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A Legacy of Discrimination: A Brief History of U.S. Territories in the American Bar Association

Anthony M. Ciolli

ABSTRACT. The American Bar Association (ABA) has done much to remedy its history of racial discrimination. However, to this day, the ABA systematically discriminates against lawyers in four overwhelmingly nonwhite U.S. territories. This Essay examines the history of this discrimination and proposes a potential way forward to remedy it.

INTRODUCTION

The American Bar Association (ABA) plays an extraordinarily important role in shaping not just the legal profession, but also our nation. While the ABA is nominally a voluntary professional association with no power to discipline lawyers or judges, its Model Rules of Professional Conduct, Model Code of Judicial Conduct, Model Rules for Lawyer Disciplinary Enforcement, Model Rule for Minimum Continuing Legal Education, and numerous other model rules and codes have been broadly adopted and given the force of law in most U.S. jurisdictions.[1] The ABA Standing Committee on the Federal Judiciary rates federal judicial nominees as "Well-Qualified," "Qualified," or "Not Qualified," and serves a formal role in the nomination and confirmation process through the White House, the Senate Judiciary Committee, or both.[2] And, of course, the

1. *See* Michael W. Price, Comment, *A New Millenium's Resolution: The ABA Continues Its Regrettable Ban on Multidisciplinary Practice*, 37 HOUS. L. REV. 1495, 1501 (2000) ("[A]lthough the ABA's Model Rules are not binding authority in any jurisdiction, most states give the Model Rules the force of law by adopting substantial portions of them into their own rules." (footnote omitted)).

2. *See generally* John R. Lott, Jr., *The American Bar Association, Judicial Ratings, and Political Bias*, 17 J.L. & POL. 41 (2001) (outlining the history of the American Bar Association (ABA) ratings of federal judicial nominees).

ABA accredits law schools through its Section on Legal Education and Admissions to the Bar, with virtually all U.S. jurisdictions mandating graduation from an ABA-accredited law school as a prerequisite to admission to the bar.[3] Simply put, the ABA wields significant power and influence not just over the legal profession, but also over national policy.

Yet much like the United States in denying constitutional rights, social-welfare programs, or a path to statehood to the territories, the ABA has historically rejected—and continues to exclude—entire swaths of the legal profession. The 1878 meeting that led to the creation of the ABA expressly "called on a select group of Anglo-Saxon lawyers to meet in Saratoga, New York, with the purpose of founding the ABA."[4] Not surprisingly, the ABA formally excluded African American lawyers from membership from its founding all the way through 1943,[5] and it openly used its accreditation powers to erect barriers designed to reduce the number of minorities in the legal profession.[6] ABA leaders, for instance, recommended a college education as a prerequisite to bar admission "so that the immigrants could 'absorb American ideals'"[7] and proactively sought to deny accreditation to law schools that primarily served African Americans.[8] The ABA likewise did not admit women into its membership until 1918,[9] and even after admitting women as members, it expressly excluded women's bar associations from its House of Delegates through World War II.[10]

But African Americans and women were not the only groups excluded from and later marginalized by the ABA. Often forgotten are the profound exclusion, marginalization, and in some instances visceral hate directed by the ABA and its leadership towards the Indigenous people of the U.S. insular territories. The ABA certainly contributed to the discrimination faced by minority and women lawyers more than 150 years ago, which remains impactful to this day. But that discrimination was primarily directed towards *lawyers*. The ABA's discrimination

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3. *See* Maureen A. O'Rourke, *The "Law" and "Spirit" of the Accreditation Process in Legal Education*, 66 SYRACUSE L. REV. 595, 599-600 (2016).

4. Adjoa Artis Aiyetoro, *Truth Matters: A Call for the American Bar Association to Acknowledge Its Past and Make Reparations to African Descendants*, 18 GEO. MASON U. C.R. L.J. 51, 66 (2007).

5. George B. Shepherd, *No African-American Lawyers Allowed: The Inefficient Racism of the ABA's Accreditation of Law Schools*, 53 J. LEGAL EDUC. 103, 109 (2003).

6. *Id.* at 110-11.

7. *Id.* at 111 (quoting Harry First, *Competition in the Legal Education Industry (1)*, 53 N.Y.U. L. REV. 311, 363 (1978)).

8. *Id.* at 113.

9. *History*, N.Y. WOMEN'S BAR ASS'N, https://www.nywba.org/history2 [https://perma.cc/XJV6-Q9UR].

10. *See* Gwen Hoerr Jordan, *Agents of (Incremental) Change: From Myra Bradwell to Hillary Clinton*, 9 NEV. L.J. 580, 637 (2009).

against the territories affected more than just territorial lawyers—it literally resulted in the withholding of many of the most fundamental rights embodied in the U.S. Constitution from *all people* living in these insular territories.

Indeed, the ABA's principal founder, Simeon E. Baldwin, played a key role by crafting the racist legal theories that the Supreme Court would ultimately adopt in the *Insular Cases* as the justification for withholding many constitutional rights from the so-called unincorporated territories.[11] And while the ABA has made meaningful efforts to remedy its history of discrimination against women and African Americans, it has not done so with respect to the people of the territories. In fact, lawyers who reside in U.S. territories remain to this day the only class of lawyers excluded from the upper echelons of ABA leadership, including the Board of Governors and the Nominating Committee.[12]

This Essay strives to draw attention to the role of the ABA and its early leaders—particularly Baldwin—in establishing the insular territories of the United States as a largely Constitution-free zone, as well as the continuing exclusion of territorial lawyers from ABA governance. Additionally, while the territories are conventionally treated as ancillary to U.S. constitutional law and mainstream legal culture, the ABA's long history of discrimination against them reveals that the territories' legal suppression lies at the heart of our shared legal history.

Part I provides historical background on America's insular territories and the active role of Baldwin and others in crafting the doctrine of territorial incorporation that the Supreme Court of the United States would recognize in the *Insular Cases*. Part II sets forth the history of exclusion, inclusion, and re-exclusion of lawyers from U.S. territories in ABA governance. Part III then examines contemporary efforts to provide the territories with a seat at the table at the highest levels of ABA leadership. Finally, Part IV considers the path forward, including efforts that the ABA should make to provide lawyers from the territories with full and equal participation in ABA governance and to remedy the damage it has done to the legal and political status of the U.S. territories.

I. U.S. TERRITORIES: THE FIRST 125 YEARS

Until the end of the nineteenth century, the status of U.S. territories within the American political and legal framework seemed largely certain. Article IV, Section 3, Clause 2 of the U.S. Constitution—commonly known as the Territorial Clause—provides:

11. *See* discussion *infra* Part II.

