

IN HONOR OF MONSIGNOR
WILLIAM F. BURKE

HON. CHARLES E. SCHUMER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 12, 1998

Mr. SCHUMER. Mr. Speaker, I ask my colleagues to join me today as I commend Monsignor William F. Burke, Ph.D., on his fifty years of devoted service to the Knights of Columbus Rockaway Council.

A Bronx native, he is one of eight children born to Anthony B. Burke and Anna M. Wash. The product of a fine, traditional Catholic upbringing and education, Monsignor Burke attended such institutions as St. Joachim's School in Cedarhurst, Long Island and St. Augustine's Diocesan High School in Brooklyn. He went on to study at St. John's College in Brooklyn, where he graduated *Cum Laude*, with a BA degree in June of 1939. Later, he received a M.A. from St. John's University in June 1948, and a Ph.D. from St. John's and Columbia Universities in 1959. He taught at St. John's University Graduate School from 1948-1952.

As a priest, he has had the chance to share his faith and spread the message to benefit a number of parishes throughout the years. He has had the opportunity to leave his mark on the parishes of St. Patrick's Church, in Huntington, Long Island (1943-1945) before going to St. Francis de Sales in Belle Harbor. In June 1951, he joined St. Camillus Parish in Rockaway Beach, where he was appointed to office of Director of Institutional Services in 1963. He retained this position until his retirement from the post in January 1995. Monsignor Burke is presently a Sunday assistant at that parish.

Among his many accomplishments at St. Camillus Parish, Msgr. Burke became Chaplain of Knights of Columbus in April 1948. He served on many Diocesan Committees as the Director of the Health Insurance and Employee Relations offices. Also during that time, he worked on a Papal committee for Pope Paul VI in 1965 and two for Pope John Paul II in 1979 and later again in 1995. In September of 1952, he established, organized, and directed the St. Camillus Band, which went on to win many competitions, medals and trophies. An octogenarian with a lot of spunk, he still manages to travel all over the United States as director of the band.

I would like to take this opportunity to salute Monsignor William Burke. He has made it his life's work to improve the human spirit and we thank you for your many years of service to the Catholic faith. Congratulations on fifty years of service to Knights of Columbus, Rockaway Council and to the citizens of New York, many more to come.

KENNETH STARR'S CREDIBILITY
AND INTEGRITY

HON. MICHAEL G. OXLEY

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 12, 1998

Mr. OXLEY. Mr. Speaker, for those who missed it, I would like to bring an opinion piece from the March 11th Wall Street Journal

to the attention of my colleagues. As the piece makes clear, our sense of right and wrong and our commitment to the rule of law is being challenged by the attacks on Independent Counsel Kenneth Starr's credibility and integrity. We would be wise to allow the investigation to proceed in an environment free of partisan bickering to allow the truth to be found.

Mr. Speaker, I commend the following column to the attention of all interested parties.

[From the Wall Street Journal, Mar. 11, 1998]

THE BORKING OF STARR

We blink every time talking heads discuss Kenneth Starr's low approval ratings; we hope we aren't the only ones taken a bit aback by the very idea of conducting opinion polls about judicial officers. In the judicial branch, we thought, the game was about statutes and precedents and scholarly qualifications, not about popularity. But perhaps this useful distinction too is being obliterated in the current climate.

If so, the corner was turned with the campaign against Robert Bork's nomination to the Supreme Court. Precisely because his scholarly attainments and intellect were the cream of his generation, his opponents feared his views would dominate a new crop of jurists. So they mounted a campaign to drive down his poll ratings, and thereby frighten the Senators weighing his nomination. They succeeded, but the cost to American institutions becomes clearer and clearer with the passage of time.

We have arrived at a point where a James Carville goes on television to declare "war" on Kenneth Starr. Mr. Starr is an official of the U.S. government, duly appointed by a panel of three judges pursuant to laws passed by the U.S. Congress and signed by Bill Clinton. Presumably this means he is not the local football coach, removable by mob sentiment. If Mr. Starr is abusing his powers, that same law provides that the Attorney General can remove him, and she should do so.

