

IN THE MATTER OF  
REPRESENTATIVE CHARLES C. DIGGS, JR.

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REPORT

together with

SUPPLEMENTAL VIEWS

[To accompany H. Res. 378]



JULY 19, 1979.—Referred to the House Calendar and ordered to be  
printed

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## SUMMARY

This report recommends that the House of Representatives subject Representative Charles C. Diggs, Jr., of Michigan to censure, that he be required to make restitution of appropriated funds which he personally had unjustly received, and that he be required to direct all of his House of Representatives employees to certify to the Committee on Standards of Official Conduct that monies they receive from such employment be in strict accordance with House Rules.

The recommendation is based on findings in a Committee investigation and on Representative Diggs' admission that he violated House Rules in his handling of clerk-hire allowances.

The funds to be repaid to the Treasury by Representative Diggs in the amount of \$40,031.66, shall be evidenced by a demand interest-bearing promissory note.



## INTRODUCTION TO REPORT

This report of the Committee on Standards of Official Conduct of the U.S. House of Representatives (hereinafter "Committee") is divided into two volumes, Volume I being divided into six parts. Part I summarizes the initiation and processing to completion of the Investigation of Representative Diggs. Part II sets forth the Committee's position regarding its jurisdiction to investigate the conduct alleged. Part III sets forth the Scope and Purpose of the investigation, adopted pursuant to Committee Rules.

Part IV of this Report synthesizes the judicial proceedings involving Representative Diggs—the indictment, trial and appeal. Part V, a summary of the evidence against Representative Diggs considered by the Committee, consists of a summary of testimonial evidence presented at Representative Diggs' trial and a reproduction of the letter from Representative Diggs to the Committee in which certain admissions were made. The recommendations of the Committee comprise Part VI.

Volume II contains excerpts from the transcript of Representative Diggs' criminal trial.



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96<sup>TH</sup> CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 96-  
*1st Session* } 351 VOL. I

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REPRESENTATIVE CHARLES C. DIGGS, JR.

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Mr. BENNETT, from the Committee on Standards of Official Conduct,  
submitted the following

REPORT

[To accompany H. Res. 378]

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## PART I—BACKGROUND OF THE INVESTIGATION

On October 7, 1978, Representative Charles C. Diggs, Jr., of the 13th District of Michigan was convicted in the United States District Court for the District of Columbia on 11 counts of an indictment charging violations of 18 U.S.C. 1341 (Mail Fraud) and 18 counts charging violations of 18 U.S.C. 1001 (False Statement).<sup>1</sup> The gravamen of the charges against Representative Diggs was that he initiated and operated a scheme to defraud the Government by inflating several of his employees' salaries in order to enable them to pay certain of his personal and congressional expenses. Representative Diggs was found to have executed materially false official documents, payroll authorization forms, and to have caused the mails to be used in furtherance of the fraudulent scheme.

Representative Diggs was sentenced to 3 years imprisonment on each of the 29 counts, said sentences to run concurrent by the counts. Timely appeal was taken to the United States Court of Appeals for the District of Columbia, where oral argument was heard on June 11, 1979. The Court of Appeals had not ruled at the time of this Report.

On February 1, 1979, Chairman Charles E. Bennett communicated to the Members of the Committee that he would, subject to Committee approval, appoint a subcommittee of two members to look into the matter of the conviction of Representative Diggs. Accordingly, on February 7, 1979, at the organizational meeting of the Committee, Representatives Hamilton and Hollenbeck were named to that subcommittee.

In a sworn complaint filed on February 2, 1979, with the Committee, Representative Newt Gingrich and eighteen other Members of the House of Representatives charged that Representative Diggs' misuse of his clerk-hire allowance—essentially the same conduct which led to Representative Diggs' indictment and conviction—constituted a violation of House Rule XLIII, Clause 1, Code of Official Conduct. A resolution to expel Representative Diggs was offered on the floor of the House on March 1, 1979, and subsequently referred to the Committee. On March 21, 1979, a formal resolution to conduct an inquiry into the official conduct of Representative Diggs was adopted by the Committee by vote of 9 to 0.

On March 28, 1979, the Committee denied by a vote of 9 to 3 a motion by Representative Diggs, made through a letter from his counsel dated March 23, 1979, that the Committee defer action until conclusion of the judicial appellate process.

