www.doi.gov/sites/doi.gov/files/migrated/oia/about/upload/RevOrganicAct_1954.pdf [hereinafter Revised Organic Act].

58. The Revised Organic Act repealed the Organic Act, concerning 1936 Act provisions that were "inconsistent with provisions of the Revised Organic Act." *Id.* § 1, ann. 2. According to a Senate Report from the Committee on Energy and Natural Resources, "[t]he 1936 statute was generally thought to have been repealed by the enactment of the Revised Organic Act of 1954." S. Rep. 109-236 (Apr. 20, 2006) (discussing a bill, recommended for passage, for the repeal of a certain property tax provision in the 1936 Act that restricted the Virgin Islands' government's ability to "assess, administer, and collect real property taxes").

59. The Judicial Council of the United States Court of Appeals for the Third Circuit, *Report of the Judicial Council of the United States Court of Appeals for the Third Circuit on the Virgin Islands Supreme Court* 1 (2012), *available at* http://www.visupremecourt.org/wfData/files/BookletReportofVirginIslandsSupremeCourt.pdf [hereinafter Judicial Council Report]. The Judicial Council was tasked with reporting to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs for the House of Representatives; the reports were due every five years and were to determine whether the appellate court had "developed sufficient institutional traditions to justify direct review by the Supreme Court of the United States." Revised Organic Act, *supra* note 57, at § 23.

60. Virgo Corp. v. Paiewonsky, 384 F.2d 569, 576 (3d Cir. 1967) (citing S. Rept. 1271, 83d Cong. 1, 2; 2 U.S.C., Cong. & Admin. News, 1954, 2585, 2586). The three branches "are not constitutionally mandated[,] but granted by federal Congress." Revised Organic Act, *supra* note 57, at § 2, ann. 2.

61. *Paiewonsky*, 384 F.2d at 576 (citing Revised Organic Act, 68 Stat. 497, 48 U.S.C.A. § 1541, et. seq.).

62. NEWMAN ET AL., *supra* note 55, at 340.

63. Pattie, *supra* note 2.

Subchapter 5 of the Revised Act covers the Virgin Islands judicial system,[64] which includes a provision vesting "general original jurisdiction" in the District Court over local causes of action not otherwise vested to the local courts.[65] The District Court's jurisdiction under the Revised Act also includes diversity actions, federal questions, bankruptcy actions, and concurrent jurisdiction for crimes committed in the U.S. Virgin Islands.[66] As implied in the Revised Act,[67] the U.S. Congress expected the Virgin Islands legislature to establish both lower and appellate courts, pursuant to the Revised Act's allowance.

The Revised Act provided the District Court, despite its establishment as an Article IV court, with the power of an Article III court[68]—meaning the District Court had the authority to adjudicate diversity cases, federal question cases, and bankruptcy cases, while also obtaining general original jurisdiction for local causes of action, with the exception of those specifically vested by local law to the local courts.[69] The District Court now possessed concurrent jurisdiction concerning criminal cases.[70] This broad jurisdictional scope, however, changed with the 1984 amendments to the Revised Act.

C. Court Changes Prompted by the Revised Organic Act

The year after the passage of the Revised Act, the municipal courts were established.[71] Nearly a decade later, in 1965, the two municipal court divisions were abolished to create a single municipal court for the entire territory.[72] In 1976, the Territorial

64. 48 U.S.C. §§ 1611–1616.

65. *Id.* § 1611(b).

66. *Id.* § 1611(b)–(c).

67. *Id.* § 1611(a). In section 1611(a), the Act vests judicial power in the District Court, as well as in any future lower and appellate courts "established by local law." *Id.*

68. Judicial Council Report, *supra* note 59, at 2.

69. 48 U.S.C. § 1612(a)–(b). Overall, "[t]he District Court of the Virgin Islands shall have the jurisdiction of a District Court of the United States." Revised Organic Act, *supra* note 57, at § 22(a). However, the District Court's jurisdiction does not extend to "civil actions wherein the matter in controversy does not exceed the sum or value of $500." *Id.* § 22(b). The District Court's jurisdiction is also outlined in caselaw. *See, e.g.*, Carty v. Beech Aircraft Corp., 679 F.2d 1051, 1055 (3d Cir. 1982) (stating that "when Congress acted to establish the District Court of the Virgin Islands, it established it as a court of original and general jurisdiction").

70. 48 U.S.C. § 1612(c).

71. Pattie, *supra* note 2.

72. Superior Court of the Virgin Islands, *Historical Overview of the Superior Court of the Virgin Islands*, SUPERIOR COURT OF THE VIRGIN ISLANDS, http://www.visuperiorcourt

Court, which was the precursor of the Superior Court and initially called the Municipal Court, was established.[73] Public Law 94-584 was also passed in 1976, authorizing the residents of the Virgin Islands to create their own constitution.[74] In 1984, Congress authorized the Virgin Islands legislature to create an appellate court at its discretion via amendment to the Revised Act,[75] which sought to "establish[] the framework for a dual system of local and federal judicial review in the Virgin Islands."[76] As a result of these amendments, the Virgin Islands District Court shared the same jurisdictional power as a United States District Court.[77] This meant that the Virgin Islands legislature could now deprive the District Court of jurisdiction, particularly over local matters that had previously fallen within its jurisdiction.[78] In order to do this, the Virgin Islands legislature vested the local courts with original jurisdiction over both civil cases and criminal cases.[79]

In 1991, the Territorial Court obtained jurisdiction over all local civil actions.[80] Three years later, the Territorial Court

.org/about/history.aspx (last visited Feb. 28, 2017).

73. *Id.* This court was established in accord with Act No. 3876 (§ 5, Sess. L. 1976, p. 17). *Id.*

74. Pub. L. No. 94-584, 90 Stat. 2899 (Oct. 1976). Guam was also included in the Act. The Virgin Islands have made five attempts to adopt their own constitution. During the last attempt in 2009, concerns were expressed about the failure to expressly mention United States sovereignty and the recognition of special privileges to certain residents, which may violate the Equal Protection Clause of the United States Constitution. *See generally* Memorandum from Ronald Welch, Assistant Attorney General for Legislative Affairs, to Office of Management and Budget, *Department of Justice Views on the Proposed Constitution Drafted by the Fifth Constitutional Convention of the United States Virgin Islands* 3–14 (Feb. 23, 2010), *available at* https://www.justice.gov/sites/default/files/olc/opinions/2010/02/31/usvi-doj-view-ltr100223_0.pdf.

75. Supreme Court of the United States Virgin Islands, *History of the Court*, SUPREME CT. OF THE U.S. VIRGIN ISLANDS, http://www.visupremecourt.org/Know_Your_Court/History_of_the_Court/index.asp (last visited Feb. 28, 2017).

76. Parrott v. Gov't of the V.I., 230 F.3d 615, 619 (3d Cir. 2000).

77. *Id.* (citing 48 U.S.C. § 1612(a)).

78. Edwards v. Hovensa, LLC*,* 497 F.3d 355, 359 (3d Cir. 2007) (citing 30 Cong. Rec. 23783, 23789 (1984) in stating that "the Virgin Islands legislature exercised the authority granted [to] it under 48 U.S.C. Section 1612(b) to divest the District Court of original jurisdiction over any cause over which local law has vested jurisdiction in the local courts"); *In re* Application of Moorhead, 27 V.I. 74, 13–14 (V.I. Terr. Ct. 1992) (noting that the "historic amendments [known collectively as the Revised Organic Act of 1954], many of which have been too long and too blatantly ignored, granted substantial autonomy to the local courts and the local legislature, and provided for the divestment from the District Court of most of its jurisdiction over local matters").

79. *Edwards*, 497 F.3d at 359 (citing 30 Cong. Rec. 23783, 23789 (1984)).

80. Superior Court of the Virgin Islands, *supra* note 72.

obtained original jurisdiction with respect to criminal actions.[81] However, the Territorial Court is not a constitutional court, meaning it does not carry out any constitutionally mandated functions.[82] The last major change to the Territorial Court was its name; in 2004, the name of the Territorial Court changed to the Superior Court,[83] which coincided with one of the most significant changes in the Virgin Islands judicial system—the establishment of a supreme court.