12. *See* discussion *infra* Part III.

> 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.[13]

The Founders adopted the Territorial Clause to address one of the greatest fears facing the newly independent nation: that the thirteen colonies, while united against Great Britain, would eventually turn against each other as they sought to expand their borders westward.[14] By vesting authority over these territories directly in Congress, the Founders intended for Congress to serve a role similar to that of a trustee, establishing an initial government and overseeing a transition to greater self-government that would culminate in "eventual admission as new states coequal to the original states under the procedure set forth in the Admissions Clause."[15] Consistent with this purpose, the Supreme Court repeatedly held that all parts of the U.S. Constitution, including the guarantees set forth in the Bill of Rights, extended to the territories.[16]

This all changed at the end of the nineteenth century. The United States completed its vision of Manifest Destiny with the Gadsden Purchase in 1853, acquiring its last piece of land within the continental United States.[17] Yet the United States did not simply cease its efforts at expansion. On the contrary, the United States then sought to extend even beyond North America. Congressman Reuben Davis articulated in 1859:

> [W]e may expand so as to include the whole world. Mexico, Central America, South America, Cuba, the West India Islands, and even England and France [we] might annex without inconvenience . . . allowing them with their local Legislatures to regulate their local affairs in their own way. And this, Sir, is the mission of this Republic and its ultimate destiny.[18]

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13. U.S. CONST. art. IV, § 3, cl. 2.

14. *See* Anthony M. Ciolli, *United States Territories at the Founding*, 35 REGENT U. L. REV. 73, 74-77 (2022).

15. *Id.* at 80-81.

16. *See, e.g.*, Thompson v. Utah, 170 U.S. 343, 346 (1898); Callan v. Wilson, 127 U.S. 540, 550 (1888); Webster v. Reid, 52 U.S. 437, 453 (1850).

17. *See* Daniel Berkowitz & Karen Clay, *The Effect of Judicial Independence on Courts: Evidence from the American States*, 35 J. LEGAL STUD. 399, 403 (2006).

18. THOMAS A. BAILEY, A DIPLOMATIC HISTORY OF THE AMERICAN PEOPLE 277 n.38 (1950) (quoting CONG. GLOBE, 35th Cong., 2d Sess. 705 (1859)).

The United States began this worldwide expansion project by annexing various uninhabited islands in the Caribbean Sea and the Pacific Ocean, such as Baker Island, Jarvis Island, Navassa Island, and Howland Island.[19] Before long, however, the United States began taking possession of inhabited areas as well. At first it did so peacefully, obtaining Alaska from Russia via treaty[20] and Hawaii at the request of its own government after the overthrow of Queen Liliuokalani and the Hawaiian monarchy.[21] But the United States would ultimately join European powers in becoming a colonial power through war. At the conclusion of the Spanish-American War in 1898, the United States annexed Guam, the Philippines, and Puerto Rico from Spain.[22] The annexation of these overseas territories with overwhelmingly nonwhite populations would forever change the law of the territories, spurred in part by the ABA and the racist ideology of its principal founder, Simeon E. Baldwin.

II. THE ABA AND THE *INSULAR CASES*

Prior to the start of the twentieth century, it had been understood that territorial status served as a temporary — and often fleeting — step on the path to statehood.[23] Yet the annexation by the United States of Puerto Rico, the Philippines, and Guam posed significant constitutional questions — not because of any inherent uncertainty, but due to the racist ideologies common among American elites during this period.

Despite the presence of Indigenous peoples, Euro-American settlers viewed the territories that made up the American West as new areas without preexisting governments and with a "sparse population" spread out over "vast distances,"

19. The United States claimed these islands and others pursuant to the Guano Islands Act, which enabled any citizen of the United States to take possession in the name of the United States of any unclaimed island containing deposits of guano, a substance used to create gunpowder and agricultural fertilizer. Act of Aug. 18, 1856, ch. 164, 11 Stat. 119 (codified as amended at 48 U.S.C. § 1411 (2018)).

20. *See* Treaty Concerning the Cession of the Russian Possessions in North America by His Majesty the Emperor of All the Russias to the United States of America art. I, Russ.-U.S., Mar. 30, 1867, 15 Stat. 539.

21. *See* Joint Resolution of July 7, 1898, 30 Stat. 750.

22. *See* Treaty of Peace Between the United States of America and the Kingdom of Spain art. I-II, Spain-U.S., Dec. 10, 1898, 30 Stat. 1754.

23. *See* Natalie Gomez-Velez, *De Jure Separate and Unequal Treatment of the People of Puerto Rico and the U.S. Territories*, 91 FORDHAM L. REV. 1727, 1742 (2023); *see also* Christina Duffy Burnett, *United States: American Expansion and Territorial Deannexation*, 72 U. CHI. L. REV. 797, 802 (2005) (arguing that the *Insular Cases* clarified how not all territories must be transformed into states and that Congress could deannex territories it had once annexed).

allowing for "the slow arrival of effective government."[24] Puerto Rico, Guam, and the Philippine Islands did not fit this profile. These overseas territories were "densely populated"—not by Euro-Americans, but by those considered to be "alien peoples"[25] who were "widely thought to be racially and culturally inferior to the Anglo-Americans on the continent."[26] It was this prospect—the extension of constitutional rights to the "'savage,' 'half-civilized,' 'ignorant and lawless' 'alien races' [that] inhabit[ed these] territories"—that led many of the leading scholars and lawyers of the time to advocate openly "for separate and unequal treatment of the territories acquired after the Spanish-American War based on conceptions of racial inferiority."[27]

Among those publishing such openly racist so-called "scholarship" was Simeon E. Baldwin. In a *Harvard Law Review* article, Baldwin wrote:

> Our Constitution was made by a civilized and educated people. It provides guaranties of personal security which seem ill adapted to the conditions of society that prevail in many parts of our new possessions. To give the half-civilized Moros of the Philippines, or the ignorant and lawless brigands that infest Puerto Rico, or even the ordinary Filipino of Manila, the benefit of such immunities from the sharp and sudden justice—or injustice—which they have been hitherto accustomed to expect, would, of course, be a serious obstacle to the maintenance there of an efficient government.[28]

Baldwin also argued against the conferral of constitutional rights on the people of these territories in a *Yale Law Journal* article:

> Our recent extension of territory by including Hawaii has probably made all the natives of that country citizens of the United States. They are not, however, and probably never will be, the people of a state. Would it be wise to invest them with a right to bear arms, which they never enjoyed by force of a similar guaranty, under their former government? We may incorporate Puerto Rico and the Philippines. Would it be safe to extend

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24. *See* Andrew P. Morriss, *Hayek & Cowboys: Customary Law in the American West*, 1 N.Y.U. J. L. & LIBERTY 35, 62 (2005).