After receiving from its Special Counsel a summary of the evidence against Representative Diggs, the Committee by vote of 10 to 0 adopted a Statement of Alleged Violations on April 4, 1979.<sup>2</sup>

Comprised of 18 counts charging violations of House Rule XLIII, Clauses 1 and 8, the Statement alleged generally that Representative

<sup>1</sup> *United States v. Charles C. Diggs, Jr.*, Crim. No. 78-142 (D.D.C. Nov. 20, 1978).

<sup>2</sup> App. A hereto.

Diggs, for the purpose of enabling several of his employees to pay certain of his personal and congressional expenses, inflated the salaries of these employees beyond levels commensurate with their respective duties, and that he had thereby brought discredit to the House by his conduct.

In response to the adoption of the Statement of Alleged Violations, Representative Diggs, through counsel, filed the following on April 25, 1979: a Motion to Dismiss for Lack of Jurisdiction, with supporting memorandum;<sup>3</sup> a Motion to Defer Committee Action Pending Completion of Judicial Proceedings, with supporting memorandum;<sup>4</sup> a Motion for Bill of Particulars; and a Request for Admissions, with supporting memorandum. Responses were subsequently filed by the Committee's Special Counsel<sup>5</sup> and oral argument was heard on May 16, 1979. There being no votes in favor of granting the Motion to Dismiss, that motion was denied. The Motion to Defer was denied by vote of 8 to 3.

After the Committee's Special Counsel responded to the Request for Admissions, Representative Diggs moved for dismissal of counts 17 and 18 of the Statement of Alleged Violations on grounds that they were based on evidence obtained in breach of Federal grand jury secrecy rules. After oral argument the motion was denied on May 23, 1979, by vote of 8 to 3.

Representative Diggs submitted a general denial of the charges against him on June 6, 1979.

On June 7, 1979, the Committee adopted a statement of the Scope and Purpose of the Investigation pursuant to Committee Rule 16(c).<sup>6</sup>

Subpoenas for the appearance of witnesses and the production of certain documents were issued on June 13, 1979. The hearing was scheduled to begin on June 25, 1979.

Because of delays in the production of certain subpoenaed bank records, the hearing was continued on a day-to-day basis, subject to call of the Chair, on June 25, 1979.

On June 29, 1979, Representative Diggs, through his attorney, presented to the Committee a letter (dated June 27, 1979) admitting he was guilty of misuse of clerk-hire funds, thereby violating House Rule XLIII, Clauses 1 and 8, admitting he personally benefitted from improper use of clerk-hire funds, agreeing to make restitution of the amount by which he personally benefitted from the misuse of funds, and apologizing to his colleagues for his conduct.<sup>7</sup> More specifically, Representative Diggs (1) admitted that he violated House Rule XLIII, Clauses 1 and 8, in his employment of Ms. Jean Stultz, (2) admitted that he was personally enriched by the use of clerk-hire funds paid to Jean Stultz, Felix Matlock, Ofield Dukes, Jeralee Richmond and George Johnson, and (3) agreed to repay \$40,031.66, the full amount of his admitted personal benefit.

After receipt of Representative Diggs' letter and admission into evidence of the transcript of Representative Diggs' criminal trial, the Committee by unanimous (11-0)<sup>8</sup> vote resolved to find Representative Diggs guilty of violating House Rule XLIII, Clauses 1 and 8 and to recommend to the House that Representative Diggs be censured

<sup>3</sup> App. B hereto.

<sup>4</sup> App. D hereto.

<sup>5</sup> Apps. C and E.

<sup>6</sup> Pt. III, *infra*.

<sup>7</sup> Pt. V, B, *infra*.

<sup>8</sup> On the same day Representative Livingston indicated that had he been present he would have voted with the majority, vol. 125, Congressional Record H5476 (1979).

and that the required restitution be evidenced by the execution of an interest-bearing demand promissory note.<sup>9</sup>

## PART II—THE JURISDICTIONAL ISSUE

Counsel for the Member, following the service upon him of the Statement of Alleged Violations, filed a motion pursuant to Committee Rule 12(a) and 12(a)(3) "to terminate (the) proceedings for lack of jurisdiction." The motion was supported and opposed by memoranda submitted respectively by counsel for the Member and Special Counsel to the Committee. These memoranda, which provide a comprehensive review of the legislative precedents and Constitutional principles pertinent to the issue, are found in the Appendices to this Report.<sup>10</sup>

The gist of the Member's argument was that the power of the House to punish for misconduct is terminated by the Member's reelection, at least where alleged misconduct was known to his constituency prior to his reelection. In this case the Committee could assume such knowledge existed since Representative Diggs was convicted of misuse of his clerk-hire allowance approximately a month before his most recent election. The legislative precedents on which the Member relied in support of his motion, however, mostly concerned the power to expel under such circumstances. His counsel maintained that the power to expel conferred by Article I, Section 5, of the Constitution of the United States<sup>11</sup> conflicted with the right of his constituency under Article I, Section 2<sup>12</sup> of the Constitution to elect and have him serve as their representative, and that the conflict must be resolved in favor of the Member's constituency.

