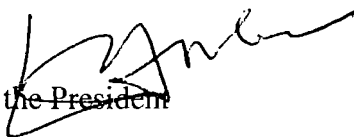


THE WHITE HOUSE

WASHINGTON

November 18, 1997

MEMORANDUM FOR CHIEFS OF STAFF OF ALL DEPARTMENTS AND AGENCIES

FROM: Erskine Bowles 
Chief of Staff to the President

SUBJECT: Coordination of Puerto Rico Matters

CC: Mickey Ibarra
Thurgood Marshall, Jr.

The Office of the President has direct responsibility within the Executive Branch for policy regarding the Commonwealth of Puerto Rico. The assignment recognizes that the islands in which 3.8 million U.S. citizens live lack the representation that a State has in the Federal process. It also recognizes that the issues are often: fundamental questions rooted in the Commonwealth's status; distinct from those of the States; and interrelated.

To assist him in fulfilling this responsibility, President Clinton directed that a group of senior White House and agency officials be organized under his Office of Intergovernmental Affairs to coordinate matters concerning Puerto Rico. The President's Interagency Group on Puerto Rico serves as the Administration's point of liaison and gives guidance on policy relating to the Commonwealth.

Mickey Ibarra, Director of Intergovernmental Affairs, has assigned Deputy Director of Intergovernmental Affairs Fred DuVal to co-chair the Interagency Group. Jeffrey Farrow remains the other Co-Chair. Decisions or significant activities relating to Puerto Rico should be coordinated with them through the Interagency Group on Puerto Rico office, telephone number 482-0037, telefax 482-2337.

In addition to advising personnel of this, you should determine whether you need to replace the official(s) previously designated to represent your department or agency on the Interagency Group as soon as possible. A recent list of Interagency Group members is attached for your review.

THE WHITE HOUSE

WASHINGTON

INTERAGENCY GROUP ON PUERTO RICO

Co-Chairs

Fred DuVal - Deputy Assistant to the President and Deputy Director of Intergovernmental Affairs
Jeffrey L. Farrow - Co-Chair and Senior Advisor to the Department of Commerce for Puerto Rico

Members

Executive Office of the President

White House Office:

Maria Echaveste - Assistant to the President and Director of Public Liaison
Stephen B. Silverman - Deputy Assistant to the President and Deputy Cabinet Secretary
Janet Murguia - Deputy Assistant to the President for Legislative Affairs
William P. Marshall - Associate Counsel to the President

Domestic Policy Council:

Vacant [formerly Jeremy Ben-Ami, Deputy Assistant to the President for Domestic Policy]

National Economic Council/Council of Economic Advisers:

Vacant [formerly Mark Mazur, Senior Director]

National Security Council:

James Dobbins - Special Assistant to the President and Senior Director for Inter-American Affairs

Office of Management and Budget:

Joseph J. Minarik - Associate Director for Economic Policy

United States Trade Representative:

Jonathan E. Huenemann - Deputy Assistant USTR for Western Hemisphere Affairs

Office of National Drug Control Policy:

Patricia McMahon - Senior Policy Advisor to the Director for Demand Reduction

Office of the Vice President

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Mary Ann Keeffe - Deputy Under Secretary for Food, Nutrition, and Consumer Services
Maria Hernandez - Director of Intergovernmental Affairs

Department of Commerce

LeeAnn Inadomi - Senior Advisor to the Secretary

Department of Defense

William J. Cassidy, Jr. - Deputy Assistant Secretary
of the Navy for Conversion and Redevelopment

Department of Education

Mario Moreno - Assistant Secretary for Intergovernmental and Interagency Affairs

Department of Energy

Robert Alcock - Deputy Assistant Secretary for Intergovernmental Affairs

Department of Health and Human Services

Katie Steele - Acting Director of Intergovernmental Affairs

Department of Housing and Urban Development

Vacant [formerly Nelson Diaz, General Counsel]

Department of the Interior

Edward B. Cohen - Deputy Solicitor

Department of Justice

Randolph D. Moss - Deputy Assistant Attorney General, Office of Legal Counsel

John D. Trasvina - Special Counsel for Immigration Related and Fair Employment Practices

Department of Labor

Ida Castro - Acting Director, Women's Bureau

State Department

John R. Hamilton - Deputy Assistant Secretary for Caribbean and Central American Affairs

Victor Marrero - U.S. Representative to the United Nations Economic and Social Council

Department of Transportation

John C. Horsley - Deputy Assistant Secretary for Governmental Affairs

Department of the Treasury

Michael F. Mundaca - Attorney Advisor, Office of International Tax Counsel

Alex Rodriguez - Deputy Assistant Secretary for Administration

Department of Veterans Affairs

Kathy Elena Jurado - Assistant Secretary for Public and Intergovernmental Affairs

Environmental Protection Agency

Vacant [formerly Shelly Metzenbaum, Associate Administrator for
Regional Operations, State and Local Relations]

General Services Administration

Eric Dodds - Deputy Chief of Staff

Small Business Administration

Irma Munoz - Assistant Administrator for Marketing and Customer Services

Federal Emergency Management Agency

Lacy Suiter - Executive Associate Director for Response and Recovery Directorate

Social Security Administration

Vacant [formerly Charlotte Brittan, Executive Assistant to the Commissioner]

THE WHITE HOUSE
WASHINGTON

Mr. Paul Weinstein
Chief Of Staff
Domestic Policy Council
The White House
2F1/ WW
Washington, DC 20500

A handwritten signature in dark ink, appearing to read "Paul Weinstein", is written over a horizontal line.

Statement of Jeffrey L. Farrow
Co-Chair, The President's Interagency Group on Puerto Rico
to the Senate Committee on Energy and Natural Resources
on H.R. 856 and S. 472
July 14, 1998

Mr. Chairman and Distinguished Members:

Thank you for inviting the Executive Branch to testify on the two bills before the Committee that would establish a process for determining the ultimate political status of Puerto Rico.

This hearing is being held days before the Centennial of the beginning of the United States taking of the Islands. The date -- July 25th -- is also the 46th anniversary of the present arrangement for the governing of Puerto Rico, including the locally-drafted, insular constitution.

This arrangement is known by the name of the government that the constitution established: Commonwealth. Under it, the insular government exercises authority similar to that of a State while the Federal Government continues to have its broad power to govern territory under the sovereignty of the United States. The arrangement also continued a number of Federal policies concerning the Islands. The insular government is elected but the 3.9 million residents of Puerto Rico are only represented in the Federal Government by a Resident Commissioner who is limited to voting in House committees . . . even though Puerto Ricans are U.S. citizens.

The arrangement was established by actions of the people of Puerto Rico as well as the Federal Government. It was a substantial development in self-government that we honor and should be respected. It was not, however, a political status choice and it did not change the Islands' fundamental status, as your predecessor committee noted in approving it.

Almost since the arrangement took effect, Puerto Ricans have petitioned for greater self-government. Today, all of Puerto Rico's political parties are based on one vision or another of a fully democratic governing arrangement.

They are divided, however, on what the options really are (in addition to which would be best). The debate primarily reflects their conflicting visions, but it is partially attributable to conflicting Federal statements and a lack of clear Federal policies on the matter as well.

Almost all Puerto Ricans want a status that involves substantial interaction with the United States. Because they cannot themselves determine what the Federal Government would be willing to do, they have repeatedly petitioned for legislation such as the bills before you.

This is, obviously, a matter of transcendent importance. It concerns the still unrealized self-government rights of millions of people: 3.9 million U.S. citizens under our flag by conquest who sacrifice for us but have no vote in the government that makes their national laws.

It also is a pivotal question in determining many other Federal and insular policies, the approaches to serious economic and social challenges faced in the Islands. Should policies be geared toward Puerto Rico being permanently under the U.S. flag or eventual separation? And if Puerto Rico is to remain permanently under our flag, will it someday become a part of our country in all respects? Should it be treated equally or differently? Resolving the status question is fundamental to resolving important economic and social policy questions. Further, the debate is so intense that it hinders action on these issues to the detriment of Puerto Ricans and the Nation.

This frustrating debate is likely to continue until the Federal Government finally responds to years of questioning by Puerto Ricans and clarifies what the options are. Their decision largely hinges on Federal decisions that have not been made or articulated:

Is statehood an option, as national leaders and a commission established by law have said, for this U.S. area to which most national laws apply? Or are its U.S. citizens somehow incompatible with their fellow citizens (including the three million Puerto Ricans who live in States) as others have suggested?

Will the United States help Puerto Rico if its people choose national sovereignty after a century under our flag without full self-government? Or will we simply cut it adrift and leave it to its own devices if its people choose to leave the family and the conditions as well as the benefits of a U.S. status?

Will the Federal Government cede the exercise of its powers to Puerto Rico under a Commonwealth arrangement? Can such an arrangement actually or effectively limit Federal territory governing powers? Can Commonwealth become a form of national sovereignty under which U.S. citizenship would continue to be granted?

President Clinton firmly believes that, after a century under the U.S. flag, Puerto Ricans should be enabled to choose among all of the options: national sovereignty -- either independence or in an association with the United States; membership in the Union; and continuing the present arrangement. This is his highest priority regarding the Islands. He will strongly support nationhood or statehood if Puerto Ricans vote for either status change and he will continue to work to make the current governing arrangement work better for them as long as they do not. He has no preference among the options, believing that the decision should be Puerto Ricans'.

The United States is internationally committed to supporting a Puerto Rican choice. Enabling Puerto Ricans to choose is a Federal responsibility. The President's position is that we should finally make it possible this Centennial year by providing the options through either of the bills before you. He wants to establish a process that Puerto Ricans can act on as they are ready to and that would channel the debate away from other issues and toward a constructive end. He does not feel Puerto Rico should be forced to change, but deeply believes that all the fully democratic options should be open to its people. We should clarify what their options are, having considered

their desires, so they can decide as they are ready to and we can all get to other business.

Thus, Mr. Chairman, on behalf of the President, I thank you for calling this hearing and for the three prior sessions you have held on the status question itself and issues that a change in status would raise. I also, on behalf of the President, thank Senators Craig and Graham for their leadership on this matter and Senator Bumpers for his assistance to the Administration on it.

The two bills that are the subject of this hearing are companion bills. They are not identical, particularly since the House acted on its bill, which was sponsored by the leaders of both parties in the House and your counterpart committee. President Clinton strongly supported House passage of H.R. 856 and hopes to be able to sign either of the two bills before you into law. The Administration strongly urges the Committee to favorably report a bill as soon as possible, given the planned number of session days left in this Congress. We are ready and anxious to work with you to do this as well as to obtain full Senate passage and final congressional action.