25. Efrén Rivera Ramos, *The Legal Construction of American Colonialism: The* Insular Cases *(1901-1922)*, 65 REV. JURÍDICA U. P.R. 225, 237 (1996).

26. Joseph E. Sung, *Redressing the Legal Stigmatization of American Samoans*, 89 S. CAL. L. REV. 1309, 1318 (2016).

27. Anthony M. Ciolli, *Territorial Constitutional Law*, 58 IDAHO L. REV. 206, 211-12 (2022).

28. Simeon E. Baldwin, *The Constitutional Questions Incident to the Acquisition and Government by the United States of Island Territory*, 12 HARV. L. REV. 393, 415 (1899).

> to all their population these immunities which Americans rightfully claim as their proper birthright?[29]

These writings were influential in large part due to the credentials and fame of their author. At the time of these writings, Baldwin served as a professor at Yale Law School, a position that he held for nearly sixty years, and would later serve as Chief Justice of the Supreme Court of Connecticut and for two terms as Governor of Connecticut.[30] However, Baldwin was perhaps best known, then as well as today, as the principal founder of the ABA—a role for which the ABA continues to commemorate him.[31] In addition to serving as its President from 1890 to 1891,[32] Baldwin was credited as "the 'founder and original guiding spirit' of the ABA"[33] and as the drafter of the original ABA constitution.[34]

To understand the importance of Baldwin's writings, one must understand the ABA. Today, the ABA is "an outsized player in the legal world" whose actions have enormous sway with the federal government, state supreme courts and other courts of last resort, bar admissions and disciplinary authorities, and other legal institutions.[35] But the ABA was not always so powerful. For the first fifty years of its existence, the ABA was largely ineffective due to its "failure to effect an integration with local and state bar associations," which resulted in its membership and leadership not being representative of the legal profession.[36]

This first began to change in the early twentieth century, when the ABA established a permanent section consisting of state and local bar associations.[37]

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29. Simeon E. Baldwin, *The People of the United States*, 8 YALE L.J. 159, 164 (1899).

30. *See* Comment, *Simeon E. Baldwin*, 36 YALE L.J. 680, 680-81 (1927).

31. *See ABA Timeline*, AM. BAR ASS'N, https://www.americanbar.org/about_the_aba/timeline [https://perma.cc/EX8K-DSKU].

32. *Id.*

33. James M. Altman, *Considering the ABA's 1908 Canons of Ethics*, 71 FORDHAM L. REV. 2395, 2417 n.142 (2003) (quoting Charles E. Clark, *Foreword* to FREDERICK H. JACKSON, SIMEON EBEN BALDWIN: LAWYER, SOCIAL SCIENTIST, STATESMAN, at vii, x (1955)).

34. David S. Clark, *The Modern Development of American Comparative Law: 1904-1945*, 55 AM. J. COMPAR. L. 587, 594 (2007).

35. Jack Park, *ABA Model Rule 8.4(g): An Exercise in Coercing Virtue?*, 22 CHAP. L. REV. 267, 268 (2019); David M. Leonard, Note, *The American Bar Association: An Appearance of Propriety*, 16 HARV. J.L. & PUB. POL'Y 537, 537 (1993) ("The ABA has a great impact on practicing attorneys, law students, law professors, the judiciary, and, ultimately, our entire society. It rates judicial nominees, accredits law schools, serves as an information source and debate forum, drafts model codes applicable to various areas of the law, promulgates the rules which regulate the legal profession, and lobbies state and federal governments on numerous issues.").

36. JAMES W. HURST, THE GROWTH OF AMERICAN LAW: THE LAW MAKERS 297 (1950).

37. *See Proceedings of the Fifth Annual Conference of Bar Association Delegates*, 43 ANN. REP. A.B.A. 395, 396 (1920).

The process culminated in 1936, when the ABA amended its constitution to adopt a mission "to correlate the activities of the Bar organizations of the respective States on a representative basis in the interest of the legal profession and of the public throughout the United States."[38] To effectuate this mission, the ABA revolutionized its entire governance structure, transitioning to a federalist system where policy decisions would be made by a House of Delegates consisting of "representatives of national, state, and local organizations of legal professionals."[39]

As a result of these changes, "the ABA was no longer merely another legal club competing for membership" but "had transformed itself into an umbrella organization containing many different legal interests."[40] Shortly thereafter, state governments, as well as relevant federal entities, vested the ABA with its formal roles regarding law-school accreditation, screening of federal judicial nominees, and establishing the canons of conduct for lawyers and judges.[41]

The hostility to the people of the territories reflected in Baldwin's scholarship permeated the ABA during this period. Shortly after the annexation of the Philippines, Puerto Rico, and Guam, and just months before publication of Baldwin's articles, the ABA convened for its Twenty-First Annual Meeting in Saratoga Springs, New York, from August 17 to 19, 1898. At that meeting, attorney Edward F. Bullard of New York moved for adoption of the following resolution:

> *Resolved*, That in the judgment of the American Bar Association it is the duty of our government to utilize its present opportunity to secure to the people of the Philippine Islands as far as practicable the benefits of American civilization.[42]

Shortly after Bullard moved for adoption of this resolution, Baldwin stood to make the following motion: "I move that the resolution be referred without debate to the Committee on International Law for report next year, if it is thought advisable to make any."[43] Baldwin's motion carried.[44] By referring the matter to this committee, Baldwin effectively killed the resolution; there is no indication that the resolution was ever reintroduced after this referral.

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38. *Constitution and By-Laws: 1936-1937*, 61 ANN. REP. A.B.A. 963, 966 (1936).

39. ROSCOE POUND, THE LAWYER FROM ANTIQUITY TO MODERN TIMES: WITH PARTICULAR REFERENCE TO THE DEVELOPMENT OF BAR ASSOCIATIONS IN THE UNITED STATES 280 (1953).

40. Leonard, *supra* note 35, at 545.

41. *Id.* at 545-46.

42. *See Transactions of the Twenty-First Annual Meeting of the American Bar Association Held at Saratoga Springs, New York, August 17, 18, and 19, 1898*, 21 ANN. REP. A.B.A. 3, 15 (1898).