In response Special Counsel to the Committee urged that the question of whether the power to expel was present in this case was prematurely raised and that it need be decided only following a determination of guilt when the Committee would have to decide on the form of disciplinary sanction to recommend to the House. Special Counsel's review of the legislative precedents in prior disciplinary proceedings leads most convincingly to the conclusion that the House has jurisdiction under Article I, Section 5, to inquire into the misconduct of a Member occurring prior to his last election, and under appropriate circumstances, to impose at least those disciplinary sanctions that fall short of expulsion. After hearing oral argument from both counsel, the Committee unanimously denied the Member's motion, ruling that jurisdiction to proceed was clearly conferred by Article I, Section 5, of the Constitution.

To have reached a contrary result concerning the jurisdiction of this Committee or the House in this matter would have required it to overrule or ignore many well reasoned precedents, including very recent opinions of the Committee. Virtually identical claims of lack of jurisdiction were raised but rejected by the Committee in proceedings involving Representative Roybal (95th Congress) and Representative Harrington (94th Congress). Similarly, the House took disciplinary action with respect to conduct occurring prior to the Mem-

<sup>9</sup> Pt. VI, *infra*.

<sup>10</sup> Apps. B and C.

<sup>11</sup> "Each House may punish its Members for disorderly behaviour, and, with the concurrence of two-thirds, expel a Member."

<sup>12</sup> "(T)he House of Representatives shall be composed of Members, chosen every second Year by the People of the several States. \* \* \*

ber's last election in the cases of Representative Sikes (94th Congress) and Representative Powell (90th Congress). In recent years, the Senate has also disciplined with respect to prior misconduct in the cases of Senator Dodd (90th Congress) and Senator McCarthy (83d Congress). These precedents are consistent with earlier precedents involving punishment for prior misconduct, *e.g.*, *Matthew Lyon*, 5th Congress (1799);<sup>13</sup> *Oakes Ames* and *James Brooks*, 42d Congress (1873) and *Senator William Blount*, 5th Congress (1797).<sup>14</sup> The proceedings cited are all discussed in Special Counsel's memorandum.

An excellent discussion of the purpose and scope of the disciplinary power conferred on the House by Article I, Section 5, of the Constitution is found in the report of the Committee on the Judiciary, 63d Congress (1914),<sup>15</sup> from which we quote:

*In the judgment of your committee the power of the House to expel or otherwise punish a Member is full and plenary and may be enforced by summary proceedings. It is discretionary in character, and upon a resolution for expulsion or censure of a Member for misconduct each individual Member is at liberty to act on his sound discretion and vote according to the dictates of his own judgment and conscience. This extraordinary discretionary power is vested by the Constitution in the collective membership of the respective Houses of Congress, restricted by no limitation except in case of expulsion the requirement of the concurrence of a two-thirds vote.*

*In the judgment of your committee, the power of the House to expel or punish by censure a Member for misconduct occurring before his election or in a preceding or former Congress is sustained by the practice of the House, sanctioned by reason and sound policy and in extreme cases is absolutely essential to enable the House to exclude from its deliberations and councils notoriously corrupt men, who have unexpectedly and suddenly dishonored themselves and betrayed the public by acts and conduct rendering them unworthy of the high position of honor and trust reposed in them.*

But in considering this question and in arriving at the conclusions we have reached, we would not have you unmindful of the fact that *we have been dealing with the question merely as one of power, and it should not be confused with the question of policy also involved.* (Emphasis supplied) (H.R. Rept. No. 570, 63d Cong., 2d sess. (1914).)

The report proceeds to state that the House, as a matter of policy, should exercise its "extraordinary prerogative only in extreme cases, always with great caution and after due circumspection," particularly when the Member's conduct was known to his electorate at the time of his last election. However, as the report emphasizes, power is not

<sup>13</sup> A motion to expel failed 49-45. Though lacking the two-thirds required for expulsion, it indicates a majority of the House, acting only ten years following adoption of the Constitution, were of the opinion that the power to punish extended to conduct committed prior to the member's election.

