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**35TH LEGISLATURE'S COMMITTEE ON
RULES AND JUDICIARY**

TESTIMONY

ON

BILL NO. 35-0121

My name is Julie S. Todman, and I am the Chief Territorial Public Defender.

I thank the members and staff of the Committee on Rules and Judiciary of the 35th Legislature for this invitation to testify on proposed Bill Number 35-0121: An Act amending Virgin Islands Code, title 4, chapter 29, section 482, and title 5, subtitle I, part V, chapter 61, section 660 – increasing jury and witness fees and allowances, respectively. I thank Senators Francis and Capehart especially as co-sponsors of the proposed Bill, which will enhance the jury system of the Territory.

The Office of the Public Defender is established by title 5, section 3521 of the Virgin Islands Code to represent the indigent charged with crimes in court. Our Constitution and the Revised Organic Act provide for trials-by-jury of one's peers. Juries are the bedrock of our judicial system. It is the jury that determines the facts of the case, the critical issues of life and liberty for litigants. For an equal playing field, our clients depend on a

sound jury. Therefore, the Office of the Territorial Public Defender welcomes any effort to enlarge the pool of jurors and enhance the effectiveness of the jury system.

By failing to provide jurors with reasonable pay for their service, we fall short of the Constitution's promise. This Bill seeks to correct this. It has our full support. As the U.S. Supreme Court has stated:

The purpose of a jury is to guard against the exercise of arbitrary power – to make available the commonsense judgment of the community as a hedge against the overzealous or mistaken prosecutor and in preference to the professional or perhaps over-conditioned or biased response of a judge. This prophylactic vehicle is not provided if the jury pool is made up of only special segments of the populace or if large, distinctive groups are excluded from the pool.¹

Juror participation research shows that adverse financial consequences explain high 'no-show' rates for those called to jury duty.² We also know from psychological research that deliberative bodies with broader representation have longer, and more substantive discussions based

¹ *Taylor vs Louisiana*, 419 U.S. 522, 530 (1975).

² Robert C. Walters, Michael D. Marin & Mark Curriden, *Jury of our Peers: An Unfulfilled Conditional Promise*, 58 SMU L. Rev. 319, 330-31 (2005).

upon their different perspectives.³ In a phrase, low juror pay results in our clients having less representative – and less effective – jurors.

Indigent members of society are often least able to contribute their time because of economic constraints. Every attorney has heard jurors describe their hardships to the Court as they seek an excused absence from serving on a jury panel. Childcare and employment responsibilities come up in every jury panel. Increasing juror pay helps to alleviate these concerns – especially to those in our society to whom those dollars mean the most.

The American Bar Association identified juror compensation as one of its key principles for juries and jury trials, noting that it is critical that persons called for service, “be paid a fee that, at a minimum, defray[s] routine expenses such as travel, parking, meals, and child-care.”⁴

According to a 2022 report on juror compensation from the National Center for State Courts, this action by the 35th Legislature would move the Virgin Islands from one of the lowest-ranking jurisdictions for juror compensation to one of the higher-ranking jurisdictions.⁵ Based upon the comparative cost of living and the level of poverty in our Territory, this

³ Samuel R. Sommers, Determinants and Consequences of Jury Racial Diversity: Empirical Findings, Implications, and Directions for Future Research, 2 Soc. Issues & Pol’y Rev. 65, n. 83 (2008).

⁴ American Bar Association, *Principles for Juries and Jury Trials* §2(f)(1).

⁵ Brendan W. Clark, *Juror Compensation in the United States*, National Center for State Courts, April 2022

legislative change has a greater chance of making a difference in our islands than in most jurisdictions.

Section Two of this Bill proposes to increase witness fees and subsistence allowances. This will result in greater participation by indigent litigants in judicial and administrative proceedings, including our clients.

On behalf of the Office of the Territorial Public Defender, I would like to express our full support for the Bill. It is both timely and needed.