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DISCUSSION PAPER

By

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STATES VIRGIN ISLANDS: THE POLICE

LAW ENFORCEMENT SERVICE OF THE UNITED STATES
AND OTHER GOVERNMENTAL AUTHORITIES

AN ANNOTATED BIBLIOGRAPHY

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OVERVIEW

Islands went to polls throughout the Territory to select 30 delegates to form the Fifth Constitutional Convention. The winning candidates were those set to be certified by the Virgin Islands Joint Boards.

construction of the ballot and whether in its final form it met the legal requirements of the authorizing statute.

In this case, Harry Daniel filed a suit against the Virgin Islands Joint Boards of Elections, et. al. In this lawsuit,

Daniel maintained that his name was not included on the ballot as he had been denied certification by the Board of Elections until it could be determined judicially that the election complied with local law setting out the election guidelines as well as other rules governing the Convention. Daniel maintained that as per the terms of the authorizing statute he should be certified as a successful candidate. The suit was decided in Daniel's favor. The High Court ruled in favor of Daniel, and the decision of the Superior Court and Supreme Court was upheld.

This was a unique case because no one had ever gone to the Supreme Court, which had recently come into existence.

The Virgin Islands did not have a constitution until 1973, following the June 12, 2007 election.

The results were certified by the Board of Elections, and the thirty (30) delegates took the oath of office as administered by The Honorable Audrey L. Thomas, Judge of the Superior Court of the Virgin Islands, on October 20, 2007. Within moments of their swearing in, members of the

Constitutional Convention were assigned to address the critical work before the body.

THE FRAMEWORK OF THE CONSTITUTION ADOPTION PROCESS

The Convention is authorized by federal Public Law 94-584 and by local law number 6969 as amended, including its most recent amendment, Act 6969, which gives the Fifth Virgin Islands Constitutional Convention until October 1, 2008 to adopt a proposed Constitution.

The federal public law states clearly that a Constitution for the Virgin Islands will be developed within the existing federal territorial relationship and is not intended as a measure to determine the status of the Virgin Islands vis à vis the United States.

The federal law places additional requirements on the Virgin Islands Constitutional process by requiring that a document drafted by the residents of the Virgin Islands must recognize and be consistent with the sovereignty of the United States over the Virgin Islands and further must

recognize the supremacy of the provisions of the Constitution, treaties and laws of the United States applicable to the Virgin Islands.

The Congress of the United States has created a constitutional process which requires the submission to the President of the United States and the Congress of the United States any draft Constitution before it is presented to the U.S. Virgin Islands. This is in addition to this scheme as well.

The Congress of the United States pursuant to the Territorial Clause of the United States Constitution may call a Constitutional Convention for the purpose of proposing a

Constitutional Convention before such a document is presented to the voters of the Virgin Islands for their consideration.

Thus, it is clear that while the United States has established a

locally drafted Constitution, the process will be determined by the Congress of the United States as a measure of self government.

In Resolution 1541 Principle VI, this body has provided that a Non-Self-Governing Territory can be said to have reached a full measure of self-government when:

- (a) Free Association with an Independent State
- (b) Integration with an Independent State

The Constitutional process in which the United States Virgin Islands is involved will result in three outcomes. Among them, to make a determination regarding the ultimate political status of the residents of the Territory from one day making a determination with regard to its ultimate political status.

In the Virgin Islands and Guam Constitutional Self-Government Act 2002, it is further provided:

"Each Virgin Islander shall have the right to determine his or her own political status in accordance with the will of the people of such territory."