III. WHERE THE VIRGIN ISLANDS COURTS ARE NOW

In 1984, Congress granted the Virgin Islands legislature the authority to establish a supreme court[84] and, in 2004, the Virgin Islands legislature exercised that authority by creating the Virgin Islands Supreme Court.[85] The creation of the Virgin Islands Supreme Court was later determined to have implicitly repealed Title 1, Section 4 of the Virgin Islands Code.[86] The Virgin Islands legislature established the Virgin Islands Supreme Court as "the highest court of the Virgin Islands" with the "supreme judicial power of the Territory."[87] In 2006, Chief Justice Hodge alongside Justices Cabret and Swan were nominated as the first three justices of the Virgin Islands Supreme Court by Governor Turnbull;[88] they were subsequently confirmed by the Virgin Islands legislature[89] and continue to serve as the three justices of the Virgin Islands Supreme Court today.[90]

A. Virgin Islands Supreme Court Assumes Jurisdiction

On January 29, 2007, the Virgin Islands Supreme Court assumed its appellate jurisdiction, which divested appellate

81. *Id. See also* Gov't of the V.I. v. Rivera, 333 F.3d 143 (3d Cir. 2003) (recognizing, via citation to 4 V.I. Code section 76, that the Territorial Court had original jurisdiction over local civil and criminal actions).

82. Territorial Court v. Richards, 673 F. Supp. 152, 158 (D.V.I. 1987) (citing Gov't of the V.I. v. Bell, 392 F.2d 207 (3d Cir. 1968)).

83. Superior Court of the Virgin Islands, *supra* note 72.

84. Supreme Court of the Virgin Islands, *supra* note 75.

85. *Id.* This was done in accordance with Bill No. 25-0213. Superior Court of the Virgin Islands, *supra* note 72.

86. Gov't of the V.I. v. Connor, 60 V.I. 597, 605 (V.I. 2014).

87. 4 V.I. CODE ANN. § 21 (repealed 2004).

88. Supreme Court of the United States Virgin Islands, *supra* note 75.

89. *Id.*

90. Judicial Council Report, *supra* note 59, at 9.

jurisdiction from the Appellate Division of the District Court.[91] After the change, the Appellate Division has jurisdiction only with respect to concluding those cases that were filed before the Virgin Islands Supreme Court assumed its appellate jurisdiction.[92] At that time, the Third Circuit also began its temporary certiorari period.[93] This temporary certiorari period included "discretionary review by a writ of certiorari of a final decision of the Virgin Islands Supreme Court" by the Third Circuit.[94] However, this period did have a time limit: either the "first fifteen years following the establishment" of the Court or when the Court "has developed sufficient institutional traditions to justify direct review by the Supreme Court of the United States from all such final decisions."[95] The Judicial Council of the United States Court of Appeals for the Third Circuit on the Virgin Islands Supreme Court was tasked with analyzing the Virgin Islands judicial system and determining, after a period of five years, whether the Court had "developed a jurisprudence, as well as procedures and supportive institutional structures."[96] During its certiorari period, the Third Circuit expressly rejected all District Court opinions that suggested that the District Court retained "original jurisdiction over any cause over which local law [had] vested jurisdiction in the local courts."[97] The Third Circuit also affirmed the *Erie* doctrine[98] and the related Rules of Decision Act.[99]

B. *Banks* and Beyond

In 2011, the *Banks* decision, presented to the Virgin Islands Supreme Court via certified question from the Third Circuit, was

91. *Id.* at 3.

92. Hypolite v. People of Virgin Islands, No. 2007-135, 2009 WL 152319, at *2 (V.I. Jan. 21, 2009) (citing section 23A of the Revised Organic Act and Virgin Islands Gov't Hosp. & Health Facilities Corp. v. Gov't of the V.I., Civ. No. 2007–125, slip op. at 3–4 (V.I. Sept. 16, 2008)).

93. Defoe v. Phillip, 702 F.3d 735, 739 (3d Cir. 2012) (citing 48 U.S.C. § 1613).

94. Judicial Council Report, *supra* note 59, at 3.

95. 48 U.S.C. § 1613 (2012).

96. Judicial Council Report, *supra* note 59, at 6.

97. Edwards v. Hovensa, 497 F.3d 355, 359 (3d Cir. 2007).

98. *Id.* at 360 ("The fact that the District Court of the Virgin Islands is an Article IV court rather than an Article III court does not preclude the application of *Erie*."). For a further discussion of the *Erie* doctrine, see Part IV(A).

99. *Edwards*, 497 F.3d at 360.

issued.[100] *Banks* sought to clarify, *inter alia*, the precedential power of Third Circuit decisions upon the Virgin Islands courts. In the following year, on December 28, 2012, Public Law 112-226 (HR 6116), the Direct Review Bill, was passed.[101] This bill provided direct appeal to the United States Supreme Court for cases decided by the Virgin Islands Supreme Court.[102] In theory, this marked the end of the Third Circuit's temporary certiorari period,[103] an end that came several years before its fifteen-year limit. However, as seen in Part IV(B), the cessation of the certiorari period was more complicated in application.

IV. SHIFTING JURISDICTIONAL BOUNDARIES

The Virgin Islands judicial system has evolved tremendously over the past several decades, particularly since the enactment of the Revised Organic Act. However, this evolution has not been without obstacles. Part A briefly discusses the development of the *Erie* doctrine and the application of *Erie* to the Virgin Islands judiciary. Part B examines three binary relationships: (1) the Third Circuit Court of Appeals and the Virgin Islands Supreme Court; (2) the Superior Court of the Virgin Islands and the Virgin Islands Supreme Court; and (3) the District Court of the Virgin Islands and the Superior Court of the Virgin Islands. Within each binary relationship, Part B discusses the shifts in jurisdictional boundaries and the resulting tension amongst the courts.

100. Banks v. Int'l Rental & Leasing Corp., 55 V.I. 967 (V.I. 2011). For a further discussion of the *Banks* decision, see Part IV(B).

101. The bill language is as follows:

> Final judgments or decrees rendered by the Supreme Court of the Virgin Islands may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of the Virgin Islands is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

Pub. L. No. 112-226 (HR 6116); 28 USC § 1260 (2012).

102. Pub. L. No. 112-226 (HR 6116).

103. *Id.*

A. Brief Overview of the *Erie* Doctrine

In 1789, the first Congress enacted Section 34 of the Judiciary Act,[104] also known as the Rules of Decision Act, to establish the structure and jurisdiction of the federal judiciary.[105] The Act provides: "The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply."[106] Thus, the Rules of Decision Act mandates that federal courts apply state substantive law in diversity cases.[107]

However, the Supreme Court limited the scope of the Rules of Decision Act in 1842. In *Swift v. Tyson*,[108] the Court ruled that the Rules of Decision Act required federal courts to follow the "positive statutes of the state" in diversity cases.[109] In doing so, the Court held that the "laws of the several states" referred to in the Rules of Decision Act do not include state common law[110] on "questions of a more general nature," such as tort or contract law.[111] For nearly one hundred years, the Court's decision in *Swift* required federal courts only to defer to state statutes and allowed federal courts to make their own body of general common law in diversity cases.[112]

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104. 28 U.S.C. § 1652 (1789).

105. Congress has amended the Judiciary Act several times by Congress, but the framework for the federal court system as established in 1789 remains largely intact. *Judiciary Act of 1789*, LIBR. OF CONGRESS, https://www.loc.gov/rr/program/bib/ourdocs/judiciary.html (last visited Feb. 28, 2017).

106. 28 U.S.C. § 1652.

107. *Id.*

108. 41 U.S. 1 (1842). Swift brought a diversity suit in the Circuit Court for the Southern District of New York to recover an unpaid debt. *Id.* at 14. Swift argued that federal law should be applied to the case, but Tyson argued that New York law governed the case since the contract was made there. *Id.* at 3–4. Justice Story, writing for the Court, held that the Circuit Court did not have to follow New York common law. *Id.* at 18–19.

109. *Id.* at 18.

110. *Id.* ("[I]t will hardly be contended that the decisions of Courts constitute laws. They are, at most, only evidence of what the laws are; and are not of themselves laws.").

111. Erie R.R. Co. v. Tompkins, 304 U.S. 64, 71 (1938) ("[F]ederal courts exercising jurisdiction on the ground of diversity of citizenship need not, in matters of general jurisprudence, apply the unwritten law of the state as declared by its highest court.").

112. William A. Fletcher, *The General Common Law and Section 34 of the Judiciary Act of 1789: The Example of Marine Insurance*, 97 HARV. L. REV. 1513, 1515 (1984) ("[A]fter *Swift*, a state court in a commercial case could declare that it followed a local rule rather than the general common law but that a federal court sitting in that state would nevertheless follow the general common law.").