Both bills contain the essential elements for a law on this matter: They would provide Puerto Ricans with the options and provide for Federal action on a choice. They would also facilitate a choice and establish a process that would move to the next stage when both sides are ready.

They would not change Puerto Rico's status. Indeed, they would require the enactment of two more laws and two more popular mandates from the people of Puerto Rico over as long as more than a decade for a status change to occur.

They would, however, finally enable a clear direction for the Islands to be determined and to be worked towards. They would provide an orderly process for rationally addressing the matters that would need to be addressed to prepare for a change in status and, then, to change status. They would enable the transition to be smooth and deliberate. And they would ensure that the mandate for change was sustained when and if one emerges, providing both Puerto Ricans and the Federal Government with opportunities to rethink in the event that matters do not develop adequately.

Let me now comment on specific provisions of each bill.

First, H.R. 856:

Section 4(a) would authorize an initial referendum on Puerto Rico's future political status to be held not later than December 31, 1998.

The President supports the goal of having a future status preference vote this year, but setting this as a statutory deadline is unnecessarily restrictive. The Government of Puerto Rico should have the flexibility to conduct the vote later if it feels that additional time is necessary for arrangements or public education reasons. The Governor and the Legislative Assembly strongly desire a vote, so there is no real chance that not setting a deadline will result in a referendum not being held.

Section 4(a) would also provide Commonwealth, Separate Sovereignty, and Statehood options. The options are based on and reasonably respond to proposals of Puerto Rico's political parties. Each of the parties is associated with one of the status options traditionally discussed in the Islands: Commonwealth; statehood; and independence. They have been recognized in Federal and Commonwealth law as advocates for these differing status visions. The Popular Democratic Party includes members who have various visions of what the current arrangement should become.

We have a concern about the Commonwealth option. Paragraph 4 suggests that Puerto Rico may only be enabled to participate equally with the States in the few programs where it is not now participating equally contingent on the payment of contributions to the cost of the programs. Puerto Rico is treated equally with the States or otherwise equitably funded in almost all programs. The exceptions to equitable treatment are a few major programs for the needy -- individuals who cannot contribute to the cost in any case. We do not disagree with the concept of Puerto Rican contributions to the cost of these programs to provide equal funding but we do disagree with suggesting that this is a universal rule.

It may be in the national interest to provide equal treatment without Puerto Rican contributions, as it has been in the case of most programs. The programs at issue now are principally the programs for: providing health insurance for needy children; aid to the needy aged, blind and disabled; medical care for the needy; and temporary assistance for needy families. It may be desirable to provide equal treatment in programs to meet compelling human needs even without special Puerto Rican contributions. The current treatment in programs such as those I have mentioned encourages migration to and imposes costs on States where Puerto Ricans, as U.S. citizens, can quickly obtain equal treatment.

We also have a more fundamental comment regarding the option: If the Popular Democratic Party makes a realistic proposal to you today for a fundamentally different option, it should be considered and be the basis for your prompt action on the bill.

The Commonwealth party is dissatisfied with the House-passed Commonwealth option even though the option is a reasonable response to what the party proposed. The party conceived of Commonwealth as a status option. Democratic principles require that the expressed aspirations of Puerto Ricans be central to the development of the options. The options also must also be viable from the Federal perspective, of course, if they are to provide Puerto Ricans with a meaningful choice. The President regards the consideration of party proposals -- and serious responses to them -- as integral to the mutual determination process that is needed. Given that it has been a year since the House provision was initially drafted, it would not be reasonable to wait for another proposal. Given the limited number of matters that need to be addressed to enable Puerto Ricans to make a status choice, you should be able to respond to a proposal without delaying the legislation.

We have six concerns with respect to the Separate Sovereignty option, although it, too, is

acceptable. The first two address concerns of the Puerto Rican Independence Party.

One is the labeling of the option as “Separate Sovereignty”.

We suggest “National Sovereignty” instead.

Second, while Paragraph 6 provides for “economic and programmatic assistance at levels and for a reasonable period as provided on a government to government basis”, it does not make clear that the assistance would be adequate to ensure a smooth transition to nationhood.

Puerto Rico came under the U.S. flag by conquest a century ago. After all this time, we have a responsibility to ensure a smooth transition to nationhood if Puerto Ricans -- who have not been really represented in our system -- want national sovereignty. We should take reasonable measures to enable a sovereign Puerto Rico to compete in the world economically.

Third, there is a problem with using the term “free association” in Puerto Rico.

National sovereignty encompasses the internationally-recognized status of free association between a small territory and a larger nation as well as independence. The option properly includes it. However, in Puerto Rico, the arrangement called “Commonwealth” in English is named by words that literally translate as “Free Associated State” in Spanish. Hence, there could be confusion between the Commonwealth and National Sovereignty options.

Given the established use of “Estado Libre Asociado” in Puerto Rico, and the little that the term “free association” has been used, it would be advisable to substitute something like “nationhood in association with the United States” for “free association” in the introductory phrase and “an association with the United States” for “a free association relationship” in Paragraph 7.

Fourth, we would also favor identifying any basic provisions of a free association that our government would contemplate with Puerto Rico, although we note that the terms would be subject to negotiation and subsequent congressional action and could be changed later.

By definition, the terms of free association should be negotiated between the parties. The transition phase of the bill would provide the opportunity for conducting such negotiations. But there are some fundamental elements of a free association that we would contemplate with a sovereign Puerto Rico that would address the aspirations of Puerto Ricans or U.S. interests.

One that would address a major issue in Puerto Rico would enable Puerto Ricans to freely enter the United States subject to appropriate security provisions. If Puerto Rico is to become a sovereign nation, birth there would certainly cease being a basis for granting U.S. citizenship; citizenship is a major element of nationhood. But the ties that have developed between Puerto Ricans and the United States over a century are extensive and deep. Puerto Ricans are currently U.S. citizens. Citizens of the Pacific islands states with which we are freely associated have the

right to freely enter, reside and work in the United States even though they were neither U.S. citizens or nationals and did not have those rights while under our territorial administration. Puerto Ricans should be treated at least as well, given the depth and length of our relationship even if they decide to substitute Puerto Rican sovereignty and citizenship for that of the U.S.

Other matters that could be referenced are the intentions to continue United States military rights, responsibility for Puerto Rican national defense, and some Federal programs. We would like to work with the Committee on appropriate language on this matter if the options are to be as extensive as those in the bill.

Fifth, Paragraphs 3 and 4, which concern the termination of U.S. law and citizenship under Puerto Rican nationhood, should be revised, primarily for clarity.

We developed alternative language for these provisions with the Chairman and Ranking Democrat of the House Committee. It is appended to my statement. We understand that it was not substituted for the language in the bill because the time was not opportune for its presentation.

Finally, Paragraph 2 of this option is unnecessary.

Much of the language in the Statehood option is also unnecessary.

In the event of a Puerto Rican choice for national sovereignty or statehood, Section 4(b) would require the President to submit a plan to the Congress within 180 days to enable the selected status to be implemented. The plan would be developed in consultation with Puerto Rico's government, political parties and others. Additionally, in the event of a Puerto Rican choice for national sovereignty, Puerto Rico would also be authorized to call a convention to formulate proposals to implement the choice. The President would be required to transmit the proposals to the Congress with views on them and, to the extent he deems advisable, incorporating them into the transition plan.

We do not object to the six month deadline for developing a transition plan in the case of statehood but it would be unrealistic given the greater complexities that would be involved in changing Puerto Rico's status in the case of sovereignty. The range of matters to be addressed would be much greater since Puerto Rico is treated as a State under most laws. The 180 days would probably be barely enough time for Puerto Rico to call and conduct a sovereignty convention. The President should have the benefit of Puerto Rico's proposals in developing a transition plan and some matters should be proposed based on consultations with Puerto Rico's representatives.

A more realistic requirement for submitting a transition plan in the case of Puerto Rican sovereignty would be one year after the conclusion of a Puerto Rican sovereignty convention.

We also think that a Puerto Rican convention would be essential in the case of a sovereignty choice and, therefore, that it should be required. Formal Puerto Rican input should be provided to the President on a host of issues that would be raised by transferring sovereignty.

We also have two technical concerns with the drafting of Section 4(a).

The initial paragraph mandates the actual presentation of the options on the ballot (in addition to their content).

We recommend leaving such decisions to the Government of Puerto Rico and replacing the words “presented on the ballot as follows” with “the following options”.

Finally, this subsection and Subsection (c) purport to require the President to submit legislation - first, a transition plan and, then, an implementation resolution to the Congress. In order to conform to our constitutional separation of powers, we recommend that the word “shall” be replaced with “should” or “shall, as the President deems appropriate”.

Finally, the bill begins with a number of Congressional Findings. They relate to Puerto Rico’s history, current situation and political status in general. These Findings would not be part of the procedure for resolving Puerto Rico’s status issue and have contributed to controversy about the legislation in the Islands. They were substantially rewritten during the process of House consideration to make them more accurate, but they are still somewhat subjective. They are also not essential. It may be more productive to delete them.

History has given us the conflicting facts and ambiguities which have fueled Puerto Rico’s status debate. Rather than relitigate them now, it would be more productive to simply provide the process for resolving the debate.

If they are retained, we urge consideration of two changes to Paragraph 4, which concerns the creation of the Commonwealth arrangement.

First, it does not make clear the full extent of the mutual creation of the arrangement. The first of two laws on the matter required the approval of an insular referendum to be effective. The second states that the arrangement was a “compact.” The Popular Democratic Party very much wanted this legislation to recognize the compact. It is appropriate in a bill as extensive as this one.

Second, Paragraph 4 refers to the arrangement as providing for “internal” self-government. “Internal” has been used to describe the Commonwealth’s scope of authority but it has resulted in some confusion. Some infer that this means that the arrangement legally eliminated Federal powers.

“Insular” or “local” would be more precise terms.

Let me now turn to S. 472.

S. 472 was a companion to H.R. 856 that was initially similar but not identical to the House bill. It does not reflect some of the improvements that were made to the House bill.

This bill also begins with Findings that are not essential and, in this case, would need to be revised.

Paragraph 1 imprecisely describes the acquisition of U.S. nationality by most Puerto Ricans pursuant to the treaty by which Spain ceded Puerto Rico to the United States.

Paragraph 2 states that Congress carries out all Federal responsibilities with respect to Puerto Rico pursuant to the Territory Clause of the Constitution.

