Message delivered by the Governor of Puerto Rico, Rafael Hernández Colón, at the Judicial Conference for the First Circuit at the Caribe Hilton Hotel

November 4, 1985

Thirty two years ago – a year after the Commonwealth of Puerto Rico was proclaimed – a distinguished judge of the court of appeals for this circuit delivered an address entiltled "The Commonwealth Status of Puerto Rico". I refer, of course, to Calvert Magruder, scholar, public servant, distinguished member of this court, and the Circuit's First Chief Jodge. We are fortunate that his speech at the University of Pittsburgh has been preserved for us by publication in the University's law review.

Anyone who reads the address will recognize at once that Judge Magruder was profound student of Puerto Rican affairs. The published version of the talk has been cited often over the years- and deservedly so- in cases in which the subtleties of Commonwealth Status and relationships of Puerto Rico to the United States have had to be considered, not just by Judge Magruder's own court (and other Federal Courts) but by the Supreme Court as well.

The reader will note as well that Judge Magruder was a good friend of Puerto Rico and its people. He remarked at the outset of his talk that the found his court's annual visit to San Juan (which apparently began during his leadership of the Circuit Court, in 1950) "one of the agreeable perquisites of membership on the Court of Appeals for the First Circuit". I can reciprocate altogether sincerely by saying that one of the pleasant perquisites of being Governor of Puerto Rico is the chance to welcome this conference to San Juan. I am honored by the invitation to address you today.

We have now had three decades of experience with the unique relationship that subsists between the United Sates and the entity that most of you know as the Commonwealth of Puerto Rico- the agreed but bland and unevocative translation of the Spanish Ëstado Libre Asociado de Puerto Rico"*occupies a relationship to the United States that has no parallel in our history".* This unique relationship was created under the terms of a compact entered into by the people of the United States, through their Congress, and the people of Puerto Rico. The history, nature and design of this historic compact is well-established.

In 1950 Congress adopted Public Law 600, whose stated purpose was to provide *"for the organization of a Constitutional Government by the people of Puerto Rico"*. Congress adopted Law 600 "in the nature of a compact"since the terms of the compact arrangement were subject to acceptance or rejection by the people of Puerto Rico. Upon approval by the Puerto Rican people, the Legislature of Puerto Rico convened a Constitutional Convention. The adopted Constitution, which guarantees which guarantees the Puerto Rican people the full-exercise of self-government over the internal affairs of the island. Became effective in 1952, upon Congressional approval. Concurrently, Law 600 automatically repealed sections of the preexisting organic act of 1917 pertaining in general to matters of purely local concern.

As this court has properly recognized, *"the theme that consistently runs throughout the Legislative history of Puerto Rico's attainment of Commonwealth Status is that Commonwealth represents the fulfillment of a process of increasing self-government over local affairs by the people of Puerto Rico". For example, the preamble of Law 600 notes that Congress "has progressively recognized the right to self-government of the people of Puerto Rico" and was designed to "complete the full measure of local self-government".* And the Puerto Rico Legislature described the Commonwealth Status it created as ä state which is free of superior authority in the management of its own local affairs" but which is linked to the United States. *("Moreover, President Truman in transmitting the Puerto Rico Constitution to the Congress described it as "the culmination of a consistent policy of*

the United States to confer an ever-increasing measure of local self-government upon the people of Puerto Rico.") In conclusion, as this court properly observed in **United States V. Quiñones**.

"Thus, in 1952, Puerto Rico ceased being a territory of the United States subject to the plenary powers of Congress as provided in the Federal Constitution. The authority exercised by the Federal Government emanated thereafter from the compact itself. Under the compact between the people of Puerto Rico and the United States, Congress cannot amend the Puerto Rico Constitution unilaterally and the Government of Puerto Rico is no longer a Federal Government Agency excercising delegated power".

We are now into the third decade of this unique and most successful political experiment. Commonwealth Status well serves the needs of the Puerto Rico people. Although no Political arrangement can be described as perfect, as Churchill said of Democracy, only Commonwealth works. It is the only alternative that permits Puerto Ricans to fulfill their competing aspirations of preserving our national identity, within a permanent union with the United States. And most importantly, the Puerto Rican people have repeatedly made clear that they support no Political Status other than Commonwealth.

Judge Magruder was presciently confident that the essentials of this relationship were durable. By its sensitivity to Puerto Rican concerns, this court of appeals has played an important role in ensuring that events would justify his confidence. It is our fervent hope that appointment of the First Puerto Rican judge to sit on the First Circuit will heighten the court's sensitivity to Puerto Rico. All of us in Puerto Rico are played and proud that Judge Torruellla now sits on the court. The judiciary is the ultimate guardian of the integrity of that Commonwealth compact that has guided the mutually beneficial relationship between the United States and Puerto Rico over tha past three decades. The Federal Judiciary bears a special responsibility to nurture the fruitful synergy of two cultures, two entities. In light of **The Anti-Majoritarian Paradox,** Federal Courts accept, and not resist the essentially autonomous character of the Commonwealth relationship, and recognize, as has the Supreme Court, that under the Commonwealth Status, Puerto Rico, like a state, is an autonomous Political entity, *'sovereign over matters not ruled by the Constitution.*'"

Indeed, I submit Commonwealth Status, and the compact relationship requires more deferential Federal Court supervision than that afforded the Federated States. As the Supreme Court has suggested, the difference in language and culture between the two sovereignties' makes Federal Court deference to Puerto Rican law, and Puerto Rican political compromises, particularly appropriate. My contention does not rest on the general federalism claim that the Constitution requires that states and local government be granted a healthy breathing space free from centralized control. For while Federal Courts more properly rely, in rejecting federalism claims, on the states' access to the political process, as did the Supreme Court in the recent **Garcia Reversal of National League of Cities,** such reliance is inappropriate in the case of Puerto Rico. Since the compact does not provide for Congressional representation, in our case courts are the ultimate guardians of the federalism or autonomy concerns so central to the American system of governance, and to the compact with Puerto Rico.