While the goal of the *Swift* decision was to ensure uniform decisions across federal courts, the *Swift* doctrine ultimately led to the inconsistent application of state laws and an increase in litigants engaging in forum shopping.[113] As a consequence of the *Swift* decision, a party's substantive rights could differ depending upon whether the case was heard in state court or in federal court.[114] In such scenarios, parties increasingly manipulated the requirements of diversity jurisdiction to ensure their case would be heard in a favorable court.[115] A notorious illustration of such manipulation was seen in *Black & White Taxicab & Transfer Co. v. Brown & Yellow Taxicab & Transfer Co.*,[116] when a Kentucky corporation dissolved and reincorporated in Tennessee to fabricate diversity jurisdiction and have a federal court enforce a contract that would be otherwise unenforceable under Kentucky law.[117] For these reasons, the *Swift* decision received much criticism.[118]

In 1938, the Court reconsidered the issue of whether federal courts must follow the common law of the state in which the court sits in *Erie Railroad Co. v. Tompkins*.[119] Tompkins brought suit in federal court after he was injured by a freight train while walking along Erie Railroad Company's track.[120] The parties differed on what law they believed should govern the standard of care: Erie argued that Pennsylvania law should apply, while Tompkins contended that the federal court was not bound by

113. *Erie R.R. Co.*, 304 U.S. at 74–75. Forum shopping is defined as a litigant's effort "to have his [or her] action tried in a particular court or jurisdiction where he [or she] feels he [or she] will receive the most favorable judgment or verdict." BLACK'S LAW DICTIONARY 590 (5th ed. 1979).

114. Adam N. Steinman, *What is the* Erie *Doctrine? (And What Does it Mean for the Contemporary Politics of Judicial Federalism?)*, 84 NOTRE DAME L. REV. 245, 256 (2008); *see also* Richard Maloy, *Forum Shopping? What's Wrong with That?*, 24 QUINNIPIAC L. REV. 25, 29 (2005) (noting that federal and state courts may apply different laws for the same civil case).

115. Steinman, *supra* note 114, at 248. Corporate litigants tend to favor federal court while private individuals tend to favor state court. *Id. See also* Stephen B. Burbank, *The Class Action Fairness Act of 2005 in Historical Context: A Preliminary View*, 156 U. PA. L. REV. 1439, 1528 (2008) (describing federal courts as "business men's courts").

116. 276 U.S. 518 (1928).

117. *Id.* at 523–24.

118. *Erie R.R. Co.*, 304 U.S. at 69 (stating that the Court granted certiorari to determine "whether the oft-challenged doctrine of *Swift v. Tyson* shall now be disapproved").

119. 304 U.S. 64, 69 (1938).

120. *Id.* at 69. Tompkins brought a diversity action against Erie in the Federal District Court for the Southern District of New York. *Id.* Tompkins was a resident of Pennsylvania while Erie was a New York corporation. *Id.*

Pennsylvania Supreme Court decisions and could determine the standard of care for itself.[121] Both lower courts refused to apply Pennsylvania law, finding for Tompkins.

The Supreme Court, however, reversed these decisions and stated that the federal court must apply Pennsylvania's liability standard in deciding Tompkins' claim.[122] The Court held that federal courts must apply state substantive law in diversity cases, finding that the "laws of the several States" referred to in the Rules of Decision Act includes both state statutes and state common law.[123] The Court then stated that federal courts lack the authority to create a "federal general common law," overruling *Swift*.[124] Rather than creating its own body of federal common law, the *Erie* doctrine requires a federal court exercising its diversity jurisdiction to apply state common law as articulated by the highest court in the state in which it is sitting.[125] Under *Erie*, only federal procedural law is permissible in diversity cases.[126]

The *Erie* doctrine could not be fully applied in the Virgin Islands until the Virgin Islands Supreme Court began exercising its appellate jurisdiction in 2007. Prior to 2007, the "highest" non-federal court in the Virgin Islands was a trial court. Accordingly, the District Court of the Virgin Islands typically rendered decisions without considering how a territorial court would address the issue.[127] Instead of looking to a territorial court for guidance on local law, the District Court of the Virgin Islands was tasked with predicting how the Third Circuit would decide the issue in question.[128] As of 2007, however, the *Erie* doctrine applies to the Virgin Islands in the same manner as it would apply to any of the states.[129] When the District Court of the

121. *Id.* at 70.

122. *Id.* at 80.

123. *Id.* at 78 ("Except in matters governed by the Federal Constitution or by acts of Congress, the law to be applied in any case is the law of the state. And whether the law of the state shall be declared by its Legislature in a statute or by its highest court in a decision is not a matter of federal concern.").

124. *Id.*

125. Gasperini v. Ctr. for Humanities, Inc., 518 U.S. 415, 427 (1996) ("Under the *Erie* doctrine, federal courts sitting in diversity apply state substantive law and federal procedural law.").

126. *Id.*

127. *See* Fraser v. Kmart Corp., No. 2005-0129, 2009 WL 1124953, at *15 n.20 (D.V.I. Apr. 24, 2009) (discussing the application of *Erie* before and after the creation of the Virgin Islands Supreme Court).

128. Edwards v. Hovensa, 497 F.3d 355, 362 n.3 (3d Cir. 2007).

129. *Id.* at 360–61.

Virgin Islands or the Third Circuit face a novel question requiring interpretation of Virgin Islands law, these federal courts must predict how the Virgin Islands Supreme Court would decide the issue and apply that rule.[130]

The application of the *Erie* doctrine created shifts in the jurisdictional boundaries of the Virgin Islands courts and federal courts. These changes are especially noticeable between the Virgin Islands Supreme Court and the Third Circuit, as well as the Superior Court of the Virgin Islands and the District Court of the Virgin Islands. The relationships between these courts, as well as between the Superior Court and the Virgin Islands Supreme Court, will each be analyzed in turn.

B. Specific Jurisdictional Relationships

The changing judicial structure in the Virgin Islands has created some tension between the courts. Repeatedly, this disharmony revolves around the application of the *Erie* doctrine and the level of deference that must be applied between the courts. The following section examines these conflicts via three binary relationships: (1) the Third Circuit and the Virgin Islands Supreme Court; (2) the Superior Court of the Virgin Islands and the Virgin Islands Supreme Court; and (3) the District Court of the Virgin Islands and the Superior Court of the Virgin Islands. Notably, within each binary relationship, the tension between the courts seems to have escalated over the last decade.

1. Third Circuit and Virgin Islands Supreme Court

In 2004, the Virgin Islands legislature established the Virgin Islands Supreme Court as the "highest court of the Virgin Islands" and conferred to the Court "the supreme judicial power of the Territory."[131] However, the Virgin Islands Supreme Court

130. Defoe v. Phillip, 702 F.3d 735, 743 (3d Cir. 2012) ("[W]hen the District Court faces a novel question of Virgin Islands law, it must predict how the Supreme Court will resolve that question."); United States v. Fontaine, 697 F.3d 221, 227 n.12 (3d Cir. 2012) ("Because [defendant's] appeal requires us to interpret a territorial law, it is our role to predict how the Supreme Court of the Virgin Islands would resolve this interpretive issue."); *Edwards*, 497 F.3d at 360 ("Now that [48 U.S.C.] § 1613 mandates that the relations between [federal] courts . . . and [Virgin Islands] courts . . . mirror the relations between state and federal courts, . . . [section] 1613 makes the Erie doctrine and the Rules of Decision Act applicable to the District Court of the Virgin Islands.").

131. 4 V.I.C. § 21 (2004).

did not begin to exercise its appellate jurisdiction until 2007.[132] While Congress' ultimate goal was to mirror the judicial review relationship between the United States Supreme Court and the highest state courts and apply it in the Virgin Islands, Congress believed that an initial transition period was required as the Virgin Islands Supreme Court developed its body of common law.[133] During this transition period, the Virgin Islands Supreme Court would be subject to discretionary certiorari review by the Third Circuit Court of Appeals for either a fifteen-year period or until the Virgin Islands Supreme Court "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.[134]

a. Judicial Boundaries Pre-2012

In 2010, the Third Circuit reviewed a decision of the Virgin Islands Supreme Court for the first time in *Pichardo v. Virgin Islands Commissioner of Labor*.[135] The Third Circuit responded to requests from the Third Circuit Bar Association by announcing the standard it would use to review Virgin Islands Supreme Court decisions.[136] The Third Circuit considered three possible standards of review. It would: (1) act as a "super-Supreme Court," reviewing Virgin Islands Supreme Court decisions as a state

132. Judicial Council Report, *supra* note 59, at 3.

133. *Id.* at 4–5; *see also* People v. John, 654 F.3d 412, 415 (3d Cir. 2011) ("[I]t is plain that Congress intended for this court's certiorari jurisdiction vis-à-vis the Virgin Islands Supreme Court to mirror the United States Supreme Court's certiorari jurisdiction vis-à-vis any of the fifty state courts of last resort.").

134. 48 U.S.C. § 1613 (1984). The Act provides:

> 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 . . . 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.

Id.

135. 613 F.3d 87 (3d Cir. 2010).

136. Andrew Simpson & Peter Goldberger, *U.S. Congress Ends Third Circuit's Oversight of Five-Year-Old Virgin Islands Supreme Court*, 7 B. ASS'N THIRD FED. CIR. 1, 1–2 (2013).