Setting aside the fact that Congress does not carry out all Federal responsibilities with respect to Puerto Rico -- the President and the courts also have their roles, Congress makes policy relating to Puerto Rico under other powers in addition to those of the Territory Clause.

Paragraph 3 states that civil government for Puerto Rico was provided by the 1917 law that is also known as the Jones Act.

The Foraker Act, enacted fifteen years earlier, had already provided for civil government in Puerto Rico.

Paragraph 4 states that Congress amended the territorial constitution in approving it.

In fact, Congress merely approved Puerto Rico's constitution subject to Puerto Rico's constitutional convention making certain amendments.

Section 2(b) would ostensibly require the Government of Puerto Rico to conduct political status referenda.

Rather than suggest a mandate that would be difficult to enforce if necessary, it would be more appropriate to simply authorize referenda. If an elected government of Puerto Rico did not want to conduct a referendum, forcing it to do so would conflict with democratic principles. As I have already noted, Puerto Rico's current Government very much wants to conduct a referendum.

This subsection would also require that an initial referendum be conducted this year. I have already suggested the deletion of this deadline as unnecessary and, perhaps, unrealistic.

Section 2(d) provides Commonwealth, Separate Sovereignty, and Statehood options.

The Commonwealth option is not based on a proposal of the Popular Democratic Party. It should be if the party submits a proposal.

Paragraph 1 of the description in the bill states that Puerto Rico conducts self-government with respect to “internal affairs”.

Again, “insular” or “local” affairs would be more precise terms.

Paragraph 2 states that provisions of the U.S. Constitution apply to Puerto Rico as determined by Congress.

Some provisions apply of their own force.

Paragraphs 3 and 4 seem to be redundant in light of Paragraphs 1 and 2.

The Committee may wish to consider incorporating provisions of the Commonwealth option in the House passed bill as we have suggested amending it. While it might not prove to be satisfactory to the Popular Democratic Party, it would, at least, be a fair Federal response to a Party proposal.

All of my comments with respect to the Separate Sovereignty option in H.R. 856 apply to the Separate Sovereignty option in this bill.

The Statehood option suggests that Puerto Rico would become fully self-governing prior to statehood.

We would suggest striking the phrase “through United States sovereignty leading to”. Additionally, while Puerto Ricans would be fully self-governing under statehood, Puerto Rico itself would not be fully self-governing. It would, instead, be fully a part of a fully self-governing country.

Much of the rest is unnecessary. If it is desired to provide an explanation of statehood as extensive as the one in the bill, we recommend that the language of the option of H.R. 856 be substituted for the language in S. 472. It reflects several revisions that we developed with the House Committee leaders and the Resident Commissioner.

Section 3(b) would ostensibly require further status referenda at least every four years in Puerto Rico if there is a majority for the continuation of the current governing arrangement in an initial referendum or Puerto Ricans reject a Federally-approved transition plan or implementation bill.

I have already recommended that it would be more appropriate to authorize the status votes than to suggest a mandate for them. Additionally, we suggest giving the Government of Puerto Rico greater flexibility on the timing of additional votes. Further votes might not be desired by Puerto

Ricans every four years. In such a case, the call for revoking so often would be a disruptive burden. Further, if Puerto Ricans were to reject Federally-approved transition or implementation legislation, further Federal action might be advisable prior to further status choice votes.

While we would prefer leaving votes to the call of the Government of Puerto Rico, we consider the language of the House bill calling for votes at least every decade acceptable.

Finally, further votes should also be authorized in the case of no option obtaining majority support -- a possibility covered by the House bill's provision that is not covered in this one.

Section 3(c)(1) would require the President to submit transition plan legislation to Congress within 180 days of a Puerto Rican choice of statehood or national sovereignty. There is no provision for a Puerto Rican convention in the event of a choice of national sovereignty.

As I explained in my comments on H.R. 856, we think such a convention is essential. As I also explained, six months would not be adequate for the calling of the convention, the conduct of its business, and considering its recommendations. Again, a year after the conclusion of a Puerto Rican sovereignty convention is the minimum amount of time that we can conceive of as necessary for developing a Puerto Rico sovereignty transition plan.

Section 3(c)(2) would require a referendum on actually implementing a new status in Puerto Rico prior to the end of the transition period. Unlike H.R. 856, however, it does not also propose Federal implementation legislation. This raises the question of how the referendum would relate to implementation of the new status.

If there is no separate implementation legislation, the status change theoretically could occur as provided in the transition plan even if the referendum disapproves final implementation of the new status . . . as unlikely as that seems. There should, at least, be language preventing this situation if the process is to be as detailed as in this bill.

Mr. Chairman, those are the specific comments we have to offer on the bills. We would be pleased to address questions about them. I want to stress that our recommendations suggest the need for relatively minor amendments and that these can be made in concert with expeditious action in the case of either bill. They also suggest that many provisions can be deleted. We will be flexible on the extent of the details in the bills so long as the essentials are included. Our goal is to reach the Federal consensus necessary to enact a law this year.

The real question that these bills present are really very simple: Are we going to finally answer Puerto Ricans' questions of what their status options are so that they can determine their preference? Are we going to facilitate the determination of the direction they want to work in, if it is different from the present? Are we going to establish a process that can finally end the frustrating debate over the most fundamental decision of any society? Are we going to provide a process for the Federal Government and Puerto Ricans to thoughtfully and non-disruptively

address the issues step-by-step? Are we going to meet our responsibilities on this matter a century after we took control of the Islands? Are we going to enter the new Millennium having enabled nearly four million U.S. citizens who are not fully self-governing to take a step towards becoming so if and when they want to?

We stand ready to work with the Committee to answer these questions affirmatively as soon as possible.

e bills before you today have their origin in hundreds of thousands of Puerto Rican petitions for Federal authorization for a referendum on statehood and implementation of a majority approval over a dozen years ago. This initiative was followed by the last administration in Puerto Rico -- a pro-Commonwealth one -- proposing a Federally-authorized referendum among the traditionally-discussed options of Commonwealth, statehood, and independence with the commitment of Federal implementation of a majority choice. This proposal was joined in by the presidents of the statehood and independence parties and supported by President Bush. Your Committee and other committees of the Senate passed a bill in the 10 Congress that would have provided Commonwealth, statehood, and independence options and implemented a majority choice. The House passed a bill that promised implementing legislation for a Puerto Rican majority choice among three similar options. After the effort began again in the 10 Congress, this Committee deadlocked between a bill that provided for final consideration of a Puerto Rican choice among the options and a substitute that proposed Puerto Ricans seek final action after selecting a status. That led to a locally-held vote in Puerto Rico that resulted in a plurality choice of a Commonwealth option

~~Revised~~

Total Pages: _____

LRM ID: MJG274

**EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001**

Tuesday, July 7, 1998

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

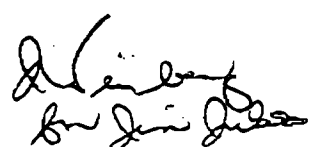
FROM: James J. Jukes (for) Assistant Director for Legislative Reference

OMB CONTACT: M. Jill Gibbons

PHONE: (202)395-7593 **FAX:** (202)395-3109

SUBJECT: Testimony on HR856 United States-Puerto Rico Political Status Act

DEADLINE: 4:00 Thursday, July 9, 1998



In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. **Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.**

COMMENTS: Please ensure that your agency's response is coordinated with your agency's representatives on the Interagency Working Group on Puerto Rico (membership list attached). Also attached FYI is the House SAP on HR856. Thank you.

Please be prepared to attend a meeting Friday morning if there are open issues that need to be resolved relating to the attached testimony. Time and room TBA.

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LRM ID: MJG274
Act

SUBJECT: Testimony on HR856 United States-Puerto Rico Political Status

RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:

(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or

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Please include the LRM number shown above, and the subject shown below.

TO: M. Jill Gibbons Phone: 395-7593 Fax: 395-3109
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant): 395-3454

FROM: _____ (Date)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

- _____ Concur
- _____ No Objection
- _____ No Comment
- _____ See proposed edits on pages _____
- _____ Other: _____
- _____ FAX RETURN of _____ pages, attached to this response sheet

THE WHITE HOUSE
WASHINGTON

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Draft

Statement of Jeffrey L. Farrow
Co-Chair, The President's Interagency Group on Puerto Rico
to the Senate Committee on Energy and Natural Resources
on H.R. 856 and S. 472
July 14, 1998

Mr. Chairman and Distinguished Members:

Thank you for inviting the Executive Branch to testify on the two bills before the Committee that would establish a process for determining the ultimate political status of Puerto Rico.

This hearing is being held days before the Centennial of the beginning of the United States taking of the Islands. The date -- July 25th -- is also the 46th anniversary of the present arrangement for the governing of Puerto Rico, including the locally-drafted, insular constitution.

This arrangement is known by the name of the government that the constitution established: Commonwealth. Under it, the insular government exercises authority similar to that of a State while the Federal Government continues to have its broad power to govern territory under the sovereignty of the United States. The arrangement also continued a number of Federal policies concerning the Islands. The insular government is elected but the 3.9 million residents of Puerto Rico are only represented in the Federal Government by a Resident Commissioner who is limited to voting in House committees . . . even though Puerto Ricans are U.S. citizens.

The arrangement was established by actions of the people of Puerto Rico as well as the Federal Government. It was a substantial development in self-government that we honor and should be respected. It was not, however, a political status choice and it did not change the Islands' fundamental status, as your predecessor committee noted in approving it.

Almost since the arrangement took effect, Puerto Ricans have petitioned for greater self-government. Today, all of Puerto Rico's political parties are based on one vision or another of a fully democratic governing arrangement.

They are divided, however, on what the options really are (in addition to which would be best). The debate primarily reflects their conflicting visions, but it is partially attributable to conflicting Federal statements and a lack of clear Federal policies on the matter as well.

Almost all Puerto Ricans want a status that involves substantial interaction with the United States. Because they cannot themselves determine what the Federal Government would be willing to do, they have repeatedly petitioned for legislation such as the bills before you.

This is, obviously, a matter of transcendent importance. It concerns the still unrealized self-government rights of millions of people: 3.9 million U.S. citizens under our flag by conquest who sacrifice for us but have no vote in the government that makes their national laws.