While some of this proposal is for information to be provided to the Committee which met in Grenada in May 2007, the information bears repeating as the debate continues in the Virgin Islands on the question of political status and whether the adoption of a Constitution before a vote on the

THE UNIVERSITY OF THE VIRGIN ISLANDS

The University of the Virgin Islands which celebrated its 40th Anniversary in 1998, is a public institution of higher learning in the Virgin Islands. The University, founded in 1959, is the first independent institution of higher learning in the Virgin Islands. The University, located in Charlotte Amalie, St. Thomas, U.S. Virgin Islands, is a comprehensive university with a strong emphasis on undergraduate education. The University offers a wide range of academic programs, including undergraduate, graduate, and professional programs. The University is committed to the development of its academic curricula, community and regional services and research programs. The institution continues to grow and remains committed to serving its students and its extended family to include faculty, staff, and the entire Virgin Islands Community. Consistent with these goals, the University has adopted the following mission:

committed to enhancing the lives of the people of the U.S. Virgin Islands and the wider Caribbean through excellent teaching, research, and service.

In addition to this mission, the University is committed to the promotion of democracy and the rule of law, and to the protection of human rights and civil liberties.

A public education project undertaken by the University in support of the Constitutional Convention is

a project, I will provide you with a concise and relevant update of our project so that you

In the public education project we endeavored to integrate both technology and the traditional public forums which mark a strong and reunite the delegation authorizing the convention. Act No. 6688, provided that prospective delegates file their petition with the Board of Elections by May 16

It is important to note that the University considered that the education project could not be completed without some input from the members of the delegation. The University organized a series of preparatory workshops for the delegates.

These preparatory meetings covered a variety of topics to include Political States, the Participative Process, and the Constitutional Convention.

These workshops also offered keynote presentations from representatives of the Center for the Study of State Constitutions at Rutgers University. These discussed the forms of state constitutions and resources that could be made available to Virgin Islands delegates undertaking this historic and monumental task.

Following the announcement of the listing of eligible delegates, the University organized several voters to their favor. These candidate forums provided an opportunity for delegate candidates to

express their views and ideas on the issues facing the Virgin Islands.

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with a convention. These forums were conducted in both political districts—the District of St. Croix, and the District of St. Thomas-St. John. The media outlets in the territory also are to be commended because they provided voter questionnaires that were published in the local paper, and several radio stations offered candidates free air time to bring their views to the public.

These forums were conducted concurrently with a media campaign, also a part of this project which created radio, television and newspaper advertisements highlighting traffic accidents and the reach a racially and culturally diverse community. Our project website www.itsourfuture.vi continued to receive regular contact and has recorded some 116,871 visits to date.

The University also distributed in excess of \$60,000 informational brochures directly to registered voters in the Territory, including voter lists from the US Virgin Islands Department of Elections.

By the end of the election, the University had spent approximately \$250,000 of the \$500,000.

Constitutional Convention. Much of the financial resources were allocated to media costs which included the production of a radio and television campaign, the creation of a website, the distribution of brochures and leaflets, and the hiring of a professional advertising agency and other agents in order to maximize visibility locally. Of course, print advertising production and placement costs were significant as well.

In order to help make its efforts to engage and inform the electorate and the educational process in preceding the June elections, the University turned its attention again to delegate preparation when it offered its course offerings in the summer of 2007. In its course listing, the University offered classes in US Virgin Islands Government and Politics and in American Government. Both political science courses offered exposure to local government structures and to issues which affect federal-territorial relations. The latter course included a study of the development of the Constitution of the United States and provided detailed exposure to the nature and function of the principles of federalism in government within a republican framework.

For these efforts and for the quality of its media products, the University, and in conjunction with the Austin Advertising, which is contracted locally to a special advertising award which recognized both the quality of the work done, the role of the University and the incredible public significance of the overall project.

The University has received its share of criticism as well, from those who argue that the project and the resources utilized by it did not generate a sufficiently large public participation at the polls. Such a concern may have been the basis for legal challenges which have caused significant delays for the University's project to update laws by an Constitutional convention.

What we continue to see throughout the community, however, is a larger public interest in

The University, recognizing the need for continuing public education, has offered to collaborate with the Convention on specific projects that would engage the community throughout the life of the proceedings.

THE WORK BEFORE THE CONVENTION

The Fifth Virgin Islands Constitutional Convention is preceded in its work by four other similar bodies. Each successive convention has followed the Constitution of the Virgin Islands, which has been widely accepted by the residents of the Territory.

