STATEMENTS OF ANGEL E. ROTGER-SABAT, ATTORNEY GENERAL, SAN JUAN, PUERTO RICO; AND CHARLES A. RODRIGUEZ, PRESIDENT, SENATE OF PUERTO RICO, SAN JUAN, PUERTO RICO

STATEMENT OF ANGEL E. ROTGER-SABAT

Mr. ROTGER-SABAT. Good afternoon, Mr. Chairman and members of this committee. My name is Angel E. Rotger-Sabat and I am the Attorney General of Puerto Rico. On January 1 of the year 2000, the Governor of Puerto Rico, the Honorable Pedro Rossello, appointed me as the Attorney General, after serving for more than 2 years as Puerto Rico's Chief Deputy Attorney General under former Attorney General Mr. Jose A. Fuentes-Agostini. On behalf of the government of Puerto Rico, I thank you for the opportunity to appear before you today.

I have submitted my written statement for this hearing and ask that it be made part of the record and will now confine my remarks to a brief summary of the legal principles therein explained regarding the 102-year-old relationship between Puerto Rico and the United States. It is my pleasure to address the legal questions that arise from this bill, mainly based on the jurisprudence of various Federal courts. Why the Federal courts? Because the questions of Puerto Rico's political status in relation to the United States and of the Congressional powers associated with that status are inherently and fundamentally questions of Federal law. As I will further explain, the historical, legislative, and judicial background of the relationship between the United States and Puerto Rico undoubtedly presents at its core a Federal question, one which only Congress can lay to rest.

Puerto Rico became subject to the jurisdiction of the United States as a result of the Treaty of Peace of December 10, 1898, also known as the Treaty of Paris, which ended the Spanish-American War. Article 9 of that treaty states that the civil rights and political conditions of the natural inhabitants of Puerto Rico and other territories ceded to the United States shall be determined by the Congress. Congress thereafter began to legislate for Puerto Rico pursuant to Article 4, Section 3, Clause 2 of the United States Constitution, also known as the Territorial Clause, which authorizes Congress to dispose of and make all needful rules and regulations respecting the territory of the United States.

In 1900, Congress enacted the Foraker Act, establishing a civil government for Puerto Rico, consisting of an elected legislature with limited powers and a governor and a supreme court appointed by the President of the United States. Then in 1917, Congress granted statutory citizenship to Puerto Rico residents and provided for an enhanced bicameral elected legislature when it enacted the Jones Act. Thirty years later, Congress once again took a further step in delegating a greater degree of internal autonomy for local self-government in Puerto Rico when it enacted the Elective Governor Act, authorizing the Puerto Rico residents to elect their own governor.

These limited actions by Congress did not alter the constitutional status of Puerto Rico, which was then defined by the United States Supreme Court in the so-called insular cases as that of an unincor-

porated territory of the United States. Puerto Rico's limited powers of local self-government existed as a matter of Congressional grace, not constitutional right. Congress's power thus remained plenary under the Territorial Clause.

The current structure of local government in Puerto Rico resulted from the enactment of Public Law 600, also known as the Puerto Rico Federal Relations Act. This law provided Federal statutory authorization for the citizens of Puerto Rico to write their own constitution, subject to Congressional approval. A local constitutional convention drafted a constitution for Puerto Rico, which was ratified by the people of Puerto Rico and later submitted to Congress for approval. Congress, exercising its power under the Territorial Clause, amended several sections of the Puerto Rico constitution draft and ultimately approved the revised version by means of Public Law 447.

It is worth noting that the legislative history of Public Law 600 leaves no doubt that even though its passage allowed the grant of internal self-government to Puerto Rico, no change was intended in Puerto Rico's territorial status and Congress continued plenary power over Puerto Rico.

During the hearings prior to the enactment of Public Law 600, Mr. Antonio Fernos Insern, then Puerto Rico's Resident Commissioner before Congress, testified that the bill, and I quote, "would not change the status of the island of Puerto Rico relative to the United States. It would not alter the powers of sovereignty over Puerto Rico under the terms of the Treaty of Paris." He and Mr. Luis Munoz Marin, then Governor of Puerto Rico, expressed their understanding that Congress unilaterally would retain authority to revoke or modify Puerto Rico's constitution. The then-Secretary of the Interior, the then-Chief Justice of the Supreme Court of Puerto Rico, the Senate report accompanying the Senate version of Public Law 600, and the Senators who sponsored it, Senators O'Mahoney and Butler, all explicitly stated that the new bill would not affect the underlying political, social, and economic relationship between Puerto Rico and the United States.

Congress has never strayed from holding the same view as it having the final authority to define the juridical status of Puerto Rico. The Federal courts have also recognized Congress's plenary power over Puerto Rico under the Territorial Clause.

The United States Supreme Court held in Harris v. Rosario that Congress under the Territorial Clause may treat Puerto Rico differently from the States so long as there is a rational basis for its action. Following the holding in Harris, the United States Court of Appeals for the First Circuit has recognized as recently as twice in this year that Puerto Rico is a territory subject to the plenary powers of Congress under the Territorial Clause.

Some may argue that there are First Circuit cases that cast some doubt regarding Puerto Rico's post-1952 constitutional status and Congress continuing plenary power over Puerto Rico as a territory. They may argue that with the enactment of Public Law 600 and the approval of the revised Puerto Rico constitution, the island ceased to be a territory and Congress's authority over Puerto Rico emanates thereafter from the compact between Puerto Rico and the United States, which Congress cannot unilaterally amend.

