Territorial Courts in the Federal Judiciary

Seventy-five years ago, the Organic Act established a Constitution and new government for the Territory of the U.S. Virgin Islands. Less than a year later, in March 1937, President Roosevelt appointed William H. Hastie, the territory’s first federal judge—and the first African American to be a federal judge. As an Article I judge, Hastie served a fixed term from 1937 to 1939. (Hastie went on to become the first African American federal appellate judge when he was appointed to the U.S. Court of Appeals for the Third Circuit in 1950).

The federal territorial courts—their rich history, varied caseloads, and dedicated judges—are a civic teacher’s dream. Their work involves powers found in Articles I, III and IV of the Constitution.

Today, the U.S. Virgin Islands is one of only three U.S. territorial courts. Their territorial courts are presided over by Article I judges. Article I judgeships were established in Guam in 1950, and in the Commonwealth of the Northern Mariana Islands (CNMI) in 1977.

These courts are Article IV U.S. district courts, so-called because under Article IV of the Constitution, “Congress shall have the power to dispose of and make all needful rules and regulations respecting the Territory or other property belonging to the United States.”

The federal courts in these territories hear cases arising out of federal law, including bankruptcy cases. Their judges are appointed by the President with the advice and consent of the Senate, for fixed terms of 10 years. Territorial court decisions may be appealed to the U.S. Court of Appeals for the Ninth Circuit (Guam and the Northern Mariana Islands) or the U.S. Court of Appeals for the Third Circuit (the U.S. Virgin Islands).

What of the Commonwealth of Puerto Rico, an unincorporated territory of the United States? A 1966 federal law made Puerto Rico one of the 94 Article III judicial districts. Federal judges in Puerto Rico are appointed by the President and serve lifetime appointments as Article III judges. Their decisions are appealable to the First Circuit.

While American Samoa also is an unincorporated territory of the United States—with its own constitution and representative government—it does not have a U.S. district court. The High Court of American Samoa has limited jurisdiction to hear cases under certain federal statutes such as food safety, protection of animals, conservation, and shipping.

“We do everything,” said Chief Judge Curtis Gomez, referring to his caseload in the U.S. Virgin Islands. “We perform all the functions of an Article III district court. In that capacity, we usually preside over more trials than the national average. Plus, we also serve as the
appellate court for the local Superior Court. In that capacity, we review family matters and civil and criminal cases with no federal nexus. That part of our caseload is diminishing as the Virgin Islands now has a Supreme Court that hears those appeals.”

Gomez earned his law degree from Harvard and was in private practice with law firms in Washington DC and the Virgin Islands. He served as an Assistant U.S. Attorney (AUSA) in the Eastern District of Virginia before returning to the Virgin Islands as an AUSA. Born and raised in the Virgin Islands, and cognizant of the brain drain of young people to the mainland United States, he wanted the opportunity to stay and help.

In addition to managing a heavy and varied caseload, the court started a re-entry program to reduce recidivism and, according to Gomez, it’s off to a good start with many businesses willing to employ offenders. “We have to gainfully engage reentrants and the community is there to help,” he said.

Sometimes, holding court in the Virgin Islands, where three islands are separated by water, can be a challenge, especially when selecting jurors. “We don’t have a broad pool, and it’s not uncommon for someone to say, ‘I know the defendant.’ We also have language issues where jurors may not be quite fluent in English. And many of our jurors are involved in the tourist industry. If they’re called for jury duty at the height of the season, it can be a financial hardship,” said Gomez.

Chief Judge Frances Marie Tydingco-Gatewood sits in Hagatna, the capital of Guam. A prosecutor for 10 years and a judge for 17, first as a trial judge on the Superior Court of Guam, then as an Associate Justice of the Supreme Court of Guam, she was appointed an Article I federal judge in 2006. She is the first Chamorro female chief judge in Guam; Chamorros are the indigenous people of the Mariana Archipelagos, which includes Guam. “It was the easiest decision ever to return to Guam,” she said, after earning her undergraduate degree from Marquette University in Milwaukee, Wisconsin, and her law degree from the University of Missouri-Kansas City School of Law. “Who wouldn’t want to live in paradise?”

Paradise, however, has real world problems. The Guam caseload is predominately criminal. There are enough drug cases that the court now has a special program to deal with these offenders. Immigration offenses also are an increasing problem. As the nearest federal court to the military bases in Okinawa, the court also hears cases involving non-military dependants. Tydingco-Gatewood also sits as the chief judge of the bankruptcy court. And with a long-standing judicial vacancy in the Commonwealth of the Northern Mariana Islands, she flies in to help with cases and handle the day-to-day administrative matters. Judges from the Ninth Circuit also are assigned to help the court. A nomination has just been made to fill that vacancy and awaits Senate confirmation.

Judge Consuelo Marshall (C. D. Cal.) chairs the Ninth Circuit’s Pacific Islands Committee, a committee formed to assist and train the courts in the Pacific, such as the Marshall Islands, a former trust territory, but now an independent country, and American Samoa. The Republic of Palau, the Federated States of Micronesia and the Marshall Islands have compacts with the United States, which provide certain types of aids, including funds for training their judiciaries.
“A court may request training on a particular subject or U.S. judges may go there as faculty to provide training to judges, lawyers and court staff. Judges from the islands also attend training at the National Judicial College and the Federal Judicial Center,” said Marshall. “We teach process: how to conduct a fair trial, case management, how to handle case backlogs, and when it is appropriate for judges to recuse themselves in a case, as well as other issues. Last year, voters in the Republic of Palau approved a system of trial by jury. I was invited by their Chief Justice to train on jury selection, jury instructions, responding to questions from a deliberating jury, taking the verdict, and other issues associated with jury trials.”

The federal Judiciary’s territorial judges also bring something unique to their home islands. As Tydingco-Gatewood expressed it, “Being from Guam just makes me a better judge for Guam.”

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