Instead, Mr. Clinton's Attorney General has expanded the scope of Mr. Starr's investigation at least three known times. Four former attorney generals, including Griffin Bell of the Carter Administration, have testified to Mr. Starr's long-standing personal reputation for integrity and judicial temperament. (Since their statement has not been widely covered, we reprint it in its entirety nearby.)

None of this matters in Mr. Carville's war, and we're confident none of it is explained to people when the pollsters put their questions.

What we have here is a public relations offensive intended to turn the public against a court official going about his work and not in a position to reply to every criticism. In the March 2 New York Times an obviously confident White House aide casually describes "our continuing campaign to destroy Ken Starr."

This "continuing campaign" hasn't been restricted to Mr. Starr, himself a former appeals court judge. Judge David Sentelle of the three judge panel has been diminished by Clinton operatives as merely a tool of Senator Helms. Other troublesome judges can expect to be similarly targeted. This is, in effect, an attack on the judicial branch if not indeed the law itself.

In this campaign, the President of the United States avails himself of his own personal Praetorian Guard of dirt-diggers, personified by Terry Lenzner's Investigative Group Inc. Back in 1994, the President's private attorneys, Robert Bennett and David Kendall, retained IGI's services in the Paula Jones and Whitewater cases. Jack Palladino,

hired in the first Clinton Presidential run to help with Betsey Wright's "bimbo eruptions," has also appeared on the scene, bragging about his success in avoiding subpoenas. Mike McCurry, spokesman for the Presidency who's doubling inappropriately as flack for Mr. Clinton's own lawyers, said the President was aware that his private lawyers had hired outside investigators but that the detectives weren't looking for "personal derogatory information."

Yet somehow derogatory information, some of it plainly false, keeps popping up. Former prosecutor Joseph diGenova said last month on "Meet the Press" that journalists told him that both he and his wife were being probed after they'd given interviews critical of Mr. Clinton in the Lewinsky scandal. Mr. Starr's private life has also been investigated, with all involved denying a White House connection. Mr. Starr's perhaps impolitic subpoena of White House spinner Sidney Blumenthal came after the IC's office started receiving reporters' calls asking for comment on destructive rumors about staff prosecutors. Wire stories, for example, suggested that prosecutor Bruce Udolf has been fined 10 years ago for violating a defendant's civil rights in Georgia. A former federal judge defended Mr. Udolf against the implication that he could be expected to abuse the law.

Richard Nixon's Watergate "plumbers" offended mainly because the President, who has authority over a powerful national security apparatus, had created a private posse to investigate his enemies, unchecked by professional pride and the mores of an ongoing institution. It's now evident that the Clintonies learned two things from Watergate: Burn the tapes, and put your plumbers in your personal law firm to acquire attorney-client privilege.

No doubt the White House is proud of its success in Borking Mr. Starr. Yet serious people would recognize the damage being wrought to institutions developed over centuries to uphold the idea that civilization means something more than the sentiment of the passing moment. If poll ratings are all that matter in the nation's capital, a President can perhaps sustain them with a prosperous economy and a winning television manner, or as the Romans said, bread and circuses. Mr. Carville's war and Mr. Starr's polls give us a glimpse of one possible evolution of our political system in an era of instant communications. The issue is whether we will be governed by men or by laws.

UNITED STATES-PUERTO RICO
POLITICAL STATUS ACT

SPEECH OF

HON. PETER DEUTSCH

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 4, 1998

The House in Committee of the Whole House on the State of the Union had under consideration the bill (H.R. 856) to provide a process leading to full self-government for Puerto Rico:

Mr. DEUTSCH. Mr. Chairman, recently, we have heard threats from the Popular Democratic Party of Puerto Rico (PDP) that it will boycott any referendum which does not include a definition of "commonwealth" that does not conform to PDP doctrine. It seems to me that this would be an ill-advised course for the PDP, because the elected constitutional legislature of Puerto Rico has adopted two

resolutions formally requesting that Congress define the options it is willing to consider, and to authorize a status referendum on the basis of those definitions. When a political party places itself at odds with the will of the people acting through their constitutional process, and threatens to boycott the democratic constitutional process because it cannot dictate the terms of its participation, that political party is risking its credibility.

