

**Honorable Federico Hernández Denton
Chief Justice
Supreme Court of the Commonwealth of Puerto Rico**

**American College of Trial Lawyers
Spring Meeting
Speakers' breakfast**

February 2009

Good Morning.

I am honored to have been invited to address the American College of Trial Lawyers and to be among such accomplished guests. Some of the most distinguished members of the trial bar from the United States, Canada and Puerto Rico are here with us today.

I am especially pleased to welcome to Puerto Rico an organization that is dedicated to the fundamental principles of independent judiciaries

and meaningful access to justice for every citizen. As a member of the Board of Directors of the Conference of Chief Justices, I can assure you that the judicial systems in our countries and states share these same concerns.

This audience knows very well that our citizens depend on strong courts to uphold the Constitution, and to rule on cases fairly and impartially, based solely on the facts and the law. It is fair to say that strong courts are an essential part of our democracy, for they provide vital balance in our government through the system of checks and balances.

For this reason, the Judicial Branch in every state and country must be independent of outside

influence, be it popular prejudice or political interference. A fair and impartial legal system is crucial to maintaining the rule of law and upholding the laws that govern societal relations in an expedient and effective manner.

Nonetheless, we should never take a strong and independent judiciary for granted. Chief Justice Margaret Marshall of the state of Massachusetts recently noted that *“a perfect storm of circumstances threatens much that we know, or think we know, about our American system of justice”*.

We are all aware of the recent developments related to the global financial crisis. Most states and countries are facing shortfalls in their budgets for

this year, and severe fiscal problems are very likely to continue into the following year as well. Courts in most states and countries have not been exempt from this troubling reality.

Trial lawyers and litigators know that their clients and cases will bear the direct consequences of the current fiscal crisis if courts do not remain strong, impartial and independent. You know better than anyone that an expeditious and efficient legal system depends on the strengths of the judiciary and the administration of justice.

Three years ago, the Board of Regents of this organization -the American College of Trial Lawyers- approved a policy paper titled "*Judicial*

Independence: A cornerstone of democracy which must be defended". This publication eloquently expressed that judicial "*independence is not established for the benefit of the judges, but rather for all of us; it is the citizens who are the intended beneficiaries of fair and impartial administration of justice consistent with the rule of law*". The fact is that this goal can only be met if there is a high level of respect and deference on the part of the other branches of government and the public for the expertise, accountability and commitment to positive reform demonstrated by the judiciary.

Consequently, we do not hesitate to recognize that judicial independence is strictly intertwined

with judicial accountability. It is our responsibility to promote confidence in the quality and professionalism of the bench, in the courts' productivity and the quality of justice being provided, and in the demonstrated ability to make efficient use of scarce resources. Such an environment is only possible if courts and lawyers work together in establishing a reputation for excellence in the management of court business -- not just now but on a continuing basis.

To achieve these goals, the Conference of Chief Justices and the American Bar Association have called for more and better resources to be directed to the administration of justice of state courts.

Accordingly, it is also the policy of the American College of Trial Lawyers to address in an appropriate manner threats to judicial independence wherever they manifest themselves.

In this regard, the extreme revenue shortfalls currently facing the public sector pose an additional challenge in the path towards an independent legal system. All public entities –including the Judicial Branch—must make painful and difficult choices to bear their fair share of the fiscal crisis. However, some court systems are being asked to take on a heavier burden, effectively threatening the stability and independence of the judiciary.

In the past few months, the Judicial Branch of New Hampshire announced that it would halt all civil and criminal jury trials for a month to save on per diem payments to jurors. Budget cuts in Florida have left 280 court personnel without jobs. In Minnesota, three judicial districts have been shut down for a half day each week, a courthouse has been permanently closed, and various civil arbitration services have been terminated. Last week, judges in Spain went on strike demanding better working conditions and new technologies for their courtrooms.

These are just a few examples of how the economic downturn has reached the courts in the

United States and abroad. In most of these cases, such drastic measures were a direct result of inadequate funding. They are not examples of judicial accountability, but of a looming crisis that can fundamentally alter the constitutional system of checks and balances. Judge Learned Hand once warned us that *“if we are to keep our democracy, there must be one commandment: Thou shall not ration justice”*. Today, these words of wisdom are more relevant than ever, as states and countries all over the world, including Puerto Rico, deal with an economic crisis of unprecedented proportions.