Supreme Court would review an intermediary state appellate court; (2) review the Virgin Islands Supreme Court as the United States Supreme Court would review decisions of a state Supreme Court; or (3) use a "manifestly erroneous" standard, which is the most deferential to the Virgin Islands Supreme Court.[137] The Third Circuit adopted the "manifestly erroneous" standard, stating that it was the role of the Virgin Islands Supreme Court "to say what the law of the territory is."[138] Giving substantial deference to the Virgin Islands Supreme Court, the Third Circuit noted it would only reverse decisions that were "inescapably wrong."[139] The Third Circuit concluded that the Virgin Islands Supreme Court "'*essentially* [has] the final word on the interpretation of local Virgin Islands law,' . . . subject to the deferential standard of review" the court had articulated.[140]

In subsequent decisions, the Third Circuit would again emphasize the role of the Virgin Islands Supreme Court in interpreting Virgin Islands law. In *Government of the Virgin Islands v. Lewis*[141] and *Defoe v. Phillip*,[142] the Third Circuit reaffirmed that the authority to interpret Virgin Islands law rests with the Virgin Islands Supreme Court.[143] In *Lewis*, the Third Circuit held that the Virgin Islands Supreme Court is not bound by post-2007 Third Circuit cases interpreting Virgin Islands law that were decided before the Virgin Islands Supreme Court had an opportunity to review the statute at issue.[144] In *Defoe*, the Third Circuit concluded that the Virgin Islands Supreme Court may reject pre-2007 Third Circuit opinions.[145] In both cases, the Third Circuit emphasized the need to allow the Virgin Islands Supreme Court the freedom to create its own precedent and that this freedom would be constrained if the Virgin Islands Supreme

137. *Pichardo*, 613 F.3d at 94.

138. *Id.* The Third Circuit held: "[W]e shall defer to decisions of the Supreme Court of the Virgin Islands on matters of local law unless we find them to be manifestly erroneous." *Id.* at 89. Seemingly influencing the Third Circuit's decision was an earlier Ninth Circuit opinion, which applied the "manifest error" standard in reviewing decisions by the Supreme Court of Guam. *Id.* at 94 (citing Haeuser v. Dep't of Law, 368 F.3d 1091, 1093 (9th Cir. 2004)).

139. *Id.*

140. *Id.* at 97 (quoting BA Properties v. Gov't of the United States Virgin Islands, 299 F.3d 207, 212 (3d Cir. 2002)) (emphasis added).

141. 620 F.3d 359 (3d Cir. 2010).

142. 702 F.3d 735 (3d Cir. 2012).

143. *Lewis*, 620 F.3d at 364 n.5.

144. *Id.*

145. *Defoe*, 702 F.3d at 744–45.

Court was bound by Third Circuit cases.[146] For these reasons, the Third Circuit has repeatedly announced that it will defer to Virgin Islands Supreme Court precedent on issues of local law.[147]

The Virgin Islands Supreme Court has also demonstrated much respect and deference toward Third Circuit precedent. In *Banks v. International Rental & Leasing Corp.*,[148] the Virgin Islands Supreme Court noted that its creation "did not erase pre-existing case law"; therefore, prior Third Circuit precedent would continue unless the Virgin Islands Supreme Court specifically reviewed the issues discussed in those cases.[149] Thus, decisions rendered by the Third Circuit and the Appellate Division of the District Court would be binding on the Superior Court of the Virgin Islands, and such decisions would be persuasive authority to the Virgin Islands Supreme Court.[150] The Virgin Islands Supreme Court stated that it would be bound by Third Circuit decisions only under the following narrow circumstances: (1) the Third Circuit is reviewing a Virgin Islands Supreme Court decision during its discretionary certiorari period, and (2) the Third Circuit has reversed the Virgin Islands Supreme Court's interpretation of local law.[151] Even though the decisions are not binding, the Virgin Islands Supreme Court noted that Third Circuit opinions interpreting Virgin Islands law are "entitled to great respect."[152]

For the first five years of this transition period (from 2007 to 2012), the opinions from both the Virgin Islands Supreme Court and the Third Circuit illustrate a mutual respect and deference between the courts. However, the passage of the Direct Review Bill in 2012 has been a catalyst for jurisdictional disagreement between the Virgin Islands Supreme Court and the Third Circuit.

146. *Id.* at 745; *Lewis*, 620 F.3d at 364 n.5. In a sweeping concession, the Third Circuit noted that its "precedents are imperfect" and that the court "cannot say that all disagreements with us must be wrong." *Defoe*, 702 F.3d at 746. The Third Circuit further noted that courts generally have the freedom to overturn precedents they had adopted from other courts. *Id.* at 745 (analogizing to the Eleventh Circuit's rejection of Fifth Circuit precedent after the courts separated in 1981).

147. *Defoe*, 702 F.3d at 745; *Lewis*, 620 F.3d at 364 n.5.

148. 55 V.I. 967 (V.I. 2011).

149. *Id.* at 974 (citations omitted).

150. *Id.*

151. *Id.* at 975–76.

152. Defoe v. Phillip, 56 V.I. 109, 120 (V.I. 2012) (citation omitted).

b. Disagreement Over the Enactment Date of the Direct Review Bill

On December 28, 2012, President Barack Obama signed the Direct Review Bill, providing direct appeal from the Virgin Islands Supreme Court to the United States Supreme Court and ending the Third Circuit's temporary certiorari period.[153] As of 2012, the Virgin Islands Supreme Court has significant autonomy over Virgin Islands law—mirroring its judicial review process with state Supreme Courts, the United States Supreme Court declines to review Virgin Islands Supreme Court decisions that are based upon a reasonable interpretation of Virgin Islands law.[154] The United States Supreme Court will review only Virgin Islands Supreme Court decisions that implicate federal law or the United States Constitution.[155] While seemingly straightforward, the application of the Direct Review Bill has created some disagreement between the Virgin Islands Supreme Court and the Third Circuit.

The Third Circuit first addressed the application of the Direct Review Bill in *Kendall v. The Virgin Islands Daily News*,[156] where the court held that it retained certiorari jurisdiction over pending cases—cases where certiorari had been granted before December 28, 2012.[157] The Third Circuit then slightly broadened its scope of certiorari review: the Third Circuit characterized its decision in *Kendall* as applying to all "certiorari petitions *filed* before the effective date of the jurisdiction-stripping act," rather

153. 28 U.S.C. § 1260 (2012). The Direct Review Bill states:

> Final judgments or decrees rendered by the Supreme Court of the Virgin Islands may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of the Virgin Islands is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

Id.

154. *Id.*; *see also* Pichardo v. V.I. Comm'r of Labor, 613 F.3d 87, 94 (3d Cir. 2010) (describing the United States Supreme Court's judicial review process of state Supreme Court decisions).

155. 28 U.S.C. § 1260.

156. 716 F.3d 82 (3d Cir. 2013).

157. *Id.* at 87 (noting that the enactment of the Direct Review Bill "does not mean, however, that all jurisdiction-stripping provisions . . . must apply to cases pending at the time of . . . enactment") (quoting Landgraf v. USI Film Prods., 511 U.S. 244, 280 (1994)).

than only the cases in which the court has already *granted* certiorari.[158] While the difference in terminology seems minimal, the Third Circuit's certiorari review is discretionary, thus the dates of when certiorari was filed and when certiorari was granted may differ by several weeks.[159]

Interestingly, the Third Circuit rejects precedent from the Ninth Circuit that addressed a similar issue. In 2006, the Ninth Circuit concluded that the Act eliminating its temporary certiorari jurisdiction over Guam's Supreme Court did apply to pending cases.[160] This departure is noteworthy because the Third Circuit has previously followed Ninth Circuit precedent on matters related to territorial oversight.[161]

The Virgin Islands Supreme Court seems to implicitly reject *Kendall*. In *Hughley v. Government of the Virgin Islands*,[162] the Virgin Islands Supreme Court states: "[I]t is well established that the court of last resort for a state or territory is not bound by decisions of its regional federal court of appeals or any other lower federal court—even those interpreting the United States Constitution—but need only follow the United States Supreme Court."[163] Here, the Virgin Islands Supreme Court seems to reject *Kendall* insofar as the opinion suggests that the Virgin Islands Supreme Court must follow Third Circuit decisions interpreting federal law, such as the scope of the Direct Review Bill.

The *Kendall* and *Hughley* decisions are significant because they signify the first signs of disagreement between the Virgin Islands Supreme Court and the Third Circuit. The increased tension between the Virgin Islands Supreme Court and the Third Circuit is apparent in *Bason v. Government of the Virgin Islands*.[164] *Bason* concerned a 2011 arbitration award requiring the Virgin Islands government to reinstate the assistant attorney general.[165] The Superior Court of the Virgin Islands ordered the

158. *In re* Kendall, 712 F.3d 814, 821–22 n.3 (3d Cir. 2013) (emphasis added).