Deliberations regarding H.R. 856 have created an open marketplace of ideas on the Puerto Rico political status question, and I know the PDP is doing some serious soul searching because these are matters of such great concern to party leaders. However, the record of hearings and deliberations in the Resources Committee establishes clearly that the Ranking Minority Member, Mr. MILLER, did all that is humanly possible—and then some—to devise and win support for a definition of commonwealth that is both constitutional and acceptable to the PDP.

The record of Resource Committee hearings on H.R. 856 in Washington, San Juan and Mayaguez establish just as clearly that the PDP's "New Commonwealth" definition simply cannot be salvaged due to fatal constitutional flaws. In my own view, it is lamentable that the PDP leadership has not been more flexible, because that would have been more helpful to Mr. MILLER and others who wanted to be fair and find a definition with which the PDP could live.

When it became painfully obvious that the PDP would not adapt to the legal and political realities which govern any legitimate definition of commonwealth, Mr. MILLER, Mr. YOUNG, Mr. ROMERO and staff representing the Clinton Administration decided on a definition that was as fair as possible to the PDP. In the end, however, the definition had to be fair to the real other party in interest with which Congress is dealing in this matter—the people of Puerto Rico.

Indeed, the Young-Miller compromise definition goes much further to accommodate the PDP than Mr. YOUNG preferred. However, Mr. MILLER went the last mile to try to include a definition that with some creative interpretation can be reconciled with the Federal constitution, and at the same time embody a position that is as fair as possible to the PDP. I support this definition of commonwealth and commend the bipartisan process through which it was achieved.

Still, the PDP has rejected any definition it does not write. However, the PDP was allowed to write its own ballot definition of commonwealth in 1993, and even then its definition got less than a majority of the votes in a plebiscite held under local law. The failure of that local plebiscite to resolve the status issue is why H.R. 856 is needed, but the PDP apparently does not want Congress to have its say or work its will in defining the options in a Congressionally-recognized referendum. Since commonwealth is a relationship to which Congress is one of the two parties, this PDP inflexibility is untenable.

The real problem is that the PDP will not accept any definition of commonwealth that is compatible with the U.S. Constitution.

The PDP does not accept the Federal supremacy under Article VI of the Constitution because the PDP demands a veto power so it can nullify future acts of Congress it does not want applied to Puerto Rico.

PDP leaders reject application of the Territorial Clause in Art. IV, Sec. 3, Cl. 2 even though the U.S. Supreme Court has ruled in cases that include *Harris v. Rosario* (1980) that the Territorial Clause still governs Puerto Rico's status.

The PDP insists that Puerto Rico have separate sovereignty and nationality, while also enjoying constitutionally guaranteed U.S. nationality and citizenship and permanent membership in the Federal union alterable only with consent of Puerto Rico.

Since Congress can not bind future Congress to a statutory relationship of that kind, even if Congress wanted to do that it would require an amendment to the U.S. Constitution. Since that is, in addition to everything else, a really bad idea which would create a permanent colonial appendage, amendment to the constitution to accommodate the PDP's four decade effort to contrive a new category of statehood seems quite implausible.

Instead of trying to reach agreement on the best definition possible in order to sustain and improve the status quo, the PDP leadership has chosen to re-package the "unalterable bilateral pact" theory in the form of the "New Commonwealth" status definition presented to the Committee on Resources in the House on March 19, 1997. The "New Commonwealth" definition would give Puerto Rico functional separate national sovereignty, but seeks to have the benefits of statehood and dual Puerto Rican—U.S. citizenship permanently guaranteed by the federal constitution.

This status would be a vested right of Puerto Rico beyond the reach of Congressional legislative authority, protected for all time from amendment without Puerto Rico's "mutual consent." Puerto Rico would not be a state, nor would it be a territory. It would be in a category by itself, a political entity of separate national sovereignty but within the federal union forever. There would be exemptions from federal law applicable to the States, as well as foreign affairs authority sufficient to enter into international agreements. The specific scope of separate foreign affairs authority and exemptions from federal law would be based on defined spheres of "full self-government" (meaning separate national sovereign powers) as proposed by Puerto Rico.