43. *Id.*

44. *Id.*

Such aspersions on the people of these overseas territories continued after the Supreme Court decided the *Insular Cases*. At the ABA's 1902 annual meeting, the ABA's President invited Congressman Charles E. Littlefield to give an address on the *Insular Cases*. Congressman Littlefield was critical of the *Insular Cases*, in part because, in his opinion, the Court had not been racist enough in its assumptions:

> What are the direful consequences that inhere in the application of all of the provisions of the Constitution to the territories? I can understand how sugar and tobacco planters, and raisers of tropical fruits, can see "serious" consequences in conditions that might compel them by competition to reduce the price of their goods to the consumer, and hence the importance of being able to discriminate against such competitors. Such consequences, however, would not necessarily be very "serious" to the great mass of our people.
>
> Inasmuch as voting and representation are not elements, what other consequences are there that should be guarded against with such zeal. Is it the competition of cheap labor? We have emancipated millions in our own land without disturbing labor conditions. There were those who thought that upon emancipation "a torrent of black emigration would set forth from the South to the North[]" "one of the first results of its emigration would be a depreciation in the price of labor. The added number of laborers would, of itself, occasion this fall of prices, but the limited wants of the negro, which enable him to underwork the white laborer, would tend still further to produce this result. The honest white poor of the North would, therefore, be either thrown out of employment entirely by the black, or forced to descend to an equality with the negro, and work at his reduced prices."
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> None of these woes have vexed us. The negro cannot be driven out of the South. He has as yet made no injurious competitive industrial development here, surrounded by vast natural resources, and *the Filipino is ten thousand miles away. He is vastly the superior of the Filipino physically, and until the Philippines produce a Fred Douglass or a Booker T. Washington, he has nothing to fear in an intellectual comparison*. The temporary inconvenience of internal revenue laws seems to me vastly overestimated. Mere inconvenience can hardly determine a constitutional question.[45]

These words are strikingly racist. Congressman Littlefield cast the people of the overseas territories as inferior not only to whites but also to African Americans,

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45. Charles E. Littlefield & J.B. Henderson, *The* Insular Cases *II*, 15 HARV. L. REV. 281, 295-96 (1901) (emphasis added).

providing white ABA members who supported civil rights with a seemingly reasonable justification—or sufficient political cover—to oppose equal treatment of the people of the overseas territories.

But during this period, the ABA did not merely refuse to support proactively the extension of the U.S. Constitution to the Philippines or other territories; the organization actively opposed inclusion of lawyers from the territories in its membership, just as it had done with African Americans and women. In 1912, the ABA Section of Legal Education considered the adoption of uniform standards for admission to the bar, proposed by a special committee established for that purpose the prior year.[46] The first rule proposed by the committee read in its entirety as follows: "The candidate shall on admission be a citizen of the United States."[47] During the drafting process, it had been brought to the committee's attention that this language excluded the inhabitants of the territories of Puerto Rico and the Philippines:

> It has been suggested that provision should be made for the admission to the Bar of our courts of the inhabitants of Porto Rico and the Philippines. Under the present law, they are not citizens of the United States, and yet, not being aliens, cannot be naturalized. *Query*: As a matter of principle, should or should not an American court admit as a practitioner at its Bar one whom the people of the United States, through the legislative and judicial departments, have refused to recognize as a citizen of the United States?[48]

The committee solicited feedback on the proposal, with "70% of those replying favor[ing] the proposition in its present form; [and] 24% additional also approv[ing] United States citizenship as a prerequisite to admission, except that they would [exempt] Puerto Ricans and Filipinos from the operation of the rule," with only "[l]ess than 6% [being] wholly opposed to citizenship as a prerequisite to admission to the Bar."[49] The recommendations of the committee, including this citizenship restriction, were brought to the section for a vote at its 1912 annual meeting and were adopted by the section without any notable dissent.[50] Thus, the exclusion of the territories was no accident or oversight: ABA leadership, as well as the general ABA membership, knew precisely what they were doing.

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46. *See ABA Timeline*, *supra* note 31.

47. *Report of the Committee on Standard Rules for Admission to the Bar*, 35 ANN. REP. A.B.A. 813, 818 (1912).

48. *Id.* at 818-19.

49. *Id.* at 821.

50. *Proceedings of the Section of Legal Education*, 35 ANN. REP. A.B.A. 710, 719 (1912).

III. U.S. TERRITORIES IN ABA INTERNAL GOVERNANCE

The early ABA certainly was not a friend of the territories with respect to questions of policy. But what about internal ABA governance, both before and after its 1936 transition to a federalist structure? Even if the ABA failed to advocate for the interests of the Indigenous people of the insular territories, did it at least afford some semblance of equality to the *lawyers* of these territories? The answer, unsurprisingly, is no.

The ABA constitution first drafted by Baldwin in 1878 remained largely in place for the first fifty years of the ABA's existence.[51] That constitution, at least facially, appears progressive for its time. Article II, titled "Qualifications for Membership," provided in its entirety:

> Any person shall be eligible to membership of this Association who shall be, and shall, for five years next preceding, have been, a member in good standing of the Bar of any State, and who shall also be nominated as hereinafter provided.[52]

The word "person" appeared without qualification—the 1878 constitution contained no language that excluded women, African Americans, other racial minorities, or anyone else from the definition of person (although certainly these groups were in many cases de facto excluded due to state laws prohibiting them from bar membership).[53] And while Article II limited membership to those who were a member of a "State" bar, Article XI, titled "Construction," provided: "The word *State*, wherever used in this Constitution, shall be deemed to be equivalent to *State*, *Territory* and the *District of Columbia*."[54]

Thus, the early ABA constitution appeared—at least facially—nondiscriminatory with respect to residence, giving lawyers from the states, territories, and the District of Columbia an equal opportunity to join the association. Moreover, the early ABA governance structure provided for the election of officers from the membership by the membership, as well as for a "Vice-President from each State."[55] In other words, the early ABA constitution ostensibly also provided all

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51. *See ABA Timeline*, *supra* note 31 (noting that a new Constitution and Bylaws were adopted in 1936.

52. *Constitution*, 1 ANN. REP. A.B.A. 30, 30 (1878).

53. See Taunya Lovell Banks, *Setting the Record Straight: Maryland's First Black Women Law Graduates*, 63 MD. L. REV. 752, 752 (2004) (summarizing the laws, largely concentrated in Southern states, that prohibited women and African Americans from practicing law).

54. *Constitution*, *supra* note 52, at 32.

55. *Id.* at 30.

states, territories, and the District of Columbia with an equal opportunity to participate in the ABA's internal governance.