It also is a pivotal question in determining many other Federal and insular policies, the approaches to serious economic and social challenges faced in the Islands. Should policies be geared toward Puerto Rico being permanently under the U.S. flag or eventual separation? And if Puerto Rico is to remain permanently under our flag, will it someday become a part of our country in all respects? Should it be treated equally or differently? Resolving the status question is fundamental to resolving important economic and social policy questions. Further, the debate is so intense that it hinders action on these issues to the detriment of Puerto Ricans and the Nation.

This frustrating debate is likely to continue until the Federal Government finally responds to years of questioning by Puerto Ricans and clarifies what the options are. Their decision largely hinges on Federal decisions that have not been made or articulated:

Is statehood an option, as national leaders and a commission established by law have said, for this U.S. area to which most national laws apply? Or are its U.S. citizens somehow incompatible with their fellow citizens (including the three million Puerto Ricans who live in States) as others have suggested?

Will the United States help Puerto Rico if its people choose national sovereignty after a century under our flag without full self-government? Or will we simply cut it adrift and leave it to its own devices if its people choose to leave the family and the conditions as well as the benefits of a U.S. status?

Will the Federal Government cede the exercise of its powers to Puerto Rico under a Commonwealth arrangement? Can such an arrangement actually or effectively limit Federal territory governing powers? Can Commonwealth become a form of national sovereignty under which U.S. citizenship would continue to be granted?

President Clinton firmly believes that, after a century under the U.S. flag, Puerto Ricans should be enabled to choose among all of the options: national sovereignty -- either independence or in an association with the United States; membership in the Union; and continuing the present arrangement. This is his highest priority regarding the Islands. He will strongly support nationhood or statehood if Puerto Ricans vote for either status change and he will continue to work to make the current governing arrangement work better for them as long as they do not. He has no preference among the options, believing that the decision should be Puerto Ricans'.

The United States is internationally committed to supporting a Puerto Rican choice. Enabling Puerto Ricans to choose is a Federal responsibility. The President's position is that we should finally make it possible this Centennial year by providing the options through either of the bills before you. He wants to establish a process that Puerto Ricans can act on as they are ready to and that would channel the debate away from other issues and toward a constructive end. He does not feel Puerto Rico should be forced to change, but deeply believes that the fully democratic options should be open to its people. We should clarify what their options are, having considered their

desires, so they can decide when they are ready to and we can all get to other business.

Thus, Mr. Chairman, on behalf of the President, I thank you for calling this hearing and for the three prior sessions you have held on the status question itself and issues that a change in status would raise. I also, on behalf of the President, thank Senators Craig and Graham for their leadership on this matter and Senator Bumpers for his assistance to the Administration on it.

The two bills that are the subject of this hearing are companion bills. They are not identical, particularly since the House acted on its bill, which was sponsored by the leaders of both parties in the House and your counterpart committee. President Clinton strongly supported House passage of H.R. 856 and hopes to be able to sign either of the two bills before you into law. The Administration strongly urges the Committee to favorably report a bill as soon as possible, given the planned number of session days left in this Congress. We are ready and anxious to work with you to do this as well as to obtain full Senate passage and final congressional action.

Both bills contain the essential elements for a law on this matter: They would provide Puerto Ricans with the options and provide for Federal action on a choice. They would also facilitate a choice and establish a process that would move to the next stage when both sides are ready.

They would not change Puerto Rico's status. Indeed, they would require the enactment of two more laws and two more popular mandates from the people of Puerto Rico over as long as more than a decade for a status change to occur.

They would, however, finally enable a clear direction for the Islands to be determined and to be worked towards. They would provide an orderly process for rationally addressing the matters that would need to be addressed to prepare for a change in status and, then, to change status. They would enable the transition to be smooth and deliberate. And they would ensure that the mandate for change was sustained when and if one emerges, providing both Puerto Ricans and the Federal Government with opportunities to rethink in the event that matters do not develop adequately.

Let me now comment on specific provisions of each bill.

First, H.R. 856.

Section 4(a) would authorize an initial referendum on Puerto Rico's future political status to be held not later than December 31, 1998.

The President supports the goal of having a future status preference vote this year, but setting this as a statutory deadline is unnecessarily restrictive. The Government of Puerto Rico should have the flexibility to conduct the vote later if it feels that additional time is necessary for arrangements or public education reasons. The Governor and the Legislative Assembly strongly desire a vote, so there is no real chance that not setting a deadline will result in a referendum not being held.

Section 4(a) would also provide Commonwealth, Separate Sovereignty, and Statehood options. The options are based on and reasonably respond to proposals of Puerto Rico's political parties. Each of the parties is associated with one of the status options traditionally discussed in the Islands: Commonwealth; statehood; and independence. They have been recognized in Federal and Commonwealth law as advocates for these differing status visions. The Popular Democratic Party includes members who have various visions of what the current arrangement should become.

We have a concern about the Commonwealth option. Paragraph 4 suggests that Puerto Rico may only be enabled to participate equally with the States in the few programs where it is not now participating equally contingent on the payment of contributions to the cost of the programs. Puerto Rico is treated equally with the States or otherwise equitably funded in almost all programs. The exceptions to equitable treatment are a few major programs for the needy -- individuals who cannot contribute to the cost in any case. We do not disagree with the concept of Puerto Rican contributions to the cost of these programs to provide equal funding but we do disagree with suggesting that this is a universal rule.

It may be in the national interest to provide equal treatment without Puerto Rican contributions, as it has been in the case of most programs. The programs at issue now are principally the programs for: providing health insurance for needy children; aid to the needy aged, blind and disabled; medical care for the needy; and temporary assistance for needy families. It may be desirable to provide equal treatment in programs to meet compelling human needs even without special Puerto Rican contributions. The current treatment in programs such as those I have mentioned encourages migration to and imposes costs on States where Puerto Ricans, as U.S. citizens, can quickly obtain equal treatment.

We also have a more fundamental comment regarding the option: If the Popular Democratic Party makes a realistic proposal to you today for a fundamentally different option, it should be considered and be the basis for your prompt action on the bill.

The Commonwealth party is dissatisfied with the House-passed Commonwealth option even though the option is a reasonable response to what the party proposed. The party conceived of Commonwealth as a status option. Democratic principles require that the expressed aspirations of Puerto Ricans be central to the development of the options. The options also must also be viable from the Federal perspective, of course, if they are to provide Puerto Ricans with a meaningful choice. The President regards the consideration of party proposals -- and serious responses to them -- as integral to the mutual determination process that is needed.

During the course of the year since the House provision was initially drafted, we have repeatedly invited the party to propose amendments to address any substantive concerns and pledged to consider the proposals. As of the preparation of this testimony, the party had not done so although we have had some general discussions on the matter and it has made some statements on its aspirations. Any lack of proposals on its part should not be the cause of your inaction.

We have six concerns with respect to the Separate Sovereignty option, although it, too, is acceptable. The first two address concerns of the Puerto Rican Independence Party.

One is the labeling of the option as "Separate Sovereignty".

We suggest "National Sovereignty" instead.

Second, while Paragraph 6 provides for "economic and programmatic assistance at levels and for a reasonable period as provided on a government to government basis", it does not make clear that the assistance would be adequate to ensure an smooth transition to nationhood.

Puerto Rico came under the U.S. flag by conquest a century ago. After all this time, we have a responsibility to ensure a smooth transition to nationhood if Puerto Ricans -- who have not been really represented in our system -- want national sovereignty. We should take reasonable measures to enable a sovereign Puerto Rico to compete in the world economically.

Third, there is a problem with using the term "free association" in Puerto Rico.

National sovereignty encompasses the internationally-recognized status of free association between a small territory and a larger nation as well as independence. The option properly includes it. However, in Puerto Rico, the arrangement called "Commonwealth" in English is named by words that literally translate as "Free Associated State" in Spanish. Hence, there could be confusion between the Commonwealth and National Sovereignty options.

Given the established use of "Estado Libre Asociado" in Puerto Rico, and the little that the term "free association" has been used, it would be advisable to substitute something like "nationhood in association with the United States" for "free association" in the introductory phrase and "an association with the United States" for "a free association relationship" in Paragraph 7.

Fourth, we would also favor identifying any basic provisions of a free association that our government would contemplate with Puerto Rico, although we note that the terms would be subject to negotiation and subsequent congressional action and could be changed later.

By definition, the terms of free association should be negotiated between the parties. The transition phase of the bill would provide the opportunity for conducting such negotiations. But there are some fundamental elements of a free association that we would contemplate with a sovereign Puerto Rico that would address the aspirations of Puerto Ricans or U.S. interests.

One that would address a major issue in Puerto Rico would enable Puerto Ricans to freely enter the United States subject to appropriate security provisions. If Puerto Rico is to become a sovereign nation, birth there would certainly cease being a basis for granting U.S. citizenship; citizenship is a major element of nationhood. But the ties that have developed between Puerto Ricans and the United States over a century are extensive and deep. Puerto Ricans are currently

U.S. citizens. Citizens of the Pacific islands states with which we are freely associated have the right to freely enter, reside and work in the United States even though they were neither U.S. citizens or nationals and did not have those rights while under our territorial administration. Puerto Ricans should be treated at least as well, given the depth and length of our relationship even if they decide to substitute Puerto Rican sovereignty and citizenship for that of the U.S.

Other matters that could be referenced are the intentions to continue United States military rights, responsibility for Puerto Rican national defense, and some Federal programs. We would like to work with the Committee on appropriate language on this matter if the options are to be as extensive as those in the bill.

Fifth, Paragraphs 3 and 4, which concern the termination of U.S. law and citizenship under Puerto Rican nationhood, should be revised, primarily for clarity.

We developed alternative language for these provisions with the Chairman and Ranking Democrat of the House Committee. It is appended to my statement. We understand that it was not substituted for the language in the bill because the time was not opportune for its presentation.

Finally, Paragraph 2 of this option is unnecessary.

Much of the language in the Statehood option is also unnecessary.

In the event of a Puerto Rican choice for national sovereignty or statehood, Section 4(b) would require the President to submit a plan to the Congress within 180 days to enable the selected status to be implemented. The plan would be developed in consultation with Puerto Rico's government, political parties and others. Additionally, in the event of a Puerto Rican choice for national sovereignty, Puerto Rico would also be authorized to call a convention to formulate proposals to implement the choice. The President would be required to transmit the proposals to the Congress with views on them and, to the extent he deems advisable, incorporating them into the transition plan.

