

**KEYNOTE REMARKS BY THE
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CHIEF JUSTICE OF THE SUPREME COURT OF PUERTO RICO
AT THE 10TH ANNUAL A. LEON HIGGINBOTHAM, JR.
JUDICIAL COUNCIL LUNCHEON OF THE
NATIONAL BAR ASSOCIATION**

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Good afternoon to all of you. Thank you, Judge Marcela Holland for your warm words of introduction.

First, let me add my words of welcome to all of you on behalf of the members of our judiciary. We are indeed very glad that you chose to have this conference here in Puerto Rico. I certainly hope that you have had a productive and very enjoyable stay and that you will come back to Puerto Rico to celebrate future meetings of the National Bar Association.

It is a pleasure to join you today at this year's mid-winter meeting of the Judicial Council of the

NBA. It is an honor to be here, as well, because of the distinguished record of so many of your members who have led successful legal struggles on issues of crucial importance such as civil rights, unfair labor practices, the advancement of minorities in the judiciary, and that most important source of power in a democracy: voting rights. Those legal struggles continue to be an inspiration to the thousands of Puerto Rican attorneys and judges who have chosen this profession to make a difference in our communities and in the lives of our people.

Given the theme of the conference, “Lifting as we Climb-Ensuring Justice and Equality”, I would like to take the opportunity to raise some concerns about issues of judicial independence that, I believe, are fundamental for all of us, especially in these trying times.

I.

First, however, let me begin by sharing some history about the unique nature of our legal system in Puerto Rico and describing our court system. Our legal system is steeped in the European Civil Law tradition as a result of our long history with Spain. When the island was ceded to the United States after the Spanish American War, Puerto Rico already had a complete legal framework of laws that covered all walks of life, including the Spanish Civil Code, a Commercial Code, a Criminal Code, a Property Registry and Mortgage Law with their accompanying Regulations, a Law of Criminal Procedure, a Law of Civil Procedure, a law of Waters, an Administrative Matters Act, and an Organic Courts Act which ruled the administration of justice, as well as the organization, operation and supervision of the courts.

We also had a European style court system which was unified and centralized and a career judiciary with judges who held appointments for life. The legal profession was divided into three groups, with distinct and specialized practices: the lawyers, the solicitors and the notaries. Each had its own association whose membership was compulsory and regulated by law.

At that time, the precursor to the Puerto Rico Supreme Court, which I am honored to preside today, was the *Real Audiencia*, established in 1831 after repeated requests by the island's residents and government to the Spanish monarchs. This was the highest court of appeals on the island. The court of last resort was the Supreme Court in Spain. But unlike American courts, both the Real Audiencia and the Supreme Court in Madrid were courts of cassation, the purpose of which, under the civil law

system, was not to review entire cases anew and delve into the facts in a case, but rather to ensure correct interpretations of the written law. While it was not perfect by any means, and although Puerto Ricans had had no role in its adoption under Spanish colonial rule, it was the legal system that had evolved over four hundred years of history. It was coherent, based on centuries of shared traditions, and Puerto Ricans valued it as their own.

Pressure to change our legal system and adapt it to the American common law tradition began from the very moment the first U.S. military governors took control of the island. What they found was a European system they didn't understand and found too foreign. They quickly and aggressively set about to change it and introduce the legal traditions of the United States which were unfamiliar to our system of laws, to our legal practitioners and to Puerto Ricans

as a whole. That uncomfortable situation continued under the presidentially-appointed American governors for close to half a century. When Puerto Ricans were finally allowed to elect their own governor in 1948, judges were still appointed by the President of the United States. In fact, it wasn't until 1952, when the Commonwealth was adopted, that Puerto Ricans had full control over the judiciary in the island and had the chance to more fully protect their legal traditions.

Today, after a century of a complex and often contentious process of transformation of our legal framework, we now have what is actually a mixed system. The Civil Law tradition, methodology and interpretive reasoning is still dominant in matters covered by the Civil Code, while Criminal Law, most matters of Administrative Law and rules for evidentiary and procedural aspects have changed

since 1898 to fit the American legal system and its common law tradition.

We still have a centralized and unified court system because in 1952 it was enshrined in our Constitution. As an essential measure of protecting the courts judicial independence, the administration of the judiciary branch was placed under the presidency of the Chief Justice of the Supreme Court of Puerto Rico. At that time, New Jersey was the only other jurisdiction to have a unified court system among the states. Since then, other states have adopted this model.

Another difference between our present system and that of many U.S. jurisdictions, which we believe also helps to protect the independence of our judicial branch in Puerto Rico, is the fact that unlike most states, which elect the members of their judiciary,

judges on the island have always been appointed. Originally, they were selected by the monarchs of Spain and subsequently by the President of the United States until the adoption of the Commonwealth in 1952. Since then, all lower court judges, appellate judges and justices of the Puerto Rico Supreme Court are appointed by the elected governors and confirmed by the Senate of Puerto Rico for fixed terms of 8, 12 and 16 years, depending on the courts to which they are appointed. The justices of the Supreme Court, however, are appointed for life, but retirement is compulsory at the age of 70 years. Salaries for judges at all levels are fixed by law and cannot be lowered during their tenure.

Our unified court system consists, at the lower court level, of Municipal Courts of limited original jurisdiction in all municipalities and Superior Courts

of general original jurisdiction in 13 regions of the island. There is an Appellate Court, located in San Juan, which operates in panels composed of three to seven judges to handle intermediate appeals. It also reviews administrative law cases. The Supreme Court is the highest court on the island.

For the purposes of administering the system, there is an Office of Court Administration, established by the Constitution and headed by a Court Administrator appointed by the Chief Justice. There are also Chief Judges at each of the 13 lower-court regions. These are also appointed by the Chief Justice.