159. *See A Reporter's Guide to Applications Pending Before the Supreme Court of the United States*, SUP. CRT. PUB. INFO. OFFICE 16 (Feb. 16, 2014), http://www.supremecourt.gov/publicinfo/reportersguide.pdf (noting that it takes an average of six weeks for the United States Supreme Court to decide whether to grant or deny certiorari).

160. Santos v. Guam, 436 F.3d 1051, 1054 (9th Cir. 2006).

161. *See, e.g.*, Pichardo v. V.I. Comm'r of Labor, 613 F.3d 87, 94 (3d Cir. 2010) (adopting the Ninth Circuit's "manifest error" standard of review).

162. 61 V.I. 323 (V.I. 2014).

163. *Id.* at 337–38.

164. 767 F.3d 193 (3d Cir. 2014).

165. *Id.* at 196.

assistant attorney general to be reinstated, but the Virgin Islands Supreme Court reversed and remanded.[166] The Union filed for appeal to the Third Circuit.[167]

The disagreement between the Virgin Islands Supreme Court and the Third Circuit in *Bason* relates to the effective date of the Direct Review Bill, which states: "The amendments made by this Act apply to *cases commenced* on or after the date of the enactment of this Act."[168] The divergence between the courts seems to rest on the scope of the term "cases commenced"—whether the term relates to the filing of a complaint in the Superior Court (broad view) or the filing a writ of certiorari with the Third Circuit (narrow view).[169] This distinction is essential given the significant backlog in the Virgin Islands Superior Court.[170] A broad interpretation of the effective date could allow the Third Circuit's certiorari jurisdiction to continue for several years, while a narrow interpretation would effectively end the Third Circuit's certiorari jurisdiction.

In *Bason*, the Virgin Islands government filed a complaint in the Superior Court on May 9, 2011, and the Union filed a petition for a writ of certiorari with the Third Circuit on January 25, 2013.[171] Thus, under the broad interpretation of the Direct Review Bill, the Third Circuit would have jurisdiction in *Bason* because the Government filed the complaint in the Superior Court prior to the Direct Review Bill's December 28, 2012 effective date. However, the Third Circuit lacked jurisdiction in *Bason* under the narrow interpretation because the Union filed its petition for a writ of certiorari with the Third Circuit after the Direct Review Bill's December 28, 2012 effective date.

The Virgin Islands Supreme Court favors the narrow interpretation of the Direct Review Bill's effective date. In an unusual move, the Virgin Islands Supreme Court filed an amicus curiae brief to the Third Circuit, arguing that the Third Circuit did not have jurisdiction over cases filed in the Virgin Islands Superior Court before December 28, 2012.[172] In its amicus brief,

166. *Id.* at 196–97.
167. *Id.* at 200.
168. 28 USC § 1260 (2012) (emphasis added).
169. *Bason*, 767 F.3d at 205–06.
170. Aldeth Lewin, *V.I. Bar Association: St. Croix Needs Another Judge to Speed Justice Along*, V.I. DAILY NEWS, Mar. 4, 2015, at A1.
171. *Bason*, 767 F.3d at 196–97, 200.
172. *Id.* at 200 n.1.

the Virgin Islands Supreme Court seemed to emphasize that it had the final say on local law and that the Third Circuit no longer had supervisory authority over the Virgin Islands Supreme Court.[173] Thus, the Virgin Islands Supreme Court seems to favor the narrow interpretation of the Direct Review Bill's effective date.

The Third Circuit, on the other hand, held in *Bason* that it maintained certiorari jurisdiction over cases filed in the Virgin Islands Superior Court prior to December 28, 2012.[174] Since the term "cases commenced" was not defined in the statute, the Third Circuit relied upon traditional statutory construction to determine that it had jurisdiction over any proceeding in any Virgin Islands court that was filed before December 28, 2012.[175] The tension between the courts is evidenced by the Third Circuit's comments on the Virgin Islands Supreme Court's amicus brief:

> [I]t does appear rather unusual and even troubling for a court to submit an amicus curiae brief, especially where the court in question actually issued the decision that is the subject of the appellate or certiorari proceeding. In addition, we find the specific circumstances under which this amicus curiae brief was filed to be rather problematic.[176]

Here, the Third Circuit seems to believe that the Virgin Islands Supreme Court overstepped its jurisdictional boundary by filing its amicus brief and seems troubled that a relatively young Virgin Islands Supreme Court would attempt to instruct the Third Circuit on the scope of its jurisdiction.

While the Virgin Islands Supreme Court has not directly spoken on the issue, two Superior Court decisions indicate that the Virgin Islands courts may not follow Third Circuit opinions

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173. *Id.*

174. *Id.* at 206.

175. *Id.* at 206–07 (noting that the "'Effective Date' section of [the Direct Review Bill] does not refer to a particular type of proceeding or a specific judicial body").

176. *Id.* at 200–01 n.1. Interestingly, this is not the only time a federal court has gone out of its way to address the VI Supreme Court. *E.g.*, Payne v. Fawkes, No. 2014-53, 2014 WL 5548505, at *2 (D.V.I. Nov. 3, 2014). The District Court of the Virgin Islands has stated: "The Court also respects the fact that it is bound by the local law enunciated by the Supreme Court on local issues. . . . What is not worthy of respect, however, is the manner in which the Supreme Court chose to communicate its disagreement with the District Court's rulings." *Id.* at *20.

that conflict with Virgin Islands Supreme Court decisions. In *Petersen v. Golden Orange Centers, Inc.*,[177] the Superior Court had to decide between conflicting Virgin Islands Supreme Court and Third Circuit precedent:

> The Third Circuit's application of the equitable tolling doctrine to cases that were re-filed after the first case was dismissed without prejudice is directly at odds with the Virgin Islands Supreme Court's decision in *Jensen*. . . . This apparent irreconcilable conflict would ordinarily pose a quandary for the Superior Court because the Third Circuit retains certiorari jurisdiction over the Virgin Islands Supreme Court for all cases commenced in the Superior Court prior to December 28, 2012. . . . In light of the Virgin Islands Supreme Court's authority as the highest court in the Virgin Islands and the final arbiter on matters of local law, the Court will apply the rule espoused in *Jensen* . . . .[178]

This opinion is consistent with an earlier Superior Court decision, which held that the Superior Court is only bound by Third Circuit decisions rendered when the Third Circuit is "serving as the de facto court of last resort in the Virgin Islands."[179] Under such an approach, the Superior Court would be bound only by Third Circuit opinions that overrule Virgin Islands Supreme Court decisions on matters of local law.[180] Thus, these decisions indicate that the territorial courts may defer to the Virgin Islands Supreme Court's narrow interpretation of the Direct Review Bill's effective date, rather than the Third Circuit's broad interpretation.

Over the last five years, the relationship between the Virgin Islands Supreme Court and the Third Circuit Court of Appeals has become increasingly complex. As discussed, this tension between the courts is a result of conflicting opinions interpreting the enactment date of the Direct Review Bill. As this is the first time these two courts have been in direct conflict with one

177. No. SX-08-CV-202, 2014 WL 7525517 (V.I. Super. Ct. Sept. 25, 2014).

178. *Id.* at *2 n.2.

179. Benjamin v. Coral World, No. ST-13-CV-065, ST-13-CV-294, 2014 WL 2922306, at *3 n.38 (V.I. Super. Ct. June 12, 2014).

180. Notably, the Third Circuit reviews VI Supreme Court decisions under an extremely deferential "manifest error" standard and, as of this writing, has never overturned the VI Supreme Court's interpretation of local law. *See* Judicial Council Report, *supra* note 59, at 5, 17 (noting that the Third Circuit has yet to reverse the VI Supreme Court).

another, it is unclear how the Virgin Islands Supreme Court and the Third Circuit will approach this issue in the future.

2. Superior Court and Virgin Islands Supreme Court

In 2011, the Virgin Islands Supreme Court discussed the analytical approach that the Superior Court must follow when local law is silent on an issue. In *Banks v. International Rental & Leasing Corp.*,[181] the Virgin Islands Supreme Court concluded that the Court is not required to mechanically apply the Restatements since the Virgin Islands Supreme Court has been granted the freedom to develop its own common law.[182] The Virgin Islands Supreme Court then established a three-factor analytical approach that the Superior Court must apply when determining what common law rule to adopt: (1) "whether any Virgin Islands courts have previously adopted a particular rule"; (2) "the position taken by a majority of courts from other jurisdictions"; and (3) "which approach represents the soundest rule for the Virgin Islands."[183] The Virgin Islands Supreme Court then held that the Superior Court may depart from the Virgin Islands Supreme Court's pre-*Banks* decisions that mechanically adopted the Restatements, so long as the Superior Court explains its reasons for doing so.[184] This three-factor approach is consistent with the Superior Court's concurrent authority to develop the Virgin Islands common law.[185]

Since early 2015, the Superior Court has slowly tested the scope of the authority granted to it by the Virgin Islands Supreme Court in *Banks*. The Superior Court began testing the bounds of its authority by indicating when the Virgin Islands Supreme Court did not conduct a *Banks* analysis and by repeatedly emphasizing that it need not follow otherwise binding precedent that mechanically adopted the Restatements.[186]

181. 55 V.I. 967 (V.I. 2011).