Under the leadership of the Fourth Constitutional Convention, the following provisions of the Constitution of the Virgin Islands, previously approved by the Fourth Constitutional Convention which are considered by the Convention to be standard and of a non-controversial nature".

Thus, Committees of the Fifth Convention have been engaged in detailed reviews of the provisions of this document while there have been also coordinating sessions for the preparation of the Convention to gain public sentiments on particular provisions as well as new ideas and issues which did not appear in the original Constitution or in the recent preparatory meetings by, our age.

In this regard, the University has consulted with the Convention specifically with regard to the critically important provisions regarding educational rights for the residents of the Territory. The

President of the University has informed a committee about the situation and a strategy

or any local, public institution or higher learning.

Some proposals have been controversial including the need for increased musical government

between the major islands of the Territory and the local tax structure will make it difficult

to implement the proposed changes in the educational system.

But perhaps the most controversial of issues lies in defining the people of this Territory for whom this document is being written.

The debate rages on, with proponents of various positions often justifying their views and the

opponents equally determined to defend their positions, as well as those who are neutral

as well. It is intermixed with the viewpoints of natives who believe that they have been

settled in the small territory.

This position is summarized in the sentiments of one local person who testified recently that Native

But the opinion is not shared by all in the Virgin Islands community. In fact, a number taken to the Virgin Islands Constitutional Convention in 2008 showed that 51 percent of the 1,100 respondents supported the idea of giving the Virgin Islanders the right to self-determination through a referendum.

voters in a referendum.

The sentiment is aired by large numbers of migrants from the Eastern Caribbean who believe that living and raising families in the Territory for the previous four or five decades or more entitle them to play a part in the political fate of the Territory—from a voice in a local constitution to one in a determination of political status.

It is echoed as well by large numbers of United States citizens who have moved to the Territory from the continental United States and who trumpet their rights under the United States Constitution and the federal law which controls this entire process. They convince that there can be no special treatment for any segment of the population which can survive the mandated review by both the President of the United States and the Congress of the United States which leads to the final adoption of the document.

Despite the opposition to the idea of special treatment for the group which defines itself as the Native Virgin Islanders, it is an important issue which demonstrates the questions of identity which are raised by the Virgin Islands which has withdrawn from the Commonwealth and decided on its own future.

In fact, the latest census figures are not yet available. What is known is that about 2000 people live here about 67 percent and that the remaining 33 percent represent almost every ethnicity imaginable. These include many of the Eastern Caribbean islands and the Greater Antillean islands; several of the countries of Central America; Argentina; Brazil; Chile; Uruguay; Venezuela; Mexico; Canada; the United States; Israel; African nations; and others.

The convention will have to bridge many racial and ethnic barriers when it brings the document to public vote. In recognition of the awesome task of writing this document and having it be acceptable to the community herein described, the Convention just recently voted (May 6, 2008) to request that the Legislature award it more time—until March 31, 2009—to complete the document.

After a recent working retreat, the Delegates decided that each committee will have a draft of a section to circulate amongst its members for the sake of completeness in July 2008. It is

These voice concern that justice, equality and democracy which have been denied to people are experiencing very little or none at all over time while African Americans can enjoy such rights. This is particularly concerning and troubling since we have shared the same colonial history with these now independent countries which we see from our shores, a colonial history replete with the horrors of African slavery and the ensuing slave-like plantation economies based on sugar and cotton and indentured labor. The Virgin Islands shares this history with the United States.

This is the context within which the following suggestions regarding constitutional documents made and in consideration of their applicability to the Virgin Islands.

governing territories which may undertake this process.

1. Funding

Public education and the expenses associated with having a Constitutional Convention as well. In the beginning, the initial budget of the Virgin Islands for the \$100,000 for the work of the Convention. That initial appropriation was later supplemented by \$10,000 which would come from the public education resources at the University of the Virgin Islands, but which was reprogrammed to support the work of the Convention.