But the ABA did not interpret its constitution according to its plain text. When Baldwin and the Connecticut Bar Association called for lawyers to attend the inaugural meeting to establish the ABA, they invited only Anglo-Saxon lawyers.[56] And notwithstanding the constitutional language permitting "[a]ny person" to join the ABA, the organization proactively excluded African American lawyers from membership until 1943[57] and admitted few women lawyers during the first half of the twentieth century.[58] In fact, when the ABA discovered that three lawyers it had admitted in 1912 were African American, it took immediate action to expel those lawyers and passed a resolution providing that "it has never been contemplated that members of the colored race should become members of this Association."[59] Article II of the early ABA constitution's promise of membership to "any person" was thus facially progressive but ultimately illusory.

Similarly, the language in Article XI defining the term "State" as "State, Territory and the District of Columbia" did not mean what it said. Importantly, the ABA did not overtly discriminate against the residents of any territories when it first adopted its constitution in 1878. After all, in 1878 all the U.S. territories were either in the contiguous United States with a majority-white population; completely uninhabited islands claimed due to their guano deposits; or, in the case of Alaska, governed as if it were a military base with no civilian government.[60] In other words, at the time Article XI was drafted, few could contemplate that the United States would one day annex overseas majority-minority territories.

The ABA's discrimination against the territories did not begin until after 1898, when the United States annexed Hawaii at the request of its then-government and acquired Puerto Rico, Guam, and the Philippines without the consent of their people as spoils of the Spanish-American War.[61] How did the ABA treat lawyers from these and the other insular, overwhelmingly nonwhite territories that the United States would acquire over the course of the next two decades?

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56. Aiyetoro, *supra* note 4, at 66.

57. Shepherd, *supra* note 5, at 109.

58. Jordan, *supra* note 10, at 637-38.

59. J. CLAY SMITH, JR., EMANCIPATION: THE MAKING OF THE BLACK LAWYER 1844-1944, at 543 (1993); *see also* David B. Wilkins, *Doing Well by Doing Good? The Role of Public Service in the Careers of Black Corporate Lawyers*, 41 HOUS. L. REV. 1, 55-56 (2004) (recounting the same, and noting that one of the three expelled lawyers, William Henry Lewis, was "both a Harvard Law graduate and one of the highest ranking officials in the Department of Justice" at the time).

60. *See* Eric Sandberg, *A History of Alaska Population Settlement*, ALASKA DEP'T OF LAB. & WORKFORCE DEV. 8 (2013), https://live.laborstats.alaska.gov/pop/estimates/pub/pophistory.pdf [https://perma.cc/TYY7-6U3G].

61. *See supra* Part II.

The historical record contains relatively little direct evidence of the treatment of these territories within ABA governance. Nevertheless, the overwhelming circumstantial evidence indicates that the early ABA did not treat these overseas, largely nonwhite territories as a "State, Territory and the District of Columbia" within the meaning of Article XI or its successor provisions.

For the first several decades of its existence, the ABA published a print membership directory containing a list of all its members, organized both alphabetically and by "state" of residence. The ABA membership directories published between 1898 and 1909 did not list any ABA members residing in Guam, the Philippines, Cuba, American Samoa, or the Panama Canal Zone.[62] And while a single member, John G. Ewing, is listed as residing in Puerto Rico in the 1907-08 membership directory,[63] membership records reveal that attorney Ewing had been granted ABA membership when he previously resided in Indiana; he served as a delegate from the Indiana Bar Association and only moved to Puerto Rico afterwards.[64] Nor did any of the published bar-association delegate lists — that is, the roster of individuals representing state and local bar associations at the ABA Annual Meeting — include any delegates from the bar associations of any of the insular territories.[65]

One could perhaps speculate that the complete absence of lawyers from these overseas territories in the ABA may be due to factors other than invidious discrimination. As summarized in Part I, the ABA did not support the overseas territories on matters of policy; perhaps lawyers from those territories simply desired no part in such an organization. And, in a world without air travel, it could take weeks or even months — not to mention great expense — to travel from the Philippines, Guam, or even Puerto Rico by boat to a port in the mainland United States and then by rail from that port to the city hosting the ABA Annual Meeting. Perhaps logistics or economics, as opposed to deliberate exclusion on the ABA's part, made participation in the ABA impractical for lawyers from the overseas territories.

The available historical record is silent as to whether a lawyer from one of those territories filed an application for membership yet was denied. However, the historical record does provide strong evidence that, before an amendment in 1909, lawyers from those insular territories could not qualify for ABA membership (and, by extension, a role in ABA governance), regardless of any desire to

62. The membership lists for this period are reprinted in Volumes 21 through 32 of the Annual Reports of the American Bar Association.

63. *Members and Delegates Registered at the Twenty-Seventh Annual Meeting*, 31 ANN. REP. A.B.A. 254, 323 (1907).

64. *State List of Members: 1907-1908*, 27 ANN. REP. A.B.A. 76, 79 (1904).

65. The delegate lists are also reprinted in Volumes 21 through 32 of the Annual Reports of the American Bar Association.

join. At its 1909 annual meeting, the ABA adopted a motion to amend Article XI to add the phrase "and the insular and other possessions of the United States" to the conclusion of the existing language,[66] so that it would read: "The word 'state,' whenever used in this Constitution, shall be deemed to be equivalent to *state*, *territory*, the *District of Columbia* and the *insular and other possessions of the United States*."[67] The ABA apparently made the amendment in response to comments by the Chair of the ABA Committee on Uniform State Laws on the failure of Puerto Rico and the Canal Zone to participate in the work of the Conference of Commissioners on Uniform State Laws.[68]

The amendment led to some positive changes. The year after passing this amendment, the ABA admitted its first three members from Puerto Rico.[69] Two years later, the ABA admitted five attorneys from the Philippines,[70] and the first attorney from the U.S. Virgin Islands joined the ABA in 1923.[71] Still, the use of "insular and other possessions" to refer to Puerto Rico and the Canal Zone suggests that the ABA did not consider these overseas territories to be territories for purposes of the ABA constitution, but something else—mere possessions.

Besides permitting membership from the overseas territories, the 1909 amendment also conferred upon most of those territories an equal role in ABA internal governance. Over the next several years, the Philippines, Puerto Rico, and the Canal Zone appointed attorneys to their respective State Vice President positions, who served on the ABA's General Council, the predecessor to its current Board of Governors.[72] While it does not appear that the U.S. Virgin Islands ever received a State Vice President, it seems likely that this never occurred because that territory's membership in the ABA never exceeded one attorney and, for numerous years, was nonexistent.[73] Significantly, the U.S. Virgin Islands was—and still is—a territory whose population is overwhelmingly African Caribbean and African American,[74] and thus many Virgin Islands lawyers were not permitted to join the ABA due to its then-prohibition on Black members.