We do not object to the six month deadline for developing a transition plan in the case of statehood but it would be unrealistic given the greater complexities that would be involved in changing Puerto Rico's status in the case of sovereignty. The range of matters to be addressed would be much greater since Puerto Rico is treated as a State under most laws. The 180 days would probably be barely enough time for Puerto Rico to call and conduct a sovereignty convention. The President should have the benefit of Puerto Rico's proposals in developing a transition plan and some matters should be proposed based on consultations with Puerto Rico's representatives.

A more realistic requirement for submitting a transition plan in the case of Puerto Rican sovereignty would be one year after the conclusion of a Puerto Rican sovereignty convention.

We also think that a Puerto Rican convention would be essential in the case of a sovereignty choice and, therefore, that it should be required. Formal Puerto Rican input should be provided to the President on a host of issues that would be raised by transferring sovereignty.

We also have two technical concerns with the drafting of Section 4(a).

The initial paragraph mandates the actual presentation of the options on the ballot (in addition to their content).

We recommend leaving such decisions to the Government of Puerto Rico and replacing the words "presented on the ballot as follows" with "the following options".

Finally, this subsection and Subsection (c) purport to require the President to submit legislation - first, a transition plan and, then, an implementation resolution to the Congress. In order to conform to our constitutional separation of powers, we recommend that the word "shall" be replaced with "should" or "shall, as the President deems appropriate".

Finally, the bill begins with a number of Congressional Findings. They relate to Puerto Rico's history, current situation and political status in general. These Findings would not be part of the procedure for resolving Puerto Rico's status issue and have contributed to controversy about the legislation in the Islands. They were substantially rewritten during the process of House consideration to make them more accurate, but they are still somewhat subjective. They are also not essential. It may be more productive to delete them.

History has given us the conflicting facts and ambiguities which have fueled Puerto Rico's status debate. Rather than relitigate them now, it would be more productive to simply provide the process for resolving the debate.

If they are retained, we urge consideration of two changes to Paragraph 4, which concerns the creation of the Commonwealth arrangement.

First, it does not make clear the full extent of the mutual creation of the arrangement. The first of two laws on the matter required the approval of an insular referendum to be effective. The second states that the arrangement was a "compact." The Popular Democratic Party very much wanted this legislation to recognize the compact. It is appropriate in a bill as extensive as this one.

Second, Paragraph 4 refers to the arrangement as providing for "internal" self-government. "Internal" has been used to describe the Commonwealth's scope of authority but it has resulted in some confusion. Some infer that this means that the arrangement legally eliminated Federal powers.

"Insular" or "local" would be more precise terms.

Let me now turn to S. 472.

S. 472 was a companion to H.R. 856 that was initially similar but not identical to the House bill. It does not reflect some of the improvements that were made to the House bill.

This bill also begins with Findings that are not essential and, in this case, would need to be revised.

Paragraph 1 imprecisely describes the acquisition of U.S. nationality by most Puerto Ricans pursuant to the treaty by which Spain ceded Puerto Rico to the United States.

Paragraph 2 states that Congress carries out all Federal responsibilities with respect to Puerto Rico pursuant to the Territory Clause of the Constitution.

Setting aside the fact that Congress does not carry out all Federal responsibilities with respect to Puerto Rico -- the President and the courts also have their roles, Congress makes policy relating to Puerto Rico under other powers in addition to those of the Territory Clause.

Paragraph 3 states that civil government for Puerto Rico was provided by the 1917 law that is also known as the Jones Act.

The Foraker Act, enacted fifteen years earlier, had already provided for civil government in Puerto Rico.

Paragraph 4 states that Congress amended the territorial constitution in approving it.

In fact, Congress merely approved Puerto Rico's constitution subject to Puerto Rico's constitutional convention making certain amendments.

Section 2(b) would ostensibly require the Government of Puerto Rico to conduct political status referenda.

Rather than suggest a mandate that would be difficult to enforce if necessary, it would be more appropriate to simply authorize referenda. If an elected government of Puerto Rico did not want to conduct a referendum, forcing it do to do so would conflict with democratic principles. As I have already noted, Puerto Rico's current Government very much wants to conduct a referendum.

This subsection would also require that an initial referendum be conducted this year. I have already suggested the deletion of this deadline as unnecessary and, perhaps, unrealistic.

Section 2(d) provides Commonwealth, Separate Sovereignty, and Statehood options.

The Commonwealth option is not based on a proposal of the Popular Democratic Party. It should be if the party submits a proposal.

Paragraph 1 of the description in the bill states that Puerto Rico conducts self-government with respect to "internal affairs".

Again, "insular" or "local" affairs would be more precise terms.

Paragraph 2 states that provisions of the U.S. Constitution apply to Puerto Rico as determined by Congress.

Some provisions apply of their own force.

Paragraphs 3 and 4 seem to be redundant in light of Paragraphs 1 and 2.

The Committee may wish to consider incorporating provisions of the Commonwealth option in the House passed bill as we have suggested amending it. While it might not prove to be satisfactory to the Popular Democratic Party, it would, at least, be a fair Federal response to a Party proposal.

All of my comments with respect to the Separate Sovereignty option in H.R. 856 apply to the Separate Sovereignty option in this bill.

The Statehood option suggests that Puerto Rico would become fully self-governing prior to statehood.

We would suggest striking the phrase "through United States sovereignty leading to". Additionally, while Puerto Ricans would be fully self-governing under statehood, Puerto Rico itself would not be fully self-governing. It would, instead, be fully a part of a fully self-governing country.

Much of the rest is unnecessary. If it is desired to provide an explanation of statehood as extensive as the one in the bill, we recommend that the language of the option of H.R. 856 be substituted for the language in S. 472. It reflects several revisions that we developed with the House Committee leaders and the Resident Commissioner.

Section 3(b) would ostensibly require further status referenda at least every four years in Puerto Rico if there is a majority for the continuation of the current governing arrangement in an initial referendum or Puerto Ricans reject a Federally-approved transition plan or implementation bill.

I have already recommended that it would be more appropriate to authorize the status votes than to suggest a mandate for them. Additionally, we suggest giving the Government of Puerto Rico greater flexibility on the timing of additional votes. Further votes might not be desired by Puerto

Ricans every four years. In such a case, the call for revoking so often would be a disruptive burden. Further, if Puerto Ricans were to reject Federally-approved transition or implementation legislation, further Federal action might be advisable prior to further status choice votes.

While we would prefer leaving votes to the call of the Government of Puerto Rico, we consider the language of the House bill calling for votes at least every decade acceptable.

Finally, further votes should also be authorized in the case of no option obtaining majority support -- a possibility covered by the House bill's provision that is not covered in this one.

Section 3(c)(1) would require the President to submit transition plan legislation to Congress within 180 days of a Puerto Rican choice of statehood or national sovereignty. There is no provision for a Puerto Rican convention in the event of a choice of national sovereignty.

As I explained in my comments on H.R. 856, we think such a convention is essential. As I also explained, six months would not be adequate for the calling of the convention, the conduct of its business, and considering its recommendations. Again, a year after the conclusion of a Puerto Rican sovereignty convention is the minimum amount of time that we can conceive of as necessary for developing a Puerto Rico sovereignty transition plan.

Section 3(c)(2) would require a referendum on actually implementing a new status in Puerto Rico prior to the end of the transition period. Unlike H.R. 856, however, it does not also propose Federal implementation legislation. This raises the question of how the referendum would relate to implementation of the new status.

If there is no separate implementation legislation, the status change theoretically could occur as provided in the transition plan even if the referendum disapproves final implementation of the new status . . . as unlikely as that seems. There should, at least, be language preventing this situation if the process is to be as detailed as in this bill.

Mr. Chairman, those are the specific comments we have to offer on the bills. We would be pleased to address questions about them. I want to stress that our recommendations suggest the need for relatively minor amendments and that these can be made in concert with expeditious action in the case of either bill. They also suggest that many provisions can be deleted. We will be flexible on the extent of the details in the bills so long as the essentials are included. Our goal is to reach the Federal consensus necessary to enact a law this year.

The real question that these bills present are really very simple: Are we going to finally answer Puerto Ricans' questions of what their status options are so that they can determine their preference? Are we going to facilitate the determination of the direction they want to work in, if it is different from the present? Are we going to establish a process that can finally end the frustrating debate over the most fundamental decision of any society? Are we going to provide a process for the Federal Government and Puerto Ricans to thoughtfully and non-disruptively

address the issues step-by-step? Are we going to meet our responsibilities on this matter a century after we took control of the Islands? Are we going to enter the new Millennium having enabled nearly four million U.S. citizens who are not fully self-governing to take a step towards becoming so if and when they want to?

We stand ready to work with the Committee to answer these questions affirmatively as soon as possible.

Attachment

3. At the time of independence the sovereignty of the United States in Puerto Rico terminates and the Constitution and laws of the United States would cease to apply to Puerto Rico, except to the extent they would be retained by the legislature of Puerto Rico.

4. (a) Residents of Puerto Rico who are citizens of the United States on the day preceding independence and who were born in Puerto Rico would cease to be citizens of the United States and will owe allegiance to and be citizens of Puerto Rico, unless they would opt to remain citizens of the United States in which case they would cease to be citizens of Puerto Rico. Their United States citizenship, however, could not be transmitted to their children born in Puerto Rico on or after the day of independence.

(b) Residents of Puerto Rico who are citizens of the United States on the day preceding independence and who were not born in Puerto Rico would remain citizens of the United States enjoying ~~treatment~~ national status in Puerto Rico, unless they would opt to become citizens of Puerto Rico in which case they would cease to be citizens of the United States.

(c) The independence of Puerto Rico would not affect the citizenship of the United States citizens residing outside Puerto Rico, provided, however, that persons born in Puerto Rico could opt to acquire Puerto Rican citizenship, in which case they would cease to be citizens of the United States.

(d) In contested cases the question whether a person was a resident of Puerto Rico on the day preceding independence would be determined by an agency or tribunal to be determined by future legislation.



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

March 3, 1998 (SENT)
(House Rules)

STATEMENT OF ADMINISTRATION POLICY

(THIS STATEMENT HAS BEEN COORDINATED BY OMB WITH THE CONCERNED AGENCIES.)

H.R. 856 - United States-Puerto Rico Political Status Act (Young (R) AK and 87 others)

The Administration strongly supports House passage of the Resources Committee substitute to H.R. 856 which would provide a three-stage process for determining the ultimate political status of the Commonwealth of Puerto Rico.

Puerto Rico's future status is the fundamental issue concerning the islands' 3.75 million residents and a pivotal question in determining many Federal and insular economic and social policies. The islands exercise governing authority similar to that of a State under the jointly established Commonwealth arrangement. The Federal Government has broad governing authority in the islands, but their residents are represented in it only by a Resident Commissioner -- who is limited to voting in House committees.