Moreover, Federal Judges when dealing with Puerto Rican cases are particularly called upon to assume a deferential attitude since their selection and confirmation is not subject, from Puerto

Rican political forces, to the conventional political scrutiny and check. Since the political responsiveness rebuttal to the **Anti-Majoritarian Paradox** is not fully available in the case of the Commonwealth, the crisis of legitimacy over judicial invalidation of political decision-making is particularly acute in cases dealing with Puerto Rico.

In conclusion, Federal Tribunals should accord a heightened degree of deference to the political compromises struck by the Puerto Rican political process; to displace those choices were not absolutely necessary to vindicate fundamental rights risks mortally debilitating the self –governing political system of Puerto Rico, and to weaken, if not subvert, the Commonwealth relationship so cherished by our people. A number of alternate vehicles are available for nourishing the special relationship of Commonwealth. First, in the absence of Legislative history to the contrary, in light of the nature of the Commonwealth compact, when construing Federal Statutes Courts should presume a Congressional intent to accord it at least as much freedom from central control as that afforded the federated sates. This approach finds judicial sanction in an important case of this circuit, the **Puerto Rico Highway Authority** decision.

With respect to Federal Statutory Enactment, pre-dating the federal relations act, Section 6 of the federal relations act requires consideration of the consistency of laws or parts laws with the policy of autonomy adopted by the federal relations act. I submit that the nature of the Commonwealth relationship commits courts to a searching inquiry over the consistency of Federal Law to the policy implemented under the Federal Relations Act.

More significantly, Section 9 of the Federal Relations Act States that the "*statutory laws of the United States not locally inapplicable… shall have the same force and effect in Puerto Rico as in the United States".* As Judge Breyer has noted, *"an examination of the history of the locally inapplicable language reveals a design to defer to local Legislatures in local matters and an intent to interpret the phrase dynamically".* Thus, it does not necessarily foreclose a finding of inapplicability that a **Congressional Enactment** is subsequent to the federal relations act. If, for example, Puerto Rico's adoption of a local statute paralleling a **Federal Enactment** may make inapplicable the formerly applicable Federal Statute.

Finally, Federal Tribunals should flexibly apply the abstention doctrine, and accord Puerto Rican Political Judgments the fullest degree of deference. When applying federal provisions to Puerto Rico, and particularly in evaluating the need or justification for challenged Puerto Rican Laws, the judiciary should accord special weight to Puerto Rico's unique, autonomous status, its history and special problems and decisions of the Supreme Court of Puerto Rico.

A deferential judicial review will also contribute to minimizing strains between the two sovereignties, without debilitating protection of fundamental values. Relationships between two sovereignties are bound to have strains when one exercise sovereign powers over the same body of citizens within the boundaries of the other, as the United States does in Puerto Rico. It is important not to overemphasize these inevitable conflicts; disputes when they arise need be no more than relatively benign since, as both the U.S. And Puerto Rican Constitution make clear, we are bonded by an uncompromising commitment to shared fundamental values and rights.

We in Puerto Rico are proud to be citizens of the United States. The preamble to the Puerto Rican Constitution speaks of *"determining factors in our life"*, among them "*our citizenship of the United States of America", "our loyalty to the Principles of the Federal Constitution,* and *"the coexistence in Puerto Rico of the two great cultures of the American Hemisphere".* Judge Magruder never spoke more nobly than when he said in **Mora V. Mejias** that *"there cannot exist under the American flag any government authority untrammeled by the requirements of due process of law as guaranteed by the Constitution of the United States".* I would like to think that under my administration the citizens of Puerto Rico will not need to invoke that guarantee or the other protections of the Federal Constitutions safeguarding individual liberty from governmental overweening. But I am sure that the all political leaders feel the same way, and their predecessors and mine have felt that way too. The pages of the U.S. Reports and of the Federal Reporter Attest that the best intentions of those of us who wield government power sometimes falls short.

Si it is not from any want of regard for the United States Constitution that I make these suggestions aimed at reducing the inevitable strains of dual sovereignties. With all respect, I urge the Judges – when a citizens of Puerto Rico registers a complaint that his government has not dealt with him in the way that the U.S. Constitution requires- to remember that the Puerto Rico Courts are open to that citizen. Federal rights, it should be noted, are also fully guaranteed by Puerto Rico's own Constitution and indeed, are fully implemented in Puerto Rican law and practice. Our courts have proven themselves thoroughly understanding of the demands both of the Federal Constitution and of the very similar but more progressive bill of rights of the Puerto Rican Constitutions- and willing to enforce those demands vigorously against the government under my administration or any successor's administration. Deference to our courts will not weaken constitutional guarantees.

I look forward to a continued, creative partnership between the Commonwealth of Puerto Rico and the Tribunals entrusted with the responsibility of safeguarding this unique experiment of Federalism that is commonwealth. If properly safeguarded. I am confident of the robustness of this political formulation. I know in futures decades, future gatherings of this Circuit's judges will continue to wrestle with the intriguing legal issues raised by this special relationship.

Thank you very much.