182. *Id.* at 976 ("We conclude that the Legislature did not intend for . . . this Court to mechanically apply the most recent Restatement.").

183. Gov't of the V.I. v. Connor, 60 V.I. 597, 605 (V.I. 2014).

184. *Id.* at 606 n.1.

185. *Banks*, 55 V.I. at 977–80.

186. *See* Cifre v. Daas Enterprises, Inc., No. ST-2012-CV-701, 2015 WL 1912709 (V.I. Super. Ct. Apr. 24, 2015) (arguing that the Superior Court may elect not to follow a pre-*Banks* Virgin Islands Supreme Court case that mechanistically applies the Restatements); Berry v. Performance Constr., No. ST-13-CV-524 (V.I. Super. Ct. 2015) (stating that the court does not have to follow otherwise binding precedent if a *Banks* analysis was not

Repeatedly, the Superior Court seemed to emphasize the appellate courts' lack of *Banks* analysis—it would emphasize the lack of a *Banks* analysis then proceed to apply the rule articulated by the appellate court.[187] In these early cases, the Superior Court seems to be gradually testing the limits of its authority by articulating the circumstances under which it may depart from Virgin Islands Supreme Court precedent.

In a recent case, the Superior Court reconsidered a post-*Banks* Virgin Islands Supreme Court case defining duress.[188] The Superior Court argued that the Virgin Islands Supreme Court did not conduct a *Banks* analysis, but mechanically applied the Restatement (Second) of Contracts.[189] While the Virgin Islands Supreme Court has authorized the Superior Court to reconsider pre-*Banks* decisions,[190] it has not expressly granted the Superior Court any authority to reconsider post-*Banks* decisions. Interestingly, the Superior Court notes in passing that it does not explicitly have the authority to reconsider a post-*Banks* case.[191] However, the Superior Court decides, without stating its justification, to reconsider the case anyway.[192] Here, the Superior Court has effectively given itself permission to reconsider post-*Banks* appellate decisions that mechanically adopt the

performed); Police Benevolent Ass'n v. Brooks, No. ST-12-CV-123 (V.I. Super. Ct. 2015) (noting that the Virgin Islands Supreme Court did not perform a *Banks* analysis in the post-*Banks* case of Ross v. Hodge); Abdallah v. Abdel-Rahman, No. ST-13-CV-227 (V.I. Super. Ct. 2015) (indicating that the Virgin Islands Supreme Court did not perform a *Banks* analysis in Pollara v. Chateau St. Croix, LLC); Nicholas v. Damian-Rojas & GEC, LLC, 62 V.I. 123 (V.I. Super. Ct. 2015) (emphasizing that pre-*Banks* Third Circuit cases that mechanically adopt the Restatements are not binding).

187. *See Police Benevolent Ass'n*, No. ST-12-CV-123, at *3–4 n.10 (emphasizing that the Virgin Islands Supreme Court did not perform a *Banks* analysis in the post-*Banks* case of Ross v. Hodge, but then following the Court's rule in *Ross* for the elements of conversion); *Abdallah*, No. ST-13-CV-227, at *4 n.13 (indicating that the Virgin Islands Supreme Court did not perform a *Banks* analysis in Pollara v. Chateau St. Croix, LLC, but then applying Court's analysis from *Pollara*).

188. Slack v. Slack, 62 V.I. 366, 378 (V.I. Super. Ct. 2015) (reconsidering the VI Supreme Court's decision in Burd v. Antilles Yachting Servs., Inc., 57 V.I. 354, 359 (V.I. 2012)).

189. *Id.*

190. Gov't of the V.I. v. Connor, 60 V.I. 597, 605–06 (V.I. 2014).

191. *Slack*, 62 V.I. at 378. After noting that the VI Supreme Court has authorized the Superior Court to reconsider pre-*Banks* decisions, the Superior Court stated: "Although *Burd* is a post-*Banks* case and binding precedent upon this Court, its mechanical application of former 1 V.I.C. 4, without further consideration to justify its continued reliance on the Restatement, makes it an appropriate case to be reconsidered." *Id.* The Superior Court then proceeds to do a *Banks* analysis without any further explanation as to where it received the authorization to do an analysis on a post-*Banks* case. *Id.* at 379.

192. *Id.* at 378.

Restatements.[193] This seems to go beyond the limited scope of authority granted to the Superior Court by the Virgin Islands Supreme Court in *Connor*.[194]

3. District Court and Superior Court

In 1954, Congress vested judicial power in the District Court of the Virgin Islands until the Virgin Islands legislature established local courts.[195] As a result, the District Court of the Virgin Islands was a court of original and general jurisdiction with significant influence on the development of Virgin Islands law—the District Court acted as a state court, rather than as a federal court interpreting local law.[196] This federal control over matters of Virgin Islands law created tension between the federal courts and local opponents who advocated for an end of federal control over local matters.[197]

The conflict over the need for local-judicial autonomy resulted in Congress amending the Revised Organic Act in 1984[198] to establish a "dual system of local and federal judicial review" in the Virgin Islands.[199] These amendments granted local trial courts original jurisdiction over civil and criminal actions beginning in the early 1990s.[200] This grant of original and general jurisdiction to local courts divested the District Court of its jurisdiction over such matters, meaning the District Court of the

193. *Id.*

194. *Connor* gave the Superior Court the authority to reconsider only pre-*Banks* decisions that mechanically adopt the Restatements. *Connor*, 60 V.I. at 605.

195. Moravian Sch. Advisory Bd. v. Rawlins, 70 F.3d 270, 272 (3d Cir. 1995) (stating that the Revised Organic Act gave the District Court of the Virgin Islands "jurisdiction over federal questions, regardless of the amount in controversy, and general original jurisdiction over questions of local law, subject to the exclusive jurisdiction of the local courts over civil actions where the amount in controversy was less than [five-hundred dollars]").

196. Carty v. Beech Aircraft Corp., 679 F.2d 1051, 1055 (3d Cir. 1982), *superseded by statute as recognized in* United States v. Gillette, 738 F.3d 63 (3d Cir. 2013) ("[W]hen Congress acted to establish the District Court of the Virgin Islands, it established it as a court of original and general jurisdiction.").

197. *In re* Moorhead, 27 V.I. 74, 81 (V.I. Terr. Ct. 1992).

198. 48 U.S.C. § 1611 (1984).

199. Parrott v. Gov't of the V.I., 230 F.3d 615, 619 (3d Cir. 2000).

200. 4 V.I.C. § 76(a)-(b) (1984) (giving the Territorial Court—now named the Superior Court—of the Virgin Islands original jurisdiction over local civil and criminal matters). The Virgin Islands legislature vested the local courts with original jurisdiction over civil cases in 1991 and criminal cases in 1994. *Id.*

Virgin Islands possessed only the same jurisdiction as any other federal district court.[201]

The purpose of the 1984 amendments to the Revised Organic Act was to establish a local court-federal court relationship in the Virgin Islands that mirrored the relationships between state courts and federal courts.[202] The grant of original jurisdiction to the Superior Court was intended to provide more autonomy to local courts, and the divestment of the District Court of its original jurisdiction was necessary to eliminate any overlap between the District Court and the Territorial Court on matters of local law.[203] However, the grant of jurisdiction to the Territorial Court and divestment of the District Court created some initial conflict over the transfer of jurisdiction between the two courts.

From 1954 to 1991, the District Court had significant influence on the development of Virgin Islands law. Initially, the District Court displayed some reluctance to lose its original jurisdiction over local law, arguing that it maintained concurrent jurisdiction with the Virgin Islands courts over local actions. In 1999, for example, the District Court stated: "This court need not predict local law . . . because it is vested with the authority to decide novel questions as a local trial court."[204] This assertion of concurrent jurisdiction by the District Court directly conflicted with an earlier opinion of the Territorial Court, which stated that the District Court was divested of such jurisdiction on October 1, 1991.[205] This dispute between the courts continued until the Third Circuit intervened in 2007. In *Edwards v. Hovensa, LLC*,[206] the Third Circuit held that it would reject any District Court opinion suggesting the District Court retains "original jurisdiction over any cause over which local law has vested

201. *Parrott*, 230 F.3d at 619. The Third Circuit explained that the 1984 amendments to the Revised Organic Act allowed the Virgin Islands Legislature to "divest the District Court of original jurisdiction for local matters by vesting that jurisdiction in territorial courts established by local law for all causes for which 'any court established by the Constitution and laws of the United States does not have exclusive jurisdiction.'" *Id.*

202. *Moorhead*, 27 V.I. at 84–85.