At the same time, "New Commonwealth" would be a permanent form of political union equal to that which binds the States of the Union, and it would extend full U.S. citizenship to a population of 3.8 million people born and living outside the States of the Union. This citizenship would be protected by the 5th Amendment as if it were a fundamental constitutional right, and in addition it would be expressly denominated constitutionally as equal to the citizenship of persons born in the States of the Union. Residents of Puerto Rico would have identical "rights, privileges and immunities" as all U.S. citizens under the U.S. Constitution, including full parity in federal benefits and entitlements. However, instead of federal taxation on the same basis as the rest of the nation Puerto Rico would make an "equitable contribution" to the federal government in connection with such benefits "as provided by law."

This relationship would be binding on Congress in perpetuity—i.e. forever. In other words, it would be separate sovereignty and nationality like free association in the case of Micronesia—but with permanent union, full U.S. citizenship and a status equal to the 50

States. "New Commonwealth" would include special preferences not available to the states, including the "mutual consent" veto over federal law.

That there is nothing "new" about this proposal is clear from the letter of May 31, 1996, from the PDP President to Congressman Young, stating that the "commonwealth" ballot definition in the 1993 plebiscite—which failed to receive a majority vote—was based on the definition of "New Commonwealth" which was allegedly "approved" by the House when it passed H.R. 4765 in 1990. Now, on March 19, 1997, the President of the PDP has presented to Congress the same 1990 definition of "New Commonwealth."

However, this "New Commonwealth" definition was not actually included in the bill approved by the House in 1990. Rather, H.R. 4765 simply included the general option of a "New Commonwealth Status" without stating what that might mean. Separately from the bill, House Report 101-790, Part 1, contained the "New Commonwealth" definition as proposed by the PDP itself back in 1990. So the PDP is merely playing back to the 105th Congress the same proposal it submitted to 101st Congress.

The assertion that this "New Commonwealth" proposal was approved by the House in 1990 is disingenuous. Indeed, the 1990 Committee Report stated that this PDP proposal would be considered, but that this did not "obligate this Committee or its counterpart Senate committee to necessarily incorporate the . . . description . . . in the legislation." Thus, in 1990 the House avoided any actual definition of commonwealth.

Instead, under the 1990 House bill continuation of the current status would have resulted from a majority vote for a "None of the above" option. This made the constitutional and political realities of the current status invisible, and made the status quo seem to be a default option in lieu of a "New Commonwealth Status" option which was not actually defined by Congress in the legislation.

Instead, the PDP was allowed to "fill in the blank" with its own definition in the Committee Report. While extremely prejudicial to informed self-determination and unfair to the statehood and independence parties, it is not hard to understand why the PDP would like to go back to the 1990 approach.

Since H.R. 4756 was never enacted by Congress the process for defining "New Commonwealth" in federal law ended there. However, the PDP was able to "fill in the blank" again in the 1993 plebiscite, and the result was a "have it both ways" definition that promised everything and cost nothing. Still, to vote for that option required devotion to the mythology of the unalterable bilateral pact rather than an understanding of the constitutional and political process for improving the current status.

By masquerading as a framework for full, legitimate and informed self-determination when it was non-substantive and non-committal on the true status options, and by linking its claim to be the vehicle for self-determination to the false promise that the U.S. will accept whatever the people of Puerto Rico choose in a referendum, H.R. 4756 was calculated to become the symbol but not the reality of a declonization policy. Its very terms assured that it would not be enacted into law. That is why passage on suspension without open debate was engineered by Congressional staff.

In contrast, H.R. 856 and S. 472 define what actually exists rather than what does not. Thus, instead of a non-committal "agreement to agree" on terms for a "New Commonwealth," the current House and Senate bills constitute informed self-determination. If the House passes H.R. 856, it will supplant the evasion of real self-determination under H.R. 4756 with a constitutionally sound process to present real choices to the people of Puerto Rico.