It is worrisome that some courts in our countries are reaching the point of being almost

unable to function at even minimally adequate levels. This is particularly more troubling during times of economic distress, when people turn in even greater numbers to their courts for relief and protection.

Jonathan Lippman, the Chief Judge of the State of New York, recently compared state courts to “*the emergency room[s] for society’s worst ailments – substance abuse, family violence, mental illness, mortgage foreclosures, and so many more*”. In Puerto Rico, this disconcerting trend has been increasingly evident. For example, from 2002 to 2009, there has been an increase of almost 90% in cases related to home foreclosures. Contract disputes, child support

cases and criminal cases related to robbery, burglary and shoplifting offenses are also steadily congesting our court system. This is certainly a consequence of our present economic situation.

Chief Judge Lippman raised several questions that are pertinent for court systems everywhere in times of unprecedented fiscal crisis: *“How can we appropriately fulfill our constitutional mission in the face of these plagues of modern-day life and remain relevant and responsive to the evolving needs and expectations of our citizenry? [...] How do we embrace innovation and re-engineer the way courts do our business in a cost effective, accessible and efficient*

manner that promotes institutional accountability and respect for the rule of law?”

The Judicial Branch of Puerto Rico has responded to these challenges with firmness and fiscal responsibility. Up to this moment, our cost-saving measures have been effective in spite of a limited budget that receives less funding than the Police and Corrections Departments combined.

The Governor of Puerto Rico has already announced the implementation of severe fiscal measures to face the revenue shortfalls and increasing expenditures that are affecting the Executive Branch. Since the outset of the current

fiscal downturn, the Judicial Branch has also contributed its fair share.

We have cut spending and continue to make necessary adjustments for the most efficient use of our scarce resources. Furthermore, we have also pursued various measures that address the need for decisional and institutional accountability to ensure that judges follow the Constitution and the law and do not respond to any external influence. Nevertheless, since the Judiciary has historically worked with a limited budget and low salaries for judges and court personnel, any further reduction of our resources will result in a rationing of justice.

Moreover, the strength and institutional independence of our courts are also rooted in the administrative and budgetary autonomy of the Judicial Branch. In 2002, the Legislature of Puerto Rico approved a statute that implemented an automatic funding formula for the Judicial Branch, allowing us to undertake austerity measures without compromising the ability of our courts to provide effective justice. This measure has proven to be an effective safeguard against the possibility of improper economic pressure on the judicial system.

The funding formula that guarantees the institutional independence of the courts of Puerto Rico has enabled us to pursue precisely those goals

with flexibility and transparency. We have committed to the pursuit of court reform by implementing various programs that facilitate case management and improve the work environment of trial lawyers in our courts. As an important component of this transformation process, the Judicial Branch is currently incorporating the use of the latest technology into various aspects of its administrative and judicial proceedings, such as *e-filing* and a digital registry of all members of the Puerto Rico bar.

We are also working on the enactment of new Rules of Evidence, Civil Procedure and Criminal Procedure that will promote greater access to justice

and enhance the relationship between the legal profession and our courts. For instance, the proposals being discussed would allow the courts to intervene in innovative ways and help trial lawyers overcome the burdens of unreasonable discovery; a matter that I am aware is of your utmost concern.

The modernization of our courts cannot be seen as an end in itself, but as a stepping stone for maximizing the speedy and efficient delivery of justice. During these perilous times, our common goal is to conduct our business in a cost effective and accessible manner that promotes institutional accountability and fairness, as well as respect for our independence and the rule of law.

I commend the American College of Trial Lawyers for its vigorous defense of judicial independence. You have explained that *“beyond working to preserve a sound, fair and impartial court system, assaults on judicial independence must be addressed, both by lawyers as individuals and by the professional organizations they have created. And they must be addressed in a way that will both educate the public and meet the threat”*.

I invite all of you to continue supporting and defending the role of courts in our democracy. We need your support, particularly during these troubling times of financial crisis. If we want to preserve the system of justice that, as you well

know, has guaranteed and upheld the rule of law in our respective jurisdictions with independence and transparency, organizations such as the American College of Trial Lawyers must play a fundamental role.

Welcome again to Puerto Rico. You are staying in a spectacular part of our island with many great restaurants and beaches nearby, and close to El Yunque National Rainforest. We invite you to take advantage of your surroundings and hope that you enjoy your stay.

Thank you.