A report that will live in infamy

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Sen. Pete Domenici, chairman of the Senate Committee on Resources & Energy, didn't take kindly to the Report by the President's Task Force on Puerto Rico Status. His committee is key in this matter. His reaction is extremely important. He did well.

The report is so partisan, biased, superficial, and ill-founded that it does a grave disservice to the United States and Puerto Rico. To characterize Puerto Rico as a colony under the plenary powers of Congress to suit the New Progressive Party (NPP), it blatantly ignores federal court decisions on the local application of federal laws and the position of the U.S. on this matter before the United Nations in 1953.

Since the early days of the Republic, the U.S. Supreme Court has distinguished between the states and the territories in the application of federal laws. In the case of states, Congress can't legislate directly on local matters because the states are sovereign political entities. Concerning the territories, Congress can legislate directly on local matters because they aren't sovereign entities. They are political creatures of Congress, governed under Organic Acts approved by Congress. The Task Force proclaims Puerto Rico is a territory and therefore, "Congress could legislate directly on local matters."

So, it was in Puerto Rico from 1900 to 1952. During that period, we were first governed under the Foraker Act and, as of 1917, under the Jones Act. We weren't sovereign within the U.S. constitutional system. All this changed when Congress entered into a compact with the people of Puerto Rico in 1952. Through this compact we, not the Congress, created the Commonwealth of Puerto Rico. The Commonwealth has been explicitly recognized as a sovereign entity like the states of the Union by the U.S. Supreme Court. In Examining Board of Engineers, Architects & Surveyors v. Flores de Otero, 486 US 572, 597 (1976) the U.S. Supreme Court said under the compact: "Congress relinquished its control over the organization of the local affairs of the island and granted Puerto Rico a measure of autonomy comparable to that possessed by the States."

The laws of Congress don't apply locally in Puerto Rico because the Commonwealth is, within the U.S. constitutional system, a sovereign entity. There is a long line of federal cases extending back to 1953, which the Task Force has blithely ignored. These federal cases, starting with Mora v. Mejías, 206 F 2d. 377, 387 (1st. Cir. 1953) and leading up to Romero v. United States, 38 F 3d. 1204, 1208 (Fed. Cir. 1994), have explicitly ruled Puerto Rico is no longer a territory and the laws of Congress are no longer locally applicable in Puerto Rico since we have to be treated as a state.

The Task Forces' impudent falsehood on the juridical nature of Commonwealth isn't the only infamous infirmity of the document. The report flies in the face of the assertions made by the United States in the

Cessation Memorandum it presented to the United Nations General Assembly in 1953. Under the U.N. Charter, those members that have colonies must report annually to the U.N. on the advances made in the colonies toward self-government.

The U.S. filed such reports as to Puerto Rico up to 1952. In 1953, it presented a Cessation Memorandum informing the General Assembly it would cease submitting such information because Puerto Rico had become a Commonwealth.

The Cessation Memorandum noted Public Law 600 had expressly recognized the principle of government by consent and declaring that it was "adopted in the nature of a compact," required that it be submitted to the voters of Puerto Rico in an islandwide referendum for acceptance or rejection. The Cessation Memorandum also noted Public Law 447, "In its preambular provisions, recalled that [Public Law 600] was adopted by the Congress as a compact with the people of Puerto Rico...."

In describing the principal features of the Constitution of the Commonwealth, the Cessation Memorandum noted the new Constitution, as specifically approved by Congress, expressly provides it "shall be exercised in accordance with [the people's] will, within the terms of the compact agreed upon between the people of Puerto Rico and the United States of America." The Memorandum also advised the United Nations that the Puerto Rico Legislature had been given "full legislative authority with respect to local matters."

Under the heading "Present Status of Puerto Rico," the Cessation Memorandum declared: By the various actions taken by the Congress and the people of Puerto Rico, Congress had agreed Puerto Rico shall have, under that Constitution, freedom from control or interference by the Congress in respect to internal government and administration, subject only to compliance with applicable provisions of the federal Constitution, the Puerto Rican Federal Relations Act and the acts of Congress authorizing and approving the Constitution, as may be interpreted by judicial decision.

Finally, Mason Sears, the U.S. representative to the Committee on Information from Nonself-governing Territories, explained the legal significance under U.S. law of the fact Puerto Rico's Constitution was the result of a compact:

A most interesting feature of the new Constitution is that it was entered into in the nature of a compact between the American and Puerto Rican peoples. A compact, as you know, is far stronger than a treaty. A treaty usually can be denounced by either side, whereas a compact can't be denounced by either party unless it has the permission of the other.

Relying on these representations made by the United States, the General Assembly approved Resolution 748, VIII, approving the cessation of information on Puerto Rico stating that: "...in the framework of their Constitution and of the compact agreed upon with the United States of America, the people of the Commonwealth of Puerto Rico have been invested with attributes of political sovereignty, which clearly

identify the status of self-government attained by the Puerto Rican people as that of an autonomous political entity."

The White House Task Force report, characterizing the Commonwealth as a territory under the plenary powers of Congress, in effect says the United States lied to the United Nations when it moved the General Assembly to accept the cessation of information on the development of Puerto Rico toward self-government because we had achieved the status of an autonomous political entity. Should the president of the United States or the Congress accept these infamous conclusions, the moral legitimacy of the United States will suffer another serious blow, just like it did when Colin Powell went before the Security Council to state Iraq had weapons of mass destruction to justify an invasion that proved incapable of finding such weapons.

In leading the world as the only superpower, the U.S. requires more than economic or military power. It also requires moral legitimacy. The Report of the White House task force on Puerto Rico is another step down the slippery slope of the justification of policy through falsehoods. This report will live in infamy.