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66. *Transactions of the Thirty-Second Annual Meeting of the American Bar Association*, 32 ANN. REP. A.B.A. 3, 47-48 (1909).

67. *Constitution*, 32 ANN. REP. A.B.A. 145, 148 (1909) (emphasis added).

68. *Transactions of the Thirty-Second Annual Meeting*, *supra* note 66, at 47.

69. *State List of Members: 1910-1911*, 33 ANN. REP. A.B.A. 241, 312 (1910).

70. *State List of Members: 1911-1912*, 34 ANN. REP. A.B.A. 179, 218 (1911).

71. *State List of Members by Cities and Towns*, 46 ANN. REP. A.B.A. 906, 1042 (1923).

72. The historical list of state vice presidents is reprinted in the pertinent volumes of the Annual Reports of the American Bar Association for the corresponding bar years.

73. The membership lists for this period are reprinted in the pertinent volumes of the Annual Reports of the American Bar Association.

74. A 1917 census of the U.S. Virgin Islands, conducted by the Census Bureau shortly after that territory's acquisition by the United States, classified 74.9% of the population as "Negroes,"

The seeming equality in internal ABA governance after the 1909 amendment was short-lived. In 1936, the ABA adopted constitutional amendments that completely changed its governance structure. The ABA committee tasked with drafting these amendments—the Special Committee on Coordination of the Bar—recommended that the ABA adopt the governance structure of the American Medical Association by establishing a House of Delegates to address policy matters and a smaller Board of Governors to manage the association.[75] The stated purpose of these drastic changes was to make the ABA "inclusive and . . . representative" since "far too few of the lawyers who are active and influential in the leadership of public opinion are active in the American Bar Association," and because members tended to skew older and more conservative, leaving "little opportunity for the youth, idealism, and liberalism, of the country and of the Bar as a whole, to find useful activity and actual influence in the organized Bar."[76]

Consistent with the now-prevailing vision of the ABA as a federation of bar associations, seats in the House of Delegates and the Board of Governors were allocated to the states.[77] The 1936 ABA constitution, however, expressly undid the earlier 1909 amendment that had defined "state" as "equivalent to state, territory, the District of Columbia and the insular and other possessions of the United States."[78] The new constitution instead adopted a more restrictive definition: "The term 'State' wherever used in this Constitution and By-Laws shall include each the District of Columbia and the Territory of Hawaii."[79]

The other territories that previously appointed State Vice Presidents under the prior ABA constitution—Alaska, Puerto Rico, the Philippines, and the Canal Zone—were not completely disenfranchised, but they were consolidated into an entity known as the "Territorial Group" that was entitled to only a single delegate, despite its members coming from all around the globe.[80] The overseas territories that had not received State Vice Presidents under the prior ABA constitution were even worse off. The U.S. Virgin Islands, Guam, and American Samoa were excluded even from this "Territorial Group" and thus received no representation at all under the 1936 constitution since their attorneys did not belong to a "state" as that term had been defined in the ABA Constitution.

17.5% as "of mixed white and Negro blood," and 7.4% as "whites." *See* DEP'T OF COMMERCE, BUREAU OF THE CENSUS, CENSUS OF THE VIRGIN ISLANDS OF THE UNITED STATES 44 (1917).

75. *See Report of the Special Committee on Coordination of the Bar*, 58 ANN. REP. A.B.A. 556, 570-71 (1935).

76. *Id.* at 560-61.

77. *Constitution and By-Laws*, *supra* note 38, at 966.

78. *Constitution*, *supra* note 67, at 148.

79. *Constitution and By-Laws*, *supra* note 38, at 966.

80. *Id.* at 970.

The "Territorial Group" immediately became the subject of criticism. At the 1936 Annual Meeting—the first meeting of the House of Delegates and the Board of Governors under the new governance structure—attorney William C. Rigby of the District of Columbia spoke on behalf of the Governor of Puerto Rico, decrying the "Territorial Group" as being "composed of wholly dissimilar elements."[81] Ultimately, in 1938, the ABA would accede to this internal and external pressure to amend the ABA constitution again, removing Puerto Rico from the "Territorial Group"[82] and adding it to the definition of "state."[83]

After the removal of Puerto Rico, the "Territorial Group" otherwise persisted until it dissolved by necessity in 1959 upon Alaska achieving statehood, the Philippines achieving independence, and the Canal Zone effectively withdrawing from the ABA due to its nonparticipation.[84] The House of Delegates voted to amend the ABA constitution not just to eliminate the vestigial references to the nonexistent "Territorial Group," but also to remove any implication that other territories—specifically, Guam and the U.S. Virgin Islands, which were identified by name—would be treated as "states" and would ever be entitled to representation in the House of Delegates.[85]

IV. CONTEMPORARY ATTEMPTS AT EQUAL REPRESENTATION IN THE ABA

The ABA has attempted to make amends for its systematic, decades-long exclusion of African Americans and women. Today, the ABA constitution sets aside seats on its powerful Board of Governors for two women, two racially or ethnically diverse persons, and one person who self-identifies as LGBTQ+ or as having a disability.[86] The Nominating Committee that selects ABA officers and Board members similarly reserves seats for three women, three racially and ethnically diverse persons, one LGBTQ+ person, and one disabled person.[87] The ABA also includes as Goal III of its Mission Statement the objectives of "[p]romot[ing] full and equal participation in the association, our profession, and the

81. *Proceedings of the Fifty-Ninth Annual Meeting of the American Bar Association*, 61 ANN. REP. A.B.A. 1, 69-70 (1936).

82. *Constitution and By-Laws*, 63 ANN. REP. A.B.A. 789, 793 (1938).

83. *Id.* at 789.

84. *Proceedings of the House of Delegates*, 84 ANN. REP. A.B.A. 130, 134 (1959).

85. *Id.*

86. *Constitution and Bylaws: Rules of Procedure House of Delegates, 2023-2024*, AM. BAR ASS'N 12 (2023), https://www.americanbar.org/content/dam/aba/administrative/house_of_delegates/constitution-and-bylaws/constitution-and-bylaws.pdf [https://perma.cc/P9CZ-W8M9].