203. *Parrott*, 230 F.3d at 619 ("The purpose of [the 1984 Amendments] is to eliminate the present situation of both the district court and the local court having jurisdiction over *strictly local causes*.").

204. Spink v. Gen. Accident Ins. Co., 36 F. Supp. 2d 689, 691 (D.V.I. 1999).

205. *Moorhead*, 27 V.I. at 82 ("Upon the vesting of this jurisdiction in the Territorial Court on October 1, 1991, the District Court was then divested of such jurisdiction . . . .").

206. 497 F.3d 355 (3d Cir. 2007).

jurisdiction in the local courts."[207] While the conflict resulting from the transfer of original jurisdiction between the District Court and the local courts was seemingly resolved by the Third Circuit in *Edwards*, the demonstrated differences in approach between the courts continue primarily as a result of the unique judicial review process in the Virgin Islands.

The 1984 amendments granted the District Court of the Virgin Islands the authority to exercise appellate jurisdiction over the decisions of local courts until the Virgin Islands Legislature established a local appellate court.[208] Thus, the District Court still held some influence over the development of Virgin Islands law as local courts had to defer to decisions rendered by the Appellate Division of the District Court.[209] In 2007, however, the Virgin Islands Supreme Court began to exercise its appellate jurisdiction over local law.[210] With the creation of the Virgin Islands Supreme Court, the District Court no longer had appellate jurisdiction over the Superior Court.[211] Instead, the Virgin Islands Supreme Court hears all appeals from Superior Court decisions.[212] This change in the judicial review process has created tension between the Superior Court and the District Court.

Under the *Erie* doctrine, federal courts must defer to a state supreme court's interpretation of local law when exercising its diversity jurisdiction.[213] However, the Virgin Islands judicial system was unique because, for a time, original jurisdiction was vested in local courts (Superior Court) while appellate jurisdiction was vested in federal courts (Appellate Division of the District Court and the Third Circuit). In *Edwards*,[214] the Third Circuit discussed whether the Appellate Division must follow

207. *Id.* at 359.

208. The Revised Organic Act of 1954 granted the Virgin Islands District Court "appellate jurisdiction to review the judgments and orders of the inferior courts of the Virgin Islands to the extent now or hereafter prescribed by local law." 48 U.S.C. § 1541 (1954). The 1984 amendments to the Revised Organic Act provided that when the Virgin Islands Legislature established an appellate court, that court would divest the Appellate Division of the Virgin Islands District Court of its appellate jurisdiction. 48 U.S.C. § 1613(a) (1984).

209. Judicial Council Report, *supra* note 59, at 2.

210. *Id.* at 3.

211. *Id.*

212. *Id.*

213. *See supra* Part IV(A) (discussing the development and application of the *Erie* doctrine).

214. 497 F.3d 355 (3d Cir. 2007).

state law as announced by the Superior Court.[215] The Third Circuit held that the Appellate Division does not have to apply Superior Court interpretations of Virgin Islands law, but may look to such decisions as "a datum for ascertaining state law."[216] The Third Circuit reasoned that the *Erie* doctrine did apply to the Appellate Division, but *Erie* mandates only that federal courts follow precedent rendered by the highest court in the state and not decisions of local trial courts.[217] The Appellate Division, therefore, is not required to defer to Superior Court decisions, but may use such decisions as persuasive authority regarding the interpretation of Virgin Islands law.

With the Supreme Court assuming its appellate jurisdiction in 2007 and the corresponding loss of appellate jurisdiction by the District Court, the question of when the Superior Court must defer to the Appellate Division continues to cause tension between the courts. As discussed, the *Edwards* decision held that the Appellate Division was not bound by Superior Court opinions. Conversely, early Virgin Islands Supreme Court decisions held that the Superior Court was bound by decisions of the District Court. In *Banks v. International Rental & Leasing Corp.*,[218] the Virgin Islands Supreme Court held that prior Third Circuit and Appellate Division cases would be binding upon the Superior Court, unless the Virgin Islands Supreme Court addressed the issue.[219] Thus, early decisions seemed to favor the Superior Court deferring to Appellate Division decisions.

Recent decisions, however, can be read as saying that the Superior Court owes no deference whatsoever to the District Court. In *Bryan v. Fawkes*,[220] the Virgin Islands Supreme Court discussed in detail the relationship between the Superior Court

215. *Id.* at 361–62.
216. *Id.* at 361 (citation omitted).
217. *Id.* at 360–62. The *Edwards* court held that, because

> [t]he Superior Court of the Virgin Islands (formerly the Territorial Court) is not the highest court of the Territory [and] . . . is not even an intermediate appellate court, but rather a trial court, . . . although we believe that the District Court could have looked to the decisions of the Superior Court as 'a datum for ascertaining state law,' we cannot conclude that it erred in holding that it was not bound by the decisions of the Superior Court.

Id. at 361.
218. 55 V.I. 967 (V.I. 2011).
219. *Id.* at 974 (quoting *In re* People of the V.I., 51 V.I. 374, 389 n.9 (V.I. 2009)).
220. 61 V.I. 416 (V.I. 2014).

and the District Court.[221] First, the Court noted that both the Superior Court and the District Court are Article IV courts, exercising authority granted to them by Congress.[222] The Supremacy Clause, therefore, does not govern the relationship between the Superior Court and the District Court.[223] Thus, the United States Constitution does not require the Superior Court to defer to the District Court.[224] Since both courts received their grant of authority from Article IV, the Virgin Islands Supreme Court held that "the Superior Court ow[ed] *no deference* to the District Court *on issues of federal or local law*, under the Supremacy Clause or otherwise."[225] This is a clear departure from the Virgin Islands Supreme Court's decision in *Banks* and may have been influenced by the Virgin Islands Supreme Court's own disagreement with the Third Circuit.[226] The Superior Court has adopted this language, claiming that it owes no deference to the District Court.[227] As a result of these decisions, a question remains about whether the Superior Court must ever defer to the District Court.

The initial conflict between the District Court and the Superior Court over the application of the *Erie* doctrine has been resolved by the courts for nearly a decade. The question of deference between the courts, however, has yet to be determined. As with the prior conflict over *Erie*'s application, the deference

221. *Id.* at 437.

222. *Id.* at 438. Article IV, Section 3 of the United States Constitution states: "[C]ongress shall have power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." U.S. CONST. art. IV, § 3 (authorizing Congress to regulate the territories of the United States). Most federal courts receive their authority from Article III of the United States Constitution. U.S. CONST. art. III ("The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.").

223. *Bryan*, 61 V.I. at 438 ("[A] conflict between [the VI Supreme Court] (or the Superior Court) and the District Court 'presents no competition between state and federal sovereignty,' given that all of the courts involved draw their sovereignty from Congress under Article IV.") (quoting Lewis v. Alexander, 685 F.3d 325, 346 n.18 (3d Cir. 2012)).

224. *Bryan*, 61 V.I. at 438 (noting that the separation between the Superior Court and District Court is administrative rather than constitutional).

225. *Id.* at 442 (emphasis added).

226. *See supra* Part IV(B)(1) (discussing the growing tension between the VI Supreme Court and the Third Circuit).

227. Haynes v. Ottley, No. ST-14-CV-0000486, 2014 WL 5548229, at *4 n.20 (V.I. Super. Ct. Oct. 30, 2014), *rev'd*, 61 V.I. 547 (V.I. 2014) ("The Superior Court and the District Court are all Article IV courts with the Superior Court owing no deference to the District Court on issues of federal or local law, under the Supremacy Clause or otherwise.") (citing *Bryan*, 61 V.I. at 442).

question may need to be considered by an appellate court. The issue then becomes which court—the Virgin Islands Supreme Court or the Third Circuit Court—has the final say regarding this jurisdictional conflict.

V. RECOMMENDATIONS AND CONCLUSION

Since the passage of the Revised Organic Act, the Virgin Islands judiciary has undergone tremendous change. With the enactment of the Direct Review Bill in 2012, the Virgin Islands judicial system has experienced a significant shift in its jurisdictional boundaries. Through these transitional periods, particular trends have been established that may be helpful in assisting the courts with resolving the above-mentioned mêlées.