This doubt should have been long ago dissipated in light of, as I have previously pointed out, the legislative history of Public Law 600, the Supreme Court's ruling in Harris v. Rosario, which was not cited in the cases that I have referred to previously, and the consistent trend of the First Circuit Court explicitly recognizing the territorial status of Puerto Rico. The historical and legislative background in this matter contains overwhelming evidence proving that before, during, and after the approval of Public Law 600, Congress did not intend to change the fundamental status of Puerto Rico from that of an unincorporated territory or to relinquish its plenary power over the island.

Almost 2 years ago, the Federal courts addressed the core issue of Puerto Rico's status. On August 17, 1998, the Puerto Rico legislature enacted Act. No. 249, which provided for a plebiscite to be held that year wherein the voters of Puerto Rico could express their preferences concerning the Commonwealth's ultimate political status. Once Governor Rossello signed into law Act No. 249, the Popular Democratic Party filed suit before a Commonwealth court, seeking declaratory and injunctive relief against the conduct of said plebiscite. Because of the substantial Federal question addressed in the suit, the Commonwealth removed the case to the Federal District Court. The United States District Court agreed with our position, denying the Popular Democratic Party's motion to remand. The court held that the causes of action of the complaint raised Federal, constitutional, and statutory questions of the highest order, implicating the power of Congress over Puerto Rico pursuant to the Territorial Clause and the Supremacy Clause of the Constitution of the United States.

The Popular Democratic Party filed a petition for a writ of mandamus jointly with a motion to expedite its consideration before the United States Court of Appeals for the First Circuit, requesting an order to remand the case to the local court. The Court of Appeals denied the petition, announcing that a written opinion would follow in due course. But the Popular Democratic Party filed a motion for voluntary dismissal of the case, and consequently, the clerk of the Court of Appeals entered an order stating that in light of the voluntary dismissal, no written opinion on the denial of the petition of writ of mandamus would be issued. Nonetheless, the fact that the Court of Appeals denied the mandamus petition certainly evidences that this higher court must have concluded that the District Court's opinion was not clearly erroneous, as this is the standard applied by the courts when reviewing a petition of this nature.

Mr. Chairman and members of this committee, the future political status of Puerto Rico and its approximately four million U.S. citizens can only be resolved by an action of Congress, exercising its plenary authority over this territory. Any bill that raises the issue of the relationship of Puerto Rico with the United States deserves the utmost serious and careful attention. As I have explained this afternoon, it is a matter of Federal law that can only be addressed through the legislative action from Congress.

I appreciate your invitation to address the committee and sincerely express my availability to answer any questions or observations you have regarding today's statement. Thank you.

Mr. DOOLITTLE. Thank you.

[The prepared statement of Mr. Rotger-Sabat follows:]
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Mr. DOOLITTLE. Our final witness is the Honorable Charlie Rodriguez, President of the Senate of Puerto Rico in San Juan. Senator Rodriguez?

STATEMENT OF CHARLES A. RODRIGUEZ

Mr. RODRIGUEZ. Thank you. Mr. Chairman, Governor Romero-Barcelo, distinguished members of the committee, although I currently serve as President of the Senate of Puerto Rico, I come before you today on behalf of Dr. Carlos Pesquera, President of the New Progressive Party and its members. I have submitted a longer written statement. I will try to summarize the same at this moment.

H.R. 4751 intends to give the present commonwealth status the following: Permanent union with the United States, sovereign powers to Puerto Rico as a nation, and an irrevocable guarantee of the United States citizenship to all persons born in Puerto Rico.

First, we welcome this bill only as a vehicle to provide and gather information on the complexities of the status issue of Puerto Rico and as a discussion tool on that matter. In fact, Mr. Chairman, you stated when you introduced this bill that it was, and I quote, "a vehicle to begin a debate regarding the current and proposed commonwealth status."

Secondly, from the details of the enhanced commonwealth formula as introduced in this bill, it pretends to establish a segregated and a separate jurisdiction of U.S. citizens. It goes on to establish a second-class citizenship for Puerto Ricans living in Puerto Rico, a citizenship not envisioned by the Constitution or the Founding Fathers.

The Popular Democratic Party, PDP, has the responsibility to explain to Congress how this formula can be implemented consistent with the U.S. Constitution. This bill as it is written is a blueprint for the perpetuation of the apartheid policy established in 1952 with the so-called free associated state or Commonwealth of Puerto Rico, whose citizens responded with patriotism when our nation was involved in World War I, World War II, Korea, Vietnam, Libya, Somalia, the Persian Gulf, and Bosnia. More than 1,300 Puerto Ricans gave their lives in defense of our nation, democracy, and freedom, and thousands more were injured in combat.

Third, this bill once more reaffirms the political reality that all three political parties of Puerto Rico agree that the current commonwealth status is colonial in nature and maintains the discredited and unconstitutional segregationist policies of the 1950's and the 1960's. Even the PDP, the pro-commonwealth party, recognizes that it is necessary to perfect or culminate the associated nation-state pact of permanent union. After five decades of failure to convert a territorial commonwealth into a non-territorial status, as if by magic, the PDP has repackaged a failed political theory as a program to perfect a status proposal that is not attainable under the Territorial Clause of the Constitution.

Fourth, this bill derails, contradicts, and opposes the spirit and the objective of H.R. 856, approved with bipartisan support in 1998, which provided clear status definitions for the three political