Many Presidents, a commission established by law, and the House (in 1990 with overwhelming support) have held Puerto Rico's options to include statehood and independence, as well as Commonwealth. The Congress in 1979 and several Administrations have committed to support a Puerto Rican status choice, and have repeatedly conveyed that commitment to international questioners of Puerto Rico's status.

Because Puerto Ricans cannot unilaterally determine what their relationship with the United States will be, they have petitioned for years for legislation that would provide options and for implementation of their choice. The President is committed to establishing such a process, and supporting a majority choice among all of the various, long-discussed options.


The committee substitute would provide for a referendum in which voters would choose from among three options: (1) retain Puerto Rico's current status; (2) full self-government through independence or free association; or (3) full self-government through statehood. If voters select the continuation of commonwealth status, the substitute provides for consideration of Puerto Rican economic and social development proposals within its current status. If voters approve full self-government through either independence or statehood, the President would be required to submit to the Congress a legislative transition plan, and, if approved by the Congress and Puerto Ricans, a joint resolution on implementation, which would also require both Congressional and Puerto Rican approval. While most of the Administration's concerns with the Committee-reported bill have been addressed in the substitute, the Administration intends to work for further improvements in the Senate.

The Administration objected when the original bill effectively eliminated Commonwealth an option and called for an option based on a proposal of Puerto Rico's Commonwealth party.

The Administration will similarly strongly oppose amendments that would effectively bar statehood as an option based on the islands' Hispanic culture. Puerto Rico's people have been citizens for 80 years; their culture is an asset to our country. To exclude them from full voting rights and responsibilities, if they so choose, would be wrong.

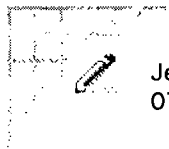
*** * * * ***

Record Type: Record

To: Jeffrey L. Farrow/WHO/EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: Puerto Rico Moment of Truth 

Jeff--this strikes me as strange--seems like you either are a us citizen or you are not and if the commonwealthers want an enhanced free association, with the equivalent of an independent sovereign nation, how can you be citizen? but what do I know, I've never looked at the legal arguments--do you think we need a meeting on this and if so, can DOJ/state really give us an impartial legal analysis--and do you think this is going anywhere in the senate and if not, why do we have to take view on this citizenship issue?

Jeffrey L. Farrow



Jeffrey L. Farrow
07/06/98 01:52:33 PM

Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Puerto Rico Moment of Truth

The subject I listed for this e-mail might seem hyperbolic, but next Tuesday's Senate hearing on the Puerto Rico status choice legislation will force us to answer a make or break issue with the Commonwealthers and the statehooders: whether we would favor continuing to grant U.S. citizenship if Puerto Rico becomes a nation that lets the U.S. exercise some of its sovereign powers ("free association"). Over the weekend, Gov. Rossello called to say its imperative that we say ASAP that we do not; Miguel Lause!! called to say the opposite. A "yes" would make free association competitive with statehood and get the Commonwealthers to go for it.

It also, though, combines contradictory concepts (independence and U.S. citizenship) and would be opposed by Justice and State. I am trying to get them to go along with what we're giving the much smaller three nations freely associated with us in the Pacific, i.e., free entry rights for Puerto Rican citizens into the U.S. (subject to necessary exclusions). The issues are that we're dealing with a population base 30 times larger and there is some desire to restrict what we've done with the Pacific islands, but I don't think WE can support less.

Those of us involved with our VP meetings discussed that this point would come. I wanted to make sure you knew we were at it. Some of you may be lobbied on it.

Any questions?

Message Sent To:

Fred DuVal/WHO/EOP
Mickey Ibarra/WHO/EOP
Janet Murguia/WHO/EOP
Maria Echaveste/WHO/EOP
Julie A. Fernandes/OPD/EOP
James J. Jukes/OMB/EOP

Message Copied To:

Julie A. Fernandes/OPD/EOP
Fred DuVal/WHO/EOP
Mickey Ibarra/WHO/EOP
Janet Murguia/WHO/EOP
Elena Kagan/OPD/EOP



Jeffrey L. Farrow
07/08/98 02:50:34 PM

Record Type: Record

To: Julie A. Fernandes/OPD/EOP

cc:

Subject: 5:45 today

We are meeting in Mickey Ibarra's office at 5:45 today. If you have a chance would you call me at 6-5179? Thanks..

Our position is:

Puerto Rico sovereign and freely assoc.
no citizenship

⊗ special access rights
for Puerto Ricans

If P.R. "freely assoc." status like independence.
Island delegates some of powers to another Co.
(Post office; military control)

Their citizens can enter U.S. freely.

No voting
No program benefits

entry doesn't qualify for nat's.

Tougher call:

If freely assoc. can't become citizens
(unhappy - commonwealthers)

No political support here except for citizenship
Citizenry
Velasquez

INS idea:

make them U.S. nationals

P.R. citizens, but U.S. nationals

free entry into U.S.
some program benefits
some laws protects them

< 50,000 U.S. nationals
(Amer. Samoa)

who controls
the laws where they
live.

Why being a national better?

May be easier for INS
US passport

Draft testimony

DoJ having an internal mtg. tomorrow

Q: What will we do for Puerto Ricans
if they set sovereignty.

If they set free assoc.

Statehood wins if citizenship not part of
sovereignty.

The Washington Post

AN INDEPENDENT NEWSPAPER

Puerto Rico's Moment

THIS IS A key moment for Congress to bear down on the Puerto Rico question, which has troubled Americans through the full 100 years since the United States seized the island from Spain. The now nearly 4 million residents are American citizens but are denied the full political rights of citizens in the 50 states. They sacrifice for the nation in war but have no vote in the government that makes their national laws. Gentle as the denial of rights may now seem, it is still fairly described as colonialism. Speaker Newt Gingrich was on the mark when he said earlier this year of Puerto Rico, "I just think personally that to keep a colony is a very dangerous idea in the 21st century."

The solution to the rankling way in which Puerto Ricans are treated has long been evident but only now is being seriously pursued. The first requirement is to afford islanders a full range of democratic choices of political status: either (1) continuing and enhancing the current commonwealth or (2) moving to statehood or (3) to national sovereignty, the latter either by independence or in association with the United States. The second requirement is to ensure that the executive and legislative branches in Washington define precisely the terms of each choice they offer Puerto Rico and commit themselves to carrying the choice out.

President Clinton has committed himself to self-determination legislation this year. The House passed a bill in March, and the Senate has been working on a measure that is similar

but not as extensive. Keeping up the legislative pace is what the Puerto Rican issue is now about.

In the past, mainland Americans were not prepared to bestow equal rights on an island of a different cultural, social and economic composition. But changes in immigration patterns and social attitudes have produced and sanctioned a broader ethnic diversity in the American population, and have at least lowered barriers to Puerto Ricans. Earlier, the easy assumption was made that Puerto Ricans would vote Democratic. Tellingly, the Senate advisory committee on Hispanic issues, chaired by Sen. Orrin Hatch, noted just last month that Alaska had been expected to send Democrats to Congress and Hawaii Republicans, and both predictions proved wrong. His committee noted that a recent poll indicated "strong support in Puerto Rico for conservative principles (e.g. 82 percent oppose abortion and 91 percent favor school prayer)."

The bills cooking on the Hill would not bestow a particular status but would simply set up a process for Washington to define Puerto Rico's choices and for Puerto Ricans to choose by plebiscite. The process would require of Congress two more bills and of Puerto Ricans three separate votes; a phase-in period, should independence or statehood be selected, would run to 2010. This is a sensible procedure that would end the unfairness and embarrassment of denying one innocent and deserving group of American citizens their essential rights.

THE WHITE HOUSE
WASHINGTON

The President's Interagency Group on Puerto Rico
Telephone (202) 482-0037
Facsimile (202) 482-2337

Facsimile Transmission Cover Sheet

Date: 7/20/98

To: Julie Fernandez

Fax Number: _____

From: Jeff Farrow

Message: I want to make sure that you didn't
miss this

Note: The information contained in this facsimile message is CONFIDENTIAL and is intended for the recipient ONLY. If there is a problem with this transmission, please contact the sender as soon as possible.

Number of pages with cover: 2

Statement of Jeffrey L. Farrow
Co-Chair, The President's Interagency Group on Puerto Rico
to the Senate Committee on Energy and Natural Resources
on H.R. 856 and S. 472
July 15, 1998

Mr. Chairman and Distinguished Members:

My name is Jeffrey L. Farrow, and I am Co-Chair of the President's Interagency Group on Puerto Rico. Let me begin by thanking you for inviting the Executive Branch to testify on the two bills before the Committee that would establish a process for determining the ultimate political status of Puerto Rico: H.R. 856, which has passed the House, and S. 472.

This hearing is being held days before the beginning of the Centennial of the United States taking of the Islands. The date -- July 25th -- is also the 46th anniversary of the present arrangement for the governing of Puerto Rico, including the locally-drafted, insular constitution.

The arrangement is known by the name of the government that the constitution established: Commonwealth. Under it, the insular government exercises authority similar to that of a State while the Federal Government continues to have its broad power under our national Constitution's Territory Clause to govern non-State areas under the sovereignty of the United States. Through the arrangement, Puerto Ricans also consented to a number of provisions of Federal law concerning the Islands.

This arrangement was established by actions of the people of Puerto Rico as well as actions of the Federal Government. It was an important step in the development of Puerto Rico's self-government that we honor and that should be respected.

It was not, however, a political status choice and it did not change the Islands' fundamental relationship to the United States, as your predecessor committee noted in approving it.

It also did not rectify the problem of Puerto Ricans not having real voting representation in the government that makes national laws for them. Insular officials are elected but the 3.9 million residents of Puerto Rico, although U.S. citizens, are represented in the Federal Government only by a single Resident Commissioner who is limited to voting in House committees.

Almost since Commonwealth took effect, Puerto Ricans have petitioned for greater self-government. Today, all of Puerto Rico's political parties are based on one vision or another of a fully democratic governing arrangement.

They are divided, however, on what the options really are -- in addition to which would be best. The debate primarily reflects their conflicting visions, but it is partially attributable to conflicting Federal statements and a lack of clear Federal policies on the matter as well.

Almost all Puerto Ricans want a status that involves substantial interaction with the United States. Because they cannot themselves determine what the Federal Government would be willing to do, they have repeatedly petitioned for legislation such as the bills before you.