H.R. 856 is not being passed in silence, this is a real and open debate that in and of itself will educate Congress and the people of Puerto Rico on the real work of decolonization that lies before us. The choices aren't painless and sterile, they are difficult and H.R. 856 tells the truth about the choices for the first time.

The "New Commonwealth" definition remains a "have it both ways" option contrary to Supreme Court, Justice Department and CRS constitutional analysis. The veil of ambiguity has been pierced as a result of scrutiny focused on past Congressional measures and lower court rulings influenced by PDP efforts in the 70's and 80's to make the revisionist definition of a "new" or "enhanced" commonwealth a *fait accompli*. The true nature of the current status and real options are becoming clear after years of political experimentation.***HD***Constitutional Implications of "New Commonwealth" Proposal

From the standpoint of American constitutional federalism, the PDP proposal of March 19, 1997, is best understood as a proposal to end Puerto Rico's unincorporated territory status by creating a new political status with some of the attributes of statehood and some of the powers of separate nationhood. In essence, it is an attempt to convert local constitutional self-government under the current territorial status into separate national sovereignty and nationality with permanent union and common citizenship. Unable to make a choice between statehood and independence, Puerto Rico would have Congress convert the international treaty-based relationship of free association into a "nation-within-a-nation" status irrevocably guaranteed by the Congress within the framework of the U.S. Constitution.

COMPARISON TO HISTORICAL CONSTITUTIONAL PRACTICE REGARDING STATEHOOD

The primary differences between the "New Commonwealth" for Puerto Rico and the status of the rest of the states would be:

Permanent union and irrevocable citizenship would be created by federal statute defining the commonwealth status as non-territorial, rather than termination of territorial status through admission to the union under clause 1 of section 3 in article IV of the Constitution.

Puerto Rico would enjoy the essential rights of states (binding on Congress), but the commonwealth would enjoy "autonomy" (not be bound) with respect to critical burden-sharing elements of membership in the federal union. Thus, the benefits of statehood would be guaranteed, but Puerto Rico's reciprocal obligations to the nation would not be constitutionally defined. Puerto Rico's contribution to the nation would be the subject of on-going negotiation and ad hoc decision-making, the very conditions that led to undue influence by the Section 936 lobbyists and creation of the current status dilemma.

Congress could not change the initial negotiated terms of the relationship based on changing national priorities. Specifically, Con-

gress would agree in the statute that in perpetuity every future Congress will be bound by this "New Commonwealth" status, which is "unalterable" without consent of Puerto Rico.

This really means that once Congress and the people of Puerto Rico have consented to the terms of the relationship the Supremacy Clause in article VI of the Constitution would be suspended to the extent required to enforce the rights, special preferences and exemptions from laws and responsibilities of the states which would be provided to the commonwealth ("associated free state" in Spanish).

COMPARISON TO HISTORICAL CONSTITUTIONAL PRACTICE REGARDING TERRITORIES

Since the period following the Northwest Ordinance of 1789 when the process for admission of new states to union began, the purpose of special measures to promote increased self-government in the U.S. territories historically has been to promote a smooth transition to full incorporation and statehood. Congress departed from this tradition when the U.S. acquired the Philippines, Cuba, Guam and Puerto Rico from Spain in 1899, and the U.S. Supreme Court defined them as "unincorporated" territories. Thus, in this century increased self-government for unincorporated territories has meant separate nationhood for Cuba and the Philippines, statehood for Hawaii and Alaska, and varying degrees of local self-government for other unincorporated territories.

As a result, instead of statehood like Hawaii or independence like the Philippines, Puerto Rico remains in an unincorporated territory status like Guam and the Northern Mariana Islands. Like the Northern Mariana Islands, Puerto Rico has a "commonwealth" structure for internal self-government under a local constitution adopted with the consent of the people—who enjoy statutory U.S. citizenship. The Philippines also had the "commonwealth" structure of internal self-government from 1935 to 1946, ending in separate nationhood.

In this context it becomes clear that the idea behind the PDP "New Commonwealth" proposal is to make a specific set of special rights for an unincorporated territory permanent, rather than resolving the status of the territory through independence or statehood. The essential transaction between Congress and Puerto Rico, as proposed by the PDP, is to mix-and-match the most beneficial features of statehood and separate nationality, make it binding on the U.S. forever, and label it as a non-territorial and therefore non-colonial status.