Concerning the relationship between the Third Circuit and the Virgin Islands Supreme Court, there appears to be three particular trends among the caselaw: (1) Third Circuit deference to the Virgin Islands Supreme Court on issues of local law; (2) Virgin Islands Supreme Court deference to the Third Circuit for issues not specifically reviewed by the Virgin Islands Supreme Court; and (3) the expanding jurisdictional scope of the Third Circuit. First, the Third Circuit has established a trend of deference to the Virgin Islands Supreme Court regarding local law issues, particularly in *Lewis*[228] and *Defoe*.[229] Consistent with its decision in *Lewis*, the Virgin Islands Supreme Court may reject post-2007 cases interpreting local law[230] and, as a result of the holding in *Defoe*, the Virgin Islands Supreme Court may reject pre-2007 cases interpreting local law.[231] The Third Circuit appears to support the premise that the Virgin Islands Supreme Court may reject Third Circuit decisions interpreting local law. The decisions in *Defoe* and *Lewis*, read in tandem, demonstrate that the Third Circuit seems to have created a trend—or at the very least begun to establish a trend over a period of several months—of allowing the Virgin Islands Supreme Court to have the final word regarding the interpretation of local law. Another trend, the counterpart to the Third Circuit's deference to the Virgin Islands Supreme Court, is the Virgin Islands Supreme

228. Gov't of the V.I. v. Lewis, 620 F.3d 359 (3d Cir. 2010).
229. Defoe v. Phillip, 702 F.3d 735 (3d Cir. 2012).
230. *Lewis*, 620 F.3d at 364–65 n.5.
231. *Defoe*, 702 F.3d at 744–45.

Court's deference to Third Circuit precedent concerning issues not specifically addressed by the Virgin Islands Supreme Court. This movement was established in *Banks*, which recognized that the creation of the Virgin Islands Supreme Court did not eradicate Third Circuit precedent.[232]

Last, the Third Circuit established its jurisdictional scope in *Kendall*, stating that it had jurisdiction over those cases where certiorari review had been granted subsequent to the December 28, 2012 enactment of the Direct Review Bill.[233] However, this jurisdiction quickly expands to cover cases in which the petition for writ of certiorari had been filed[234] to cases in which the complaint had been filed with the Superior Court.[235] This expanding jurisdiction appears to be a departure from similar Ninth Circuit precedent, which the Third Circuit previously followed, that narrowed Ninth Circuit jurisdiction over pending cases in Guam.[236] This departure seems to signal that the Third Circuit has not fully given up its temporary certiorari status.

Keeping these trends—and the well-established *Erie* doctrine[237]—in mind, the Third Circuit and Virgin Islands Supreme Court may find it helpful to consider the following jurisdictional structure: the Virgin Islands Supreme Court retains jurisdiction over cases concerning local law while the Third Circuit retains jurisdiction over cases concerning purely federal issues. Likewise, in an effort to keep with the Third Circuit's original precedent and the spirit of Congress' goal of establishing a Virgin Islands Supreme Court as the final authority over territorial common law,[238] the Third Circuit may contemplate retaining jurisdiction only over those cases in which a petition for writ of certiorari had been granted before December 28, 2012. This change also aligns with the *Erie* doctrine,

232. Banks v. Int'l Rental & Leasing Corp., 55 V.I. 967, 974–76 (V.I. 2011).

233. Kendall v. The V.I. Daily News, 716 F.3d 82, 86–87 (3d Cir. 2013).

234. *In re* Kendall, 712 F.3d 814, 821–22 n.3 (3d Cir. 2013).

235. Bason v. Gov't of the V.I., 767 F.3d 193, 206 (3d Cir. 2014).

236. *Compare* Pichardo v. V.I. Comm'r of Labor, 613 F.3d 87, 94 (3d Cir. 2010) (adopting the Ninth Circuit's "manifest error" standard of review as it was established in Haeuser v. Dep't of Law, 368 F.3d 1091, 1093 (9th Cir. 2004)) *with* Bason v. Gov't of the V.I., 767 F.3d 193, 206 (3d Cir. 2014) (rejecting, implicitly, Santos v. Guam, 436 F.3d 1051 (9th Cir. 2006), where the Ninth Circuit held that it was without jurisdiction since an act ending the temporary certiorari review had been passed).

237. See *supra* Part VI(A) for an overview of the *Erie* doctrine.

238. *See* 48 U.S.C. § 1613 (2012) (stating that the VI Supreme Court should establish its own "sufficient institutional traditions").

respecting the Virgin Islands Supreme Court's domain over local law and the Third Circuit's federal-law sphere.

The second judicial relational issue concerns the jurisdiction between the Superior Court and the Virgin Islands Supreme Court and can be simply resolved. This relational issue concerns the Superior Court's authority to reconsider cases involving the application of the Restatements after *Banks*.[239] The Virgin Islands Supreme Court has authorized the Superior Court to reconsider pre-*Banks* decisions now that the Restatements are not binding law.[240] However, the Superior Court's reconsideration authority appears to be limited to pre-*Banks* decisions only.[241] By looking at the relationship between the Third Circuit and the Virgin Islands Supreme Court for guidance, it seems that the Superior Court may need the same level of explicit authorization to reconsider post-*Banks* decisions as the Third Circuit needed from the Virgin Islands Supreme Court to reconsider pre-2007 and post-2007 decisions.[242] Respectfully, it may be suitable that the Superior Court limit itself to reconsidering only those cases that were decided before the *Banks* analysis was established—at least until the Virgin Islands Supreme Court explicitly says otherwise.

Finally, the Virgin Islands Superior Court and the District Court's disagreements over jurisdiction may potentially be resolved by relying on traditional application of the *Erie* doctrine. For instance, the Superior Court does not defer to the District Court; this is seen in *Bryan v. Fawkes*[243] and *Haynes v. Ottley*.[244] The lack of deference for local matters aligns squarely with the *Erie* doctrine, which states that local courts should resolve local matters.[245] However, also in line with the *Erie* doctrine is the notion that federal courts should resolve federal issues.[246] Following similar trends established by the Third Circuit and the Virgin Islands Supreme Court, a possible solution for resolving

239. Gov't of the V.I. v. Connor, 60 V.I. 597, 605 n.1 (V.I. 2014).
240. *Id.*
241. *Id.*
242. *See* Defoe v. Phillip, 702 F.3d 735, 748 (3d Cir. 2012) (holding that the VI Supreme Court may reject pre-2007 cases interpreting local law); Gov't of the V.I. v. Lewis, 620 F.3d 359, 364–65 n.5 (3d Cir. 2010) (stating that the VI Supreme Court may reject post-2007 cases interpreting local law).
243. 61 V.I. 416 (V.I. 2014).
244. No. ST-14-CV-0000486, 2014 WL 5548229, at *4 n.20 (V.I. Super. Ct. 2014).
245. Erie R.R. Co. v. Tompkins, 304 U.S. 64, 78 (1938).
246. *Id.*

the tension between the courts involves a compromise along local-federal lines, which was the intention of the 1984 Revised Organic Act amendments.[247] The traditional application of the *Erie* doctrine suggests that the Superior Court owes little deference[248] to the District Court concerning matters of local law; however, *Erie* doctrine application also suggests that the Superior Court should defer to the District Court on matters concerning federal law. Related, the District Court should defer to the Virgin Islands Supreme Court on matters of local law.[249] This respectfully proposed compromise is also supported, in part, by the Third Circuit, which has noted that the District Court's jurisdiction does not extend to local law matters.[250]

Through compromise, the jurisdictional confusion amongst the Virgin Islands Supreme Court and the Third Circuit, the Superior Court and the District Court, and the Superior Court and the Virgin Islands Supreme Court may be resolved. By providing a history of the Virgin Islands judicial system, the transformation of the system can be better understood. Also, by outlining the differing precedents established by these courts, their stances and the law of the area can also be comprehended. Relying on the trends established by the courts and certain notable observations, recommendations have been presented that aim to demonstrate a compromise between the autonomy of the Virgin Islands courts and the sovereignty of the relevant federal courts. While implementing these recommendations may take time, they may also provide a more predictable and harmonious judicial system for the United States Virgin Islands.

247. The 1984 Revised Organic Act amendments were intended to create a relationship between the Superior Court and the District Court that reflected the state court-federal court relationship. *In re* Moorhead, 27 V.I. 74, 84–85 (V.I. Terr. Ct. 1992).

248. The District Court was the sole VI trial court before the establishment of the Territorial—now Superior—Court, so its decisions on territorial law before the Territorial Court was established should be considered useful guidance (but not binding upon) the Superior Court. *See* Superior Court of the Virgin Islands, *supra* note 72 (providing a historical overview of the Virgin Islands judiciary as it relates to the establishment of the Superior Court).

249. Edwards v. Hovensa, LLC, 497 F.3d 355, 361–62 n.3 (3d Cir. 2007).

250. *Id.*