This is, obviously, a matter of transcendent importance. It concerns the still unrealized self-government rights of millions of people: 3.9 million U.S. citizens under our flag by conquest who sacrifice for us in war but have no vote in the government that makes their national laws.

It also is a pivotal question in determining many other Federal and insular policies, the approaches to serious economic and social challenges. Should policies be geared toward Puerto Rico being permanently under the U.S. flag or eventual separation? And if Puerto Rico is to remain permanently under our flag, will it someday become a part of our country in all respects? Should it be treated equally or differently? Resolving the status question is fundamental to resolving important economic and social policy questions. Further, the debate is so intense that it hinders action on these issues to the detriment of Puerto Ricans and the Nation.

This frustrating situation is likely to continue until the Federal Government finally responds to years of questioning by Puerto Ricans and clarifies what the options are. Their decision largely hinges on Federal decisions that have either not been made or articulated:

Is statehood an option, as national leaders and a commission established by law have said, for this U.S. area to which most national laws apply? Or are Puerto Ricans somehow incompatible with their fellow U.S. citizens (including the three million Puerto Ricans who live in States) as others have suggested?

Will the United States help and remain open to Puerto Rico if its people choose to become a sovereign nation after a century under our flag without full self-government? Or will we simply cut it off and leave it to its own devices if its people choose to leave the family and the restrictions as well as the benefits of a U.S. status?

Will the Federal Government cede the exercise of its substantial national government authority to Puerto Rico under a Commonwealth arrangement? Can such an arrangement limit Federal powers to govern U.S. territory? Can Commonwealth be a form of national sovereignty under which U.S. citizenship would continue to be granted?

President Clinton firmly believes that, after a century under the U.S. flag, Puerto Ricans should be enabled to choose among all of the options: national sovereignty -- either independence or in an association with the United States; membership in the Union of States; and continuing the present arrangement. This is his highest priority regarding Puerto Rico. He will strongly support nationhood or statehood if Puerto Ricans vote for either status change and he will continue to work to make the current arrangement work better for them as long as they do not. He has no preference among the options, believing that the decision should be Puerto Ricans'.

The United States has committed itself internationally to supporting a Puerto Rican choice. Enabling Puerto Ricans to choose is a Federal responsibility. The President's position is that we should finally carry it out this Centennial year by providing the options through either of the bills before you. He wants to establish a process that Puerto Ricans can act on as they are ready to and that would channel the debate away from other issues and toward a constructive end. He does not feel Puerto Rico has to change, but he also believes that all the fully democratic options should be open to its people. Most fundamentally, though, our government has a responsibility to tell non-fully self-governing Puerto Ricans what their fully democratic options are so they can decide as they are ready to and we can all get to other business.

Thus, Mr. Chairman, on behalf of the President, I thank you for calling these hearings and for the three prior sessions you have held on the status question itself and issues that a change in status would raise. I also, on behalf of the President, thank Senators Craig and Graham for their leadership on this matter and Senator Bumpers for his assistance to the Administration on it.

The two bills that are the subject of this hearing are companion bills. They are not identical, especially since the House acted on its bill, which was sponsored by the leaders of both parties in the House and your counterpart committee. President Clinton strongly supported House passage of H.R. 856 and hopes to be able to sign either of the two bills before you into law. The Administration strongly urges the Committee to favorably report a bill as soon as possible, given the number of session days left in this Congress. We are ready and anxious to work with you to do this as well as to obtain full Senate passage and final congressional action.

Both bills contain the essential elements for a law on this matter: They would provide Puerto Ricans with the options, authorize a choice until one is made, and provide for a Federal action on a choice. They would also facilitate a choice and lay out a process that would move to the next stage when both sides are ready.

The bills would not change Puerto Rico's status, however. Indeed, they would require the passage of two more bills and three popular mandates from the people of Puerto Rico over a period of up to a dozen years or more for a status change to occur.

They would, though, finally enable a clear direction for the Islands to be determined and to be worked towards. They would provide an orderly process for rationally addressing the myriad and complex matters that would need to be addressed to prepare for a change in status and, then, to change it. They would enable the transition to be smooth and deliberate. Finally, they would ensure that the mandate for change was sustained when and if one emerges, providing both Puerto Ricans and the Federal Government with opportunities to rethink in the event that matters do not develop adequately.

Let me now comment on specific provisions of each bill.

First, H.R. 856.

Section 4(a) would authorize an initial referendum on Puerto Rico's future political status to be held not later than December 31, 1998.

The President supports the goal of having a future status preference vote this year, but setting this as a statutory deadline is unnecessarily restrictive. The Government of Puerto Rico should have the flexibility to conduct the vote later if it feels that additional time is necessary for arrangements or for public education reasons. The Governor and the Legislative Assembly strongly desire a vote, so not setting a deadline will not result in a failure to hold a referendum

Section 4(a) would also provide Commonwealth, Separate Sovereignty, and Statehood options. The options are based on and reasonably respond to proposals of Puerto Rico's major political parties. Each of the parties is associated with one of the status options traditionally discussed in the Islands: Commonwealth; statehood; and independence. The parties have been recognized in Federal and Commonwealth law as the leading advocates for these differing status visions.

Our comment regarding the Commonwealth option is a fundamental one.

Democratic principles require that the expressed aspirations of Puerto Ricans be central to the development of the options -- which also must be viable from the Federal perspective if they are to provide Puerto Ricans with a meaningful choice. The President regards the consideration of party proposals -- and serious responses to them -- as integral to the mutual determination process that is needed to resolve the Puerto Rico future status question.

H.R. 856 earlier contained a Commonwealth option written by the bill's primary sponsors based on their own understanding of the option. We and the Ranking Democrat of the House committee insisted that the Popular Democratic Party, which conceived of Commonwealth as a status option, be able to propose substitute language since the party said that the option did not reflect its aspirations. The primary sponsors agreed and the bill was subsequently amended to reflect a reasonable response to what the party proposed. Because of this, it remains acceptable to us.

The option is now based on and is similar to what the party proposed but the party is still dissatisfied with it. The issues have centered on the party's contentions that Federal Territory Clause powers with respect to Puerto Rico were legally limited by the current Commonwealth arrangement and that the citizenship of Puerto Ricans is guaranteed by the 14th Amendment.

During the year since the response to the party's proposal was initially drafted, we have repeatedly invited the party to propose amendments or an entirely different alternative, pledged to seriously and sympathetically consider such a proposal, and pledged work for its congressional consideration. The party includes members who advocate various enhancements or more fundamental changes to the current arrangement and has had internal discussions on the matter.

The president of the party has discussed it in general with us and made some suggestions of his

ideas, but the party has made no new proposal to us. The latest communication we have had from the party president suggests that its priority request is for the option to guarantee that U.S. citizenship will continue to be granted and that a secondary aspiration is for a grant of national sovereignty with an association with the United States.

You heard from the president of the party yesterday. His presentation should be the basis for your prompt action. It should respond to the extent that he proposed a description that is legally possible and advisable from a policy perspective. We are ready to work with you in this regard.

We have six concerns with respect to the Separate Sovereignty option, although it, too, is acceptable as passed. The first two address concerns of the Puerto Rican Independence Party.

One is the labeling of the option as “Separate Sovereignty”.

“National Sovereignty” would be equally clear and sound more neutral.

The second concern relates to Paragraph 6, which suggests a willingness to assist the new nation economically and programmatically and that goods and citizens would be able to go between it and the United States. It does not, however, make clear that the assistance would be geared toward helping Puerto Rico tap its potential for prosperity as a nation, that we would hope the trade to be free, and that the movement of citizens should be on terms that respond to our century of ties with the Islands.

This is especially an oversight since the Puerto Rican Independence Party has proposed that there continue to be close ties between an independent Puerto Rico and the United States. More fundamentally, though, we have an obligation to take sympathetic and generous measures with if the Islands’ people want national sovereignty after we took them by conquest and governed them without their having a vote in our system for 100 years.

Third, there is a problem with using the term “free association” in Puerto Rico.

National sovereignty encompasses the internationally-recognized status of free association between a small territory and a larger nation as well as independence. The option properly includes both. However, in Puerto Rico, the arrangement called “Commonwealth” in English is named “Estado Libre Asociado” in Spanish, which literally translates as “Free Associated State”. Hence, there could be confusion between the Commonwealth and National Sovereignty options.

Given the established use of “Estado Libre Asociado” in Puerto Rico, and the little that the term “free association” has been used, it would be advisable to substitute something like “nationhood in association with the United States” for “free association” in the introductory phrase and “an association with the United States” for “a free association relationship” in Paragraph 7.

Fourth, we would also favor identifying any basic provisions of a free association with Puerto

Rico that Congress would join us in contemplating, although we note that the terms would be subject to negotiation and subsequent congressional action and that they could be changed later.

By definition, the terms of free association should be negotiated between the parties. The transition phase of the bill would provide the opportunity for conducting such negotiations. But there are some fundamental elements of a free association that we would contemplate with a sovereign Puerto Rico that would address the aspirations of Puerto Ricans or U.S. interests.

One that would address a major issue in Puerto Rico would say that we would enable Puerto Ricans to freely enter the United States subject to appropriate security provisions. If Puerto Rico is to become a sovereign nation, birth there would cease being a basis for granting U.S. citizenship: citizenship is a major element of nationhood. But the ties that have developed between Puerto Ricans and the United States over a century are extensive and deep. Puerto Ricans are currently citizens. Citizens of the Pacific islands states with which we are freely associated have the right to freely enter, reside and work here even though they were neither U.S. citizens or nationals and did not have those rights while under our territorial administration. Puerto Ricans should be treated at least as well, given the depth and length of our relationship even if they decide to substitute Puerto Rican sovereignty and citizenship for that of the U.S.

Other matters that could be referenced are the intentions to continue: the presence of United States military bases; U.S. responsibility for Puerto Rican national defense; and some Federal programs. We would like to work with the Committee on appropriate language on this matter if the options are to be as extensive as those in the bill.

Fifth, Paragraphs 3 and 4 should be revised, primarily for clarity.

We developed alternative language for these provisions with the Chairman and Ranking Democrat of the House Committee. It is appended to my statement. We understand it was not substituted for the language in the bill because the time was not opportune for its presentation.

Finally, Paragraph 2 of this option is unnecessary and are, essentially, redundant.

Much of the language in the Statehood option is also unnecessary. Statehood is defined in the Constitution of the United States.