The primary differences between the "New Commonwealth" and the historical practice of the U.S. concerning Puerto Rico and other unincorporated territories would be:

Congress supposedly would no longer have the ability to exercise its express power to determine the status of Puerto Rico and its inhabitants under the Territorial Clause of the Constitution (Article IV, Section 3, Clause 2). This proposed elimination of a constitutional express power of Congress by statute supposedly would make the "New Commonwealth" status a non-territorial.

The nationality and citizenship of the residents of Puerto Rico would be guaranteed under the 5th and 14th Amendments on the same basis as it is for persons born in the states rather than being determined by Congress under statutory provisions enacted pur-

suant to the Territorial Clause and article I, section 8 of the Constitution. At present, statutory citizenship based on birth in Puerto Rico is subject to regulation and termination at the discretion of Congress in accordance with the U.S. constitutional process. See, *Rogers v. Bellei* 401 U.S. 815 (1971).***HD***U.S. Supreme Court and Department of Justice Positions

On July 28, 1994, the U.S. Department of Justice stated in a legal opinion that Congress is not bound by the current relationship with Puerto Rico or the current status of the territory created under federal statute. With respect to the concept of a binding pact based on the "mutual consent" principle the DOJ memo addressed the Puerto Rico questions as follows: "The Department revisited this issue in the early 1990's in connection with the Puerto Rico Status Referendum Bill in light of *Bowen v. Agencies Opposed to Social Security Entrapment*, 477 U.S. 41 (1986), and concluded that there could not be an enforceable vested right in a political status; hence the mutual consent clauses were ineffective because they would not bind a future Congress."

In Puerto Rico, it is argued that P.L. 81-600 created an "unalterable bilateral pact" since the local constitution adopted pursuant to that law was approved with the consent of the people in the territory. The theory is that once the people consented to the form of local self-government it can not be altered by Congress. From that premise the leap is made that as a matter of federal law this constitutes a fully self-governing status and that Puerto Rico is no longer a U.S. territory. Consequently, the territorial clause no longer applies and Congress can not apply even federal laws to Puerto Rico without its consent.

The PDP definition of "New Commonwealth" is an attempt to "perfect" this "bilateral pact" relationship. The 1994 Department of Justice memorandum is ignored in the testimony of the PDP leaders which accompanied the new definition when proposed to the House Committee on Resources on March 19, 1997. Instead of addressing the constitutional issues, the PDP relies upon the following statement of Felix Frankfurter in 1914 when he was an official at the War Department in the days it administered Puerto Rican affairs: "The present day demand upon inventive statesmanship is to help evolve new kinds of relationships so as to combine the advantages of local self-government with those of a confederated union. Luckily, our Constitution has left this filed of invention open."

Of course, the field of invention Frankfurter was alluding to exists under the Territorial Clause of the Constitution. In contrast, the PDP proposes to convert the relationship created in 1952 by statute into a permanent form of union which exists outside the Territorial Clause authority of Congress.

In 1980 the U.S. Supreme Court ruled that Congress acts with respect to Puerto Rico under the Territorial Clause (*Harris v. Rosario*, 446 U.S. 651). In *U.S. v. Sanchez*, 992 F. 2d 1143 (1993) the court stated that Congress retains authority to determine the status of the territory in accordance with the Territorial Clause and the Treaty of Paris as it deems consistent with the national interest.

In *Reid v. Covert*, 354 U.S. 1 (1957), the U.S. Supreme Court described territorial

clause status as a "temporary" condition regulated by Congress until institutions of self-government are established.

The response of the PDP to the Supreme Court ruling in *Harris* is to cite various 5th Amendment federal property rights cases involving commercial disputes and the enforceability of contract obligations, rather than political status questions. In addition, the PDP continues to rely on dictum from federal lower court decisions which actually went against the "unalterability" theory of commonwealth, but acknowledged the unique nature of the highly evolved federal-territorial relationship and the local self-governing status of Puerto Rico. See, for example, *U.S. v. Quinoes*, 758 F.2d 1143 (1993).