Shortly after they were sworn into office, the delegates to the UVI Virgin Islands Constitutional Convention created a budget and submitted it to the Legislature of the Virgin Islands. In its budget, the Convention called for a sum of \$3.2 million which would allow the Convention to identify office spaces, hire staff and consultants, travel between islands, and meet related costs and expenses. To date, the Convention has received only the \$218,000 with another appropriation of \$200,000.

The Virgin Islands Constitutional Convention and the Virgin Islands Government to date has not been provided to the convention. All of the funding supporting this important political change has been provided from the General Fund of the local government.

We suggest that cost of this process should not be shouldered by the Territory of the Virgin Islands and that the work of the Convention can be supported in many ways by the considered resources of the administering power, the United States of America. This should apply to other non-self

governments as well. It is in support of this position that the following suggestion is made:

Through the public education project the University of the Virgin Islands gained first-hand exposure to the incredible challenges of informing citizens regarding details of the impending constitutional convention to provide a body of principles on which to test a government. This Constitutional Convention follows the last such endeavor by 27 years. An entire generation of new voters was being exposed to this idea for the first time, and to another generation of older Virgin Islanders, these conversations were at best remote and confusing. Thus the project started with a population

This makes the point for ongoing dialogues on status and on constitutional change. It is essentially

that public education on these critical issues be encouraged and supported for the widest audience.

Change is incoming directly ahead.

3. Defining the People

The population of the Virgin Islands is incredibly diverse and it is with this in mind that those who come to the Territory from the United States and those who have been born here and have never left the Territory must be considered.

There are those United States citizens who are permanent residents of the Territory, those who have migrated to the Territory but who are now naturalized Virgin Islanders, and those

who are permanent residents of the Territory but who have never been naturalized. There are also those who have never left the Territory but who have traveled abroad many times and who made no such clear choice. Thus, the question continues to raise its head as to exactly who defines the class of persons for whom this document is being written and who will take responsibility for its effects as it comes through execution.

4. Engaging Higher Education Institutions

Institutions of higher education are by their nature, repositories of vast resources. This is clearly the case with the University of the Virgin Islands. These resources should be engaged in constitutional processes because of their potential and invaluable impact on the local community which these institutions serve.

THE RÔLE OF THE UNITED NATIONS

which the following suggestions are offered.

1. Clarify and Publicize the United Nations definition of what constitutes self-government for a Territory.

in government publications and in educational institutions, the average person who lives in the Virgin Islands enjoys a benevolent relationship with the United States might question why he or she does not have the option to retain the Territorial status as is. This is further complicated by

2. The United Nations Must Have More Direct Contact With the Territories

The United Nations is robustly involved in international practices significantly impacted by its

conversations about self-government and self-determination are carried out in the United Nations, they take on an air of intellectual curiosity, not one which requires their active engagement. So, just as you send peacekeeping missions into troubled areas, or election observers when the specter of unfair elections is raised, perhaps self-government missions might also be in order. The presence of the United Nations would add a sense of importance and seriousness to the discussions. It is for this reason that I would like to see more public and open discussions regarding the very thorny issues of status, self-determination and self-government.

3. In Processes Which Include Constitutional Development and Status, the United Nations should provide Technical Expertise

"People shouting one another down... People interrupting others to an offending tirade... Promotions with the words 'Deal with them' as punitive measures. A series of motions put into

The Virgin Islands' Constitution 2008 has been published in the *Virgin Islands News*, the newspaper of the Virgin Islands government in its May 8, 2008 issue following the most recent plenary session of the Fifth Constitutional Convention on Tuesday, May 6, 2008. The paper's Publisher/Editor is a Convention delegate from the District of St. Croix.

The editorial clearly makes the case for the parliamentary process in the affairs of what should be an

area primarily ministerial in its composition, with the editor's editorials providing sound support to complex proceedings.

Despite challenges, the University continues to see itself as an important institution in ensuring that the Virgin Islands' Constitutional Convention is successful. As such, the University has invited the editor of the *VI News* to speak at the University's graduation ceremony on June 14, 2008. This will be an opportunity for the editor to answer your questions.