In the event of a Puerto Rican choice for national sovereignty or statehood, Section 4(b) would require the President to submit a plan to the Congress within 180 days to enable the selected status to be implemented. The plan would be developed in consultation with Puerto Rico's government, political parties and others. Additionally, in the event of a Puerto Rican choice for national sovereignty, Puerto Rico would also be authorized to call a convention to formulate proposals to implement the choice. The President would be required to transmit the proposals to the Congress with views on them and, to the extent he deems advisable, incorporate them into the transition plan.

We do not object to the six month deadline for developing a transition plan in the case of statehood but it would be unrealistic given the greater complexities that would be involved in the case of Puerto Rican sovereignty. The range of matters to be addressed would be much greater since Puerto Rico is treated as a State under most laws. The 180 days would probably be barely enough time for Puerto Rico to call and conduct a sovereignty convention. The President should have the benefit of Puerto Rico's proposals in developing a transition plan and some matters should be proposed based on consultations with Puerto Rico's representatives. The matters would vary depending on whether the convention chooses full independence or nationhood in association with the United States.

A more realistic requirement for submitting a transition plan in the case of Puerto Rican sovereignty would be one year after the conclusion of a Puerto Rican sovereignty convention.

We also think that a convention would be essential in the case of a national sovereignty choice and, therefore, that it should be required. Formal Puerto Rican input should be provided to the President on a host of issues that would be raised by transferring sovereignty.

We also have two technical concerns with the drafting of Section 4(a).

The initial paragraph mandates the actual presentation of the options on the ballot (in addition to their content).

We recommend leaving such decisions to the Government of Puerto Rico and replacing the words "presented on the ballot as follows" with "the following options".

Finally, this subsection and Subsection © purport to require the President to submit legislation -- first, a transition plan and, then, an implementation resolution to the Congress. In order to conform to our constitutional separation of powers, we recommend that the word "shall" be replaced with "should" or "shall, as the President deems appropriate".

Finally, the bill begins with a number of Congressional Findings. They relate to Puerto Rico's history, current situation and political status in general. These Findings would not be part of the procedure for resolving Puerto Rico's status issue and have contributed to controversy about the legislation in the Islands. They were substantially rewritten during the process of House consideration to make them more accurate, but they are still somewhat subjective. They are also not essential. It may be more productive to delete them.

History has given us the conflicting facts and ambiguities which have fueled Puerto Rico's status debate. Rather than relitigate them now, it would be more productive to simply provide the process for resolving the debate.

If they are retained, we urge consideration of two changes to Paragraph 4, which concerns the creation of the Commonwealth arrangement.

First, the paragraph does not make clear the full extent of the mutual nature of the arrangement's creation. The first of two Federal laws on the matter required the approval of an insular referendum to be effective. The second states that the arrangement was a "compact."

The Popular Democratic Party very much wanted this legislation to recognize the compact. The objection in the House related to a history of suggestions that the compact legally bound the Federal Government to all provisions of law it involved rather than morally to the governing arrangement itself. The latter is correct, of course, and this legislation is consistent with the commitment not to replace the arrangement without the agreement of the people of Puerto Rico. The compact exists and it is appropriate to mention in a bill as extensive as this one.

Second, Paragraph 4 refers to the arrangement as providing for "internal" self-government. "Internal" has been used to describe the Commonwealth's scope of authority but it, like "compact" has resulted in some confusion. Some infer that its use means that the arrangement legally eliminated Federal powers.

"Insular" or "local" would be more precise terms.

Let me now turn to S. 472.

This bill is a companion to H.R. 856. While similar, it is not as extensive. It also does not reflect some of the improvements that the House made to H.R. 856.

A major difference between the bills is that S. 472 would only provide a process for making Puerto Rico a territory destined for statehood, rather than make it a State, in the event of a choice of statehood. To be clear about the distinction, the process in H.R. 856 would make Puerto Rico a State if two more laws are enacted after H.R. 856 and three referenda vote for statehood. S. 472 lays out a process that through one law in addition to S. 472 and three referenda, Puerto Rico would be an incorporated territory. Congress would have to act beyond what is specified in the bill to grant statehood.

Another significant difference is that S. 472 would not provide rules for congressional consideration of subsequent legislation in the process. H.R. 856 and the transition plan in the H.R. 856 includes provisions intended to ensure that its transition plan and implementation resolution are considered by the Congress as a whole and expeditiously.

Like H.R. 856, S. 472 also begins with Congressional Findings. They are not essential and should be revised if they are favorably reported.

Paragraph 2 states that Congress carries out all Federal responsibilities with respect to Puerto Rico pursuant to the Territory Clause of the Constitution.

Setting aside the fact that Congress does not carry out all Federal responsibilities with respect to

Puerto Rico -- the President and the courts also have their roles, Congress makes policy relating to Puerto Rico under powers in addition to those of the Territory Clause.

Paragraph 3 states that civil government for Puerto Rico was provided by the 1917 law that is also known as the Jones Act.

The Foraker Act, enacted fifteen years earlier, had already provided for civil government in Puerto Rico.

Paragraph 4 states that Congress amended the territorial constitution in approving it.

In fact, Congress merely approved Puerto Rico's constitution subject to Puerto Rico's constitutional convention making certain amendments.

Section 2(b) would ostensibly require the Government of Puerto Rico to conduct political status referenda.

Rather than suggest a mandate that would be difficult to enforce if necessary, it would be more appropriate to simply authorize referenda. If an elected government of Puerto Rico did not want to conduct a referendum, forcing it to do so would conflict with democratic principles. As I have already noted, Puerto Rico's current government very much wants to conduct a referendum.

Section 2© would require that an initial referendum be conducted this year.

I have already suggested the deletion of this deadline as unnecessary and, perhaps, unrealistic.

Section 2(d) provides Commonwealth, Separate Sovereignty, and Statehood options.

The Commonwealth option is not based on a proposal of the Popular Democratic Party. It should be either through your action in response to what was proposed yesterday or through the option in the House bill or something similar.

Paragraph 1 of the description in the bill states that Puerto Rico conducts self-government with respect to "internal affairs".

Again, "insular" or "local" affairs would be more precise terms.

Paragraph 2 states that provisions of the U.S. Constitution apply to Puerto Rico as determined by Congress. Some provisions apply by their own force.

We would rewrite the paragraph as follows: (2) The provisions of the Constitution of the United States that do not apply by their own force and the laws of the United States apply to Puerto Rico as determined by the Congress.

Paragraphs 3 and 4 seem to be redundant in light of Paragraphs 1 and 2.

All of my comments with respect to the Separate Sovereignty option in H.R. 856 apply to the Separate Sovereignty option in this bill. In addition, the option suggests that Puerto Rico would attain sovereignty prior to becoming independent or entering into a free association relationship. The Statehood option suggests that Puerto Rico would become fully self-governing prior to statehood.

We would suggest striking the phrase “through United States sovereignty leading to”. Additionally, while the option suggests that Puerto Rico would be fully self-governing under statehood, it would be more precise to say that Puerto Ricans would be. The Islands would, instead, be fully a part of a fully self-governing country.

Much of the rest is unnecessary. If it is desired to provide an explanation of statehood as extensive as the one in the bill, we recommend that the language of the option of H.R. 856 be substituted for the language in S. 472. It reflects several revisions that we developed with the House Committee leaders and the Resident Commissioner.

Section 3(b) would ostensibly require further status referenda at least every four years in Puerto Rico if there is a majority for the continuation of the current governing arrangement in a status referendum or if Puerto Ricans reject a Federally-approved transition plan or implementation of a selected status.

I have already recommended that it would be more appropriate to authorize the status votes than to suggest a mandate for them. Additionally, we suggest giving the Government of Puerto Rico greater flexibility on the timing of additional votes. Further votes might not be desired by Puerto Ricans every four years. In such a case, the call for revoting so often would be a disruptive burden. Further, if Puerto Ricans were to reject Federally-approved transition or implementation legislation, additional Federal action might be advisable prior to further status choice votes.

While we would prefer leaving votes to the call of the Government of Puerto Rico, we consider the language of the House bill calling for votes at least every decade acceptable.

Additionally, this subsection would prohibit a referendum within 180 days of a general election. The decision of whether to schedule a referendum in concert with or separate from a general election should be left to the Government of Puerto Rico.

Finally, this subsection does not authorize further votes in the case of no option obtaining majority support -- a possibility covered by the House bill's provision that should also be covered in this one.

Section 3(c)(1) would require the President to submit transition plan legislation to Congress within 180 days of a Puerto Rican choice of statehood or national sovereignty. There is no

provision for a Puerto Rican convention in the event of a choice of national sovereignty.

As I explained in my comments on H.R. 856, we think such a convention is essential. As I also explained, six months would not be adequate for the calling of the convention, the conduct of its business, and considering its recommendations. Again, a year after the conclusion of a Puerto Rican sovereignty convention is the minimum amount of time that we can conceive of as necessary for developing a Puerto Rico sovereignty transition plan.

Section 3(c)(2) would require a referendum on actually implementing a new status in Puerto Rico prior to the end of the transition period. As I have noted, in the case of a status choice of statehood, the status that would be implemented would be incorporation leading to statehood rather than statehood.

Unlike H.R. 856, however, S. 472 does not also propose Federal implementation legislation. Thus, nationhood could theoretically be implemented as provided in the transition plan even if the referendum disapproves final implementation of the new status . . . as unlikely as that seems. Additionally, Congress would have to act beyond what is contemplated in this bill to implement statehood.

Mr. Chairman, those are the specific comments we have to offer on the bills. We would be pleased to address questions about them. I want to stress that our recommendations suggest the need for relatively minor amendments and that these can be made in taking expeditious action in the case of either bill. They also suggest that many provisions of the bills are not essential. We will be flexible on the extent of the details in the bills so long as the essentials are included. Our goal is to reach the Federal consensus necessary to enact a law this year.

The real questions that these bills present are really very simple: Are we going to finally answer Puerto Ricans' questions of what their status options are so that they can determine their preference? Are we going to facilitate the determination of the direction they want to work in, if it is different from the present? Are we going to establish a process that can finally end the frustrating debate over the most fundamental decision of any society? Are we going to provide a process for the Federal Government and Puerto Ricans to thoughtfully and non-disruptively address the issues step-by-step? Are we going to meet our responsibilities on this matter a century after we took control of the Islands? Are we going to enter the new Millennium having enabled nearly four million U.S. citizens who are not fully self-governing to take a step towards becoming so if and when they want to?

We stand ready to work with the Committee to answer all or any of these questions affirmatively as soon as possible.