87. *Id.* at 14.

justice system by all persons," and "[e]liminat[ing] bias in the legal profession and the justice system."[88] Likewise, Goal IV of its Mission Statement calls for the ABA to "[w]ork for just laws, including human rights, and a fair legal process," as well as to "[a]ssure meaningful access to justice for all persons."[89] On the policy side, the ABA shifted from "political stances [that] were conservative" in the early and mid-twentieth century to what are now often perceived as "liberal causes," such as support for gun-control measures, abortion, and the Equal Rights Amendment.[90]

But the ABA remains surprisingly indifferent towards remedying the discriminatory amendments to the ABA constitution, even though the legal profession's antiquated views on race played a significant role in U.S. territories being denied an assortment of rights throughout the twentieth century. While the four excluded territories — the U.S. Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa — had been requesting representation in ABA governance since the 1970s,[91] the ABA took no action to improve the status of the territories until the 1989 Midyear Meeting. At that meeting, the House of Delegates passed a resolution to amend the ABA constitution to provide the Virgin Islands Bar Association with a voting delegate in the House.[92] However, this resolution was significantly watered down from the original resolution that had been introduced, which would have treated the U.S. Virgin Islands as if it were a state and consequently would have (1) provided it with a State Delegate who would sit on the Nominating Committee, (2) provided it with an ordinary voting delegate in the House, and (3) placed it in the rotation for a position on the Board of Governors.[93]

Subsequent attempts to amend the ABA constitution to provide the territories of Guam, the Northern Mariana Islands, and American Samoa with even a single voting delegate in the House also met significant resistance. Although a resolution was introduced in 1993 to provide Guam and the Northern Mariana Islands with representation in the House of Delegates, that resolution was

88. *ABA Mission and Goals*, AM. BAR ASS'N, https://www.americanbar.org/about_the_aba/aba-mission-goals [https://perma.cc/U4AG-3S5J].

89. *Id.*

90. Leonard, *supra* note 35, at 547-48.

91. Zita Y. Taitano, *Guam Gets Seat, Vote in ABA House of Delegates*, GUAM DAILY POST (Aug. 11, 2011), https://www.postguam.com/news/local/guam-gets-seat-vote-in-aba-house-of-delegates/article_1134d02f-7518-564b-b157-237c6abaac0a.html [https://perma.cc/GML9-9BBG].

92. *See Resolution 89AM11-3*, AM. BAR ASS'N (1989), https://www.americanbar.org/content/dam/aba/directories/policy/annual-1989/1989_am_11_3.pdf [https://perma.cc/MR9L-TUTC] (prior to amendment).

93. *Id.* Because all states are included in the Board of Governors rotation, treatment as a state would automatically place the U.S. Virgin Islands into this rotation.

watered down so that Guam and the Northern Mariana Islands would share a single seat that would rotate between those territories every two years.[94] Attempts to provide American Samoa with a voting delegate also failed at first.[95] For instance, while resolutions had been introduced in the 2010 Annual Meeting to provide Guam, the Northern Mariana Islands, and American Samoa with their own seats, the resolutions were defeated, notwithstanding the fact that Guam Supreme Court Justice Robert Torres and American Samoa Governor Togiola Tulafono had attended the meeting to lobby personally for their passage.[96] Although these resolutions would ultimately pass on subsequent attempts, the Guam delegate to the House noted that even in victory, he had been reminded that the U.S. territories were "the stepchildren of America."[97]

Most recently, the Virgin Islands Bar Association submitted a proposal to the Commission on Governance in 2014 as part of the Commission's decennial review of the ABA constitution. Under that proposal, the existing territorial delegates for the U.S. Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa would serve on the Nominating Committee. As with attorney White's proposal, this would have allowed territorial representation on this body without enlarging the House or increasing any expenses. It also would have created a seat for the territories on the Board of Governors.[98]

The Commission on Governance, by letter dated February 25, 2015, refused to act on either proposal:

> Under Article 2.2(a), the Commonwealth of Puerto Rico and the District of Columbia shall be treated "as if they were states." Under Article 2.2(g), territories are defined as American Samoa, the Commonwealth of the Northern Mariana Islands, Guam and the United States Virgin Islands. Under this constitutional provision, the states as well as the District of Columbia and the Commonwealth of Puerto Rico are represented on the Board of Governors. The territories are represented in the House of Delegates. We believe this continued balanced approach provides an appropriate voice for all entities and should not be changed.[99]

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94. Taitano, *supra* note 91.

95. *Id.*

96. *Id.*

97. *Id.*

98. Letter from Anthony M. Ciolli, ABA Delegate, Virgin Islands Bar Ass'n, to Roberta Leibenberg & James Dimos, Co-Chairs, ABA Comm'n on Governance (Jan. 16, 2015) (on file with author).

99. Letter from Roberta Leibenberg & James Dimos, Co-Chairs, ABA Comm'n on Governance, to author (Feb. 25, 2015) (on file with author).

In its final report, the Commission on Governance went even further, seeking to exclude the territories from several of its proposed reforms. For example, although the Commission recommended that the ABA constitution be amended to "provide an additional delegate to those delegations without a young lawyer, subject to the additional delegate being less than 36 years old or admitted to his or her first bar within the past five years at the beginning of the term," the language it selected excluded the U.S. Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa by limiting delegates to "states."[100] While the ABA constitution would later be amended to provide the U.S. Virgin Islands with that young-lawyer delegate, the ABA still denies the other three territories such a delegate.[101]

The exclusion of the territories from a meaningful role in the internal governance of the ABA stands in stark contrast to how similar organizations treat the territories. The American Medical Association, whose constitution served as the model for the 1936 amendments to the ABA constitution, provides representation to all the "recognized medical associations of states, commonwealths, districts, territories, or possessions of the United States of America"[102] and does not restrict any board or officer positions based on residence.[103] The other preeminent national lawyer associations — the National Bar Association and the Federal Bar Association — both provide for full representation of the territories in their internal governance.[104] Even the Conference of Chief Justices (CCJ) does not discriminate against the territories, but in its bylaws provides that the highest judicial officers "of each state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Territory of American Samoa, the Territory of Guam, the Territory of the Virgin Islands, [and] the Commonwealth of the Northern Mariana Islands" are eligible to serve as members of the CCJ, with all

100. *See Resolution 15AM11-6*, AM. BAR ASS'N § 11-6A(3) (Aug. 3-4, 2015) (on file with author).

101. *Constitution and Bylaws*, *supra* note 82, at 7-8 (providing in Article 6, Section 4 that "[e]ach state delegation, as well as the United States Virgin Islands, that did not have an additional young lawyer delegate prior to the 2015 Annual Meeting shall be entitled to one additional delegate").

102. *Constitution and Bylaws*, AM. MED. ASS'N 7 (July 2024), https://www.ama-assn.org/system/files/ama-constitution-and-bylaws.pdf [https://perma.cc/VR8C-Z5XY].

103. *Id.* at 5, 28-33.