Let me also point out that the judicial system in Puerto Rico finally achieved budgetary autonomy in 2002, when legislation was approved to establish that funding for the judicial branch was to be based

on a fixed percentage of the yearly income of the Commonwealth's Treasury. This development, coupled with the constitutionally-established administrative autonomy of our courts, is also an important element to help protect our judicial independence.

II.

But as we face uncertain economic times and endure the worst recession since the Great Depression, judiciaries from across the United States have been facing increasing challenges to their judicial independence. How do we protect our judicial branches from political interference, the pressures of interest groups, and, most of all, budgetary constraints that place increasing strain on the administration of justice? In such an environment, how do we assure and increase access to the courts to all who need it? You will surely

agree that for minorities in particular this is an issue of paramount importance. After all, an independent judiciary, as Senator Sam Ervin, Jr., once put it, is “the most essential safeguard of a free society.”

The purpose of judicial independence is not so much to protect judges from criticism, and certainly not to protect us from accountability, but to assure that people have access to fair and impartial courts. As John Adams stated, “it is the right of every citizen to be tried by judges as free, impartial and independent as the lot of humanity will admit.” Any attempt to curtail judicial independence threatens the very core of our freedom.

As “the least understood” branch of government, we all have a great stake in defending the judiciary. One element in this struggle is educating our people about their courts and judges, what they represent,

what they stand for, and their role in protecting our democratic system of government.

Justice Sandra Day O'Connor's recent efforts to encourage the teaching of civics in the classroom through the I Civics Project are a wonderful initiative. It is a challenge we should all take up. We must hasten to promote a more active and informed citizenry that is aware of their courts as a fundamental protection to their rights and freedoms.

A knowledgeable and educated public is our most important ally. But we need to do it at all levels. It is essential to establish education programs and public information addressed to the entire population in order to make them familiar with the function of their courts, the role of judges, and the operation of the system. Here in Puerto Rico we are attempting to do that at the Judicial Centers in each

region through information booths, publications available in the court buildings that explain the services provided and programs or initiatives to facilitate court access, special court programs for domestic violence cases and others for drug infractions, special support efforts to facilitate “pro se” appearances, and general information available through our website. Let me add that this is a challenge not only for state and Puerto Ricans courts, but also for other judiciaries. In Argentina, for example, the courts have also identified a similar problem and therefore established a Public Information arm of the Judiciary, an important initiative that guarantees transparency and accountability.

The legal profession and bar associations across the country have a crucial role in this effort, as well. In jurisdictions where Judicial Elections are the

method of selecting judges, the monitoring of special interest pressure on the courts, publishing voter guides for the electors, promoting improved disclosure of campaign and interest group contributions, fostering awareness of the importance of merit based selection of judges and even supporting attempts at public financing of judicial elections can be important contributions in this direction.

Standing up for fair and impartial courts requires active engagement by all who hope to preserve and defend our individual rights and freedoms. Our courts must certainly be accountable, but to the Constitution, to the law and to the people, not to those who try to influence them and bring pressure on the judiciary for reasons unrelated to the goals of achieving a proper administration of justice.

In these difficult years, as I mentioned before, one of the most important threats can come from budgetary constraints. For the courts, this is a particular challenge since the weakest branch of government does not have the power of the purse and in most jurisdictions is subject to extensive legislative budget cuts.

Yet this threat comes at a time when the very strain placed on people by the harsh economy makes them look to the courts for solutions. This causes large increases in consumer-related cases, foreclosures, rental disputes, home evictions, domestic relations cases, and debt collection attempts, among others. We have seen it here in Puerto Rico and I understand it is a clear pattern in state courts all across the country, as well. Even at the Federal Court level, this problem is manifested in

large increases in individual and business bankruptcy filings and other related cases.

In the face of increasing caseloads, state judiciaries thus face decreasing funding which forces reductions in the court budgets. Some jurisdictions have had to resort to hiring and salary freezes, layoffs, pay cuts, early retirement, increased filing fees and even furloughs with no pay and partial court closings. I have seen reports that mention that 8 states have resorted to closing courts on certain dates per month and 19 states that have implemented furloughs for staff and judges.

This scenario poses a serious threat to an independent judiciary. In some jurisdictions the budget confrontations have even led to legal actions by the judicial branch against the state government. What is happening across the United States to the

courts is dangerous and all efforts must be made to protect the judiciary in an effective manner. Reductions in court services affect access to justice for those who specially need it most. As an organization that, among its goals, is geared to bring together legal professionals that seek to advance access for minorities to the courts, as well as their increased representation in the judiciary branches, this may be a different but important new road for action.

We recognize that legislators face a difficult decision making process, but the judicial branch cannot be seen simply as merely one more item in the budget. It is the Third Branch in our Republican Constitution System. For a nation built upon the Rule of Law and the principle of access to justice, our governments must take all the necessary precautions to avoid compromising justice for the

people and to assure the judiciary's continued strength, vitality, independence and proper functioning, specially in the most trying of times.

Thus, as we all face this set of new and persistent challenges, we must all join in the search for solutions. Perhaps an unprecedented joint effort to seek imaginative ways to address the problem may result from this. We must certainly continue looking for means to assure a judicial system that remains strong, accessible, sensitive to the needs of the public, effective and transparent, and most of all independent in order to assure the fair and impartial courts we strive to provide to our citizens.

As you complete your work here this week I urge you to consider this problem carefully. I hope you have some time to discuss its particular implications for those you represent, and to help those of us in

the judiciary to look for ways we can all find new mechanisms and initiatives together to address these new and increasingly difficult challenges for the people that we serve.

Thank you.