The cases cited by the PDP merely confirm the ambiguity and confusion in Congress and the courts due too much "inventive statesmanship" regarding the status of Puerto Rico over the years. It is time to sort it out through the deliberative process of our constitutional system.

The fact that Congress can be inventive does not necessarily mean that it serves the national interest or redeems the dignity of the concerned territorial population to do so. This is especially true when some in Puerto Rico and the federal government have attempted to convert temporary invention into a permanent extra-constitutional status. The "New Commonwealth" proposal is the last gasp of that doctrine.

The PDP also rejects the Young-Miller compromise definition because it tells the truth to the voters at the expense of certain long-held PDP positions. For example, it recognizes that the current statutory citizenship is statutory, and in the future Congress could change the current policy of conferring U.S. citizenship on persons born in Puerto Rico. This is not to undermine the PDP, but because it is the truth. If people in Puerto Rico are going to continue to have citizenship which is permissive under the discretion of Congress rather than of right

by constitutional guaranty, they should know that is what they are voting to approve.

Thus, the current statutory citizenship is secured by the U.S. constitution only in the sense that Congress can not end the conferral of U.S. citizenship on persons born in Puerto Rico without due process law. An act to amend or repeal 8 U.S.C. 1402, in other words, must be a valid exercise of Federal authority, involving legitimate Federal interests and measures reasonably related thereto.

Just as Congress extended U.S. nationality but not citizenship to Puerto Rico and the Philippines under the same Treaty of Paris provisions that still govern the civil rights and political status of persons born in Puerto Rico, Congress could alter the status of the territory and its population in the future. Existing policy is not irrevocable. Those currently having U.S. citizenship by statutory policy must be treated in accordance with due process and equal protection, but those born in the future have no right that would prevent Congress from altering the future policy on the status of the territory or persons born there.

Similarly, the Young-Miller compromise definition of commonwealth in H.R. 856 as offered by Mr. YOUNG in the nature of a substitute for passage also recognizes that U.S. citizens in Puerto Rico enjoy the rights, privileges and immunities of citizens in the states except where limited by the U.S. Constitution to citizens in the states. In addition to voting rights in national elections for President and Vice President and voting representation in Congress, the limitation on the rights, privileges and immunities of U.S. citizens in Puerto Rico include the absence of any reservation to the people of Puerto Rico under the 10th Amendment to the Federal constitution.

For as the Supreme Court made clear in the 1980 case of *Harris v. Rosario*, as long as Puerto Rico is within U.S. sovereignty but is not a state of the union Congress will retain the authority and responsibility under the Territorial Clause to determine the civil rights and

political status of persons born in the territory. The statutory arrangements and policies adopted by one Congress are not binding on a future Congress. Thus, the Foraker Act governed the status of Puerto Rico from 1900 to 1917, then Congress altered that policy and replaced it with the Jones Act.

P.L. 81-600 replaced the Jones Act in 1950 and led to establishment of internal self-government, but Congress could change that policy as well. Congress could decide that Puerto Rico will never be a state, as it did in the case of the Philippines in 1916. In that case it would be reasonable and rational if Congress decided to stop conferral of U.S. citizenship which has been creating a large population of disenfranchised citizens who have no right to equality or prospect of self-determination through which such disenfranchisement can be ended.

In this regard, the Young-Miller compromise definition of commonwealth also recognizes that the current commonwealth relationship is not a constitutionally guaranteed status, but implements current policy. It is policy not to dissolve the commonwealth without consent of the people, but commonwealth is not a permanent status like statehood under the federal structure of government.

Thus, a future Congress could determine that separate sovereignty is the only alternative to commonwealth, and that if commonwealth is to continue taxes must be imposed. That would alter the commonwealth relationship and current policy, and the Young-Miller compromise recognizes that this could happen. No one expects that to happen any time soon, but the voters need to know where they stand under commonwealth in order to make an informed choice in the exercise of the right of self-determination.

I want to applaud what Mr. YOUNG and Mr. MILLER have accomplished.