104. *See Constitution and Bylaws of the National Bar Association*, NAT'L BAR ASS'N 15 (2020), https://members.nationalbar.org/NBAR/NBAR/content/about.aspx [https://perma.cc/R8MK-78WB]; *FBA Constitution*, FED. BAR ASS'N, https://www.fedbar.org/about-us/governance-and-organizational-structure/fba-constitution [https://perma.cc/S35Y-6NSH] (providing membership eligibility to "[a]ny person admitted to the practice of law before . . . a court of record in any of the several states, commonwealths or territories" in Article IV, Section 1 and allowing all members to serve as elective officers and directors in Article V, Section 2).

the rights and privileges therein, including the right to seek election to its Board of Directors.[105]

V. THE PATH FORWARD

This history may leave one with a feeling of hopelessness—a sense that the ABA will never eradicate the vestiges of naked racism within its governance structure. But while the situation may appear bleak, there remains some reason for optimism. The most recent attempt to provide for greater representation for the territories—a proposed constitutional amendment in 2019 to provide the U.S. Virgin Islands with a seat on the ABA Nominating Committee—resulted in a tie vote, and had among its supporters two former ABA presidents, Dennis Archer and Paulette Brown.[106] While the proposal fell short of the votes needed, the fact that half the House of Delegates voted in support—with opponents largely arguing against the measure on procedural grounds and not on the merits[107]—is reason to believe that change may come with time.

How, then, do we move forward? Opponents of the proposal to provide the U.S. Virgin Islands with a seat on the Nominating Committee maintain that the issue should first be considered by the ABA's Commission on Governance, which as noted earlier conducts a decennial review of the Association's governance and provides recommendations for change to the House of Delegates. While the Commission failed to include greater territorial representation in its 2015 recommendation, the fact that half of the House of Delegates voted in support of bypassing the decennial review process and immediately providing the U.S. Virgin Islands with a seat on the Nominating Committee demonstrates a strong desire among ABA leaders to give the remaining territories a greater voice in ABA governance. As of this writing, the Commission on Governance has commenced operations in advance of the 2025 decennial review and has begun to accept proposals and testimony.

The problem, of course, is *how* to provide the territories with much-needed additional representation. Treating every territory as if it were a state would seem to be the simplest and most egalitarian solution. But the effect of this change would be the creation of four additional seats on the Nominating Committee,

105. *Bylaws of the Conference of Chief Justices*, CONF. OF CHIEF JUSTS. 2, https://ccj.ncsc.org/__data/assets/pdf_file/0011/23240/bylaws.pdf [https://perma.cc/7NR9-LX9E].

106. Lorelei Laird, *Despite Ardent Support, ABA House Votes Down Measure Giving a 'State' Delegate to US Virgin Islands*, A.B.A. J. (Aug. 12, 2019, 3:28 PM), https://www.abajournal.com/news/article/aba-house-of-delegates-votes-down-measure-giving-a-state-delegate-to-the-u.s.-virgin-islands [https://perma.cc/6R5F-YMQ3].

107. The primary argument in opposition was that the proposal should await consideration by the ABA Commission on Governance at the next decennial review. *See id.*

three additional young-lawyer delegates in the House, and either the creation of a new Board of Governors district or the dilution of the existing districts. These concerns are compounded by legitimate concerns about the size of the territories, and in particular American Samoa, whose lawyer population is extraordinarily small and decreasing rapidly.[108]

Perhaps the most politically expedient option is simply bringing back the "Territorial Group" in some form. To avoid the administrative problems that plagued the original "Territorial Group," the U.S. Virgin Islands — the largest and most active of the remaining territories — could enter as its own state, while the Pacific territories (i.e., Guam, the Northern Mariana Islands, and American Samoa) could be consolidated into a single combined "state." But regardless of which option is ultimately chosen, the ABA should do *something*.

CONCLUSION

The modern ABA is, in many ways, an enigma. While ABA membership numbers have fallen dramatically and less than twenty percent of all lawyers are part of the ABA,[109] the association maintains a privileged position — and, in some cases, a near monopoly — with respect to law-school accreditation, the vetting of federal judicial nominees, and the drafting of the prevailing rules of attorney and judicial conduct.[110] Although built on a foundation of racism and exclusion, the ABA now professes to champion diversity and inclusion in the legal profession — except when it comes to providing lawyers from America's insular territories with the same opportunities to participate in ABA governance as lawyers from the fifty states.

One may wonder, after considering this overview of the ABA's history with the territories, why the lawyers who live and practice in those territories — and the territorial bar associations that represent them — would want anything to do with the ABA. For better or worse, and rightly or wrongly, many continue to view the ABA as the authoritative and representative voice of the legal profession. Just as the millions of Americans who call the territories their home "are systematically forgotten" and disenfranchised by the federal government that

108. Fili Sagapolutele, *How Many Samoan Lawyers Does It Take to Serve the Territory? More than We've Got, Togiola Says*, SAMOA NEWS (Mar. 21, 2022, 9:50 AM), https://www.samoanews.com/local-news/how-many-samoan-lawyers-does-it-take-serve-territory-more-weve-got-togiola-says [https://perma.cc/5KF2-NCEU].

109. Karen Sloan, *ABA Leader to Step Down as Lawyer Group Fights to Keep Members*, REUTERS (Nov. 10, 2022, 5:46 PM), https://www.reuters.com/legal/legalindustry/aba-leader-step-down-lawyer-group-fights-keep-members-2022-11-10 [https://perma.cc/NS9U-Z5UN].

110. Park, *supra* note 35, at 268.

purportedly represents them,[111] those of us who practice law in America's territories seek validation: that we are part of the American legal profession, that our viewpoints matter, and that we are not simply "a footnote within a footnote" that can be safely ignored or "casually disregarded."[112] It is my sincere hope that drawing attention to historical and ongoing discrimination will play a part, no matter how small, in ensuring that this equality is achieved sooner rather than later.

Practicing Faculty, St. Mary's University School of Law; Past President, Virgin Islands Bar Association; Special Assistant to Hon. Rhys S. Hodge, Chief Justice of the Virgin Islands. The views expressed herein are solely my own and not those of the Judicial Branch of the Virgin Islands, the Virgin Islands Bar Association, or any of their officers or employees.

111. *See* Tom C.W. Lin, *Americans, Almost and Forgotten*, 107 CALIF. L. REV. 1249, 1250 (2019).

112. Ciolli, *supra* note 27, at 248 (quoting J.M. Balkin, *The Footnote*, 83 NW. U. L. REV. 275, 302 n.65 (1989)).