<sup>14</sup> Senator Blount was expelled by a vote of 25-1.

<sup>15</sup> The Committee was investigating allegations that a Member had been improperly influenced by lobbying activities. The Committee determined the evidence did not warrant expulsion, but did warrant censure. The Member resigned prior to consideration of the report by the House.

to be confused with policy or discretion, and it was the power of Congress which the Member's motion to dismiss for lack of jurisdiction challenged.

Because of the Committee's recommended disposition of the matter it need not express an opinion on the Constitutional issue of whether the House has the power to expel the Member in the instant case. Indeed, the Committee deems it unwise to do so, preferring to exercise restraint and to avoid the unnecessary expressions of views on Constitutional questions. This does not suggest that the possibility of expulsion was never discussed but instead reflects the ultimate determination by the Committee that the extreme penalty of expulsion was not justified considering the circumstances of this case and the offenses charged. Prominent among the considerations in reaching that determination was the fact that expulsion is the most serious penalty that can be imposed by the House, and the precedents indicate that this has been so recognized in the past. In fact, the House has exercised the power to expel in only three instances, all involving Members who, during the Civil War, left the House to support the Confederate cause. In the eyes of some this amounted to treason, certainly nothing similar to what occurred in the instant case. The Committee and the House cannot overlook entirely the reelection of Rep. Diggs following his conviction and due respect for that decision by his constituents is a proper element in the consideration of this case.

### Part III—Scope and Purpose of the Investigation

Pursuant to Committee Rule 16(c), the Committee on June 7, 1979, adopted the following statement of the Scope and Purpose of the Investigation:

#### SCOPE AND PURPOSE OF THE INVESTIGATION

On April 4, 1979, the Committee adopted a Statement of Alleged Violations, a copy of which is attached hereto.<sup>16</sup> The allegations made in that Statement can be summarized as follows:

For differing periods of time from January, 1973, through January, 1977, Representative Diggs maintained on his staff payroll at salary levels not commensurate with the services performed by each, the following individuals: Jean G. Stultz, Felix Matlock, Ofield Dukes, Jeralee Richmond, George G. Johnson, and Maria A. Reynolds. Representative Diggs maintained these individuals on his payroll either with knowledge that a portion of their compensation would be used to pay his expenses or in order to discharge his personal indebtedness. The conduct of Representative Diggs with respect to the employment of each of these individuals reflected discredit on the House of Representatives.

The hearing shall be conducted in accordance with Subpart B (Disciplinary Hearings) of the Committee's Rules of Procedure. The first phase of the disciplinary hearing shall be limited to a determination of whether or not the counts in the Statement have been proved, in accordance with Rule 16(a). The burden of proof rests on the Committee's staff with respect to each count to establish the facts alleged therein clearly and convincingly by the evidence that it introduces. Evidence will be limited to that which is relevant to the charges raised in the Statement of Alleged Violations. Pursuant to Rule 20 of the Com-

<sup>16</sup> App. A hereto.

mittee's Rules, the Chairman or presiding Member shall rule on admissibility of evidence.

Should the Committee find that any or all of the charges against Representative Diggs have been proved, the second phase of the hearing will be conducted to determine what disciplinary action should be recommended to the House. Conducted in accordance with Rules 16(f) and 17 of the Committee's rules, this second phase shall consist of oral and/or written submission by Counsel for the Committee and counsel for Representative Diggs as to the sanction the Committee should recommend. Pursuant to Rule 16(f) testimony by witnesses will not be heard during the second phase except by a vote of a majority of the Committee.

## PART IV—JUDICIAL PROCEEDINGS

### A. INDICTMENT AND TRIAL

A grand jury sworn in on October 13, 1976, in the U.S. District Court for the District of Columbia on March 23, 1978, indicted Representative Charles C. Diggs, Jr., on 14 counts of violating 18 U.S.C. 1341 (mail fraud) and 21 counts of violating 18 U.S.C. 1001 (false statement). All counts of the indictment were related to an alleged scheme by Representative Diggs to defraud the government by either (1) inflating employees' salaries in order that they could "kick back" the increase by paying his personal and congressional expenses, or (2) adding individuals to his congressional payroll to compensate them for providing him personal services.

After the government voluntarily withdrew 6 counts of the indictment, on September 27, 1978, a jury trial was begun on the remaining 11 mail fraud counts and 18 false statements counts. On October 7, 1978, the jury returned a verdict of guilty on all counts.

On November 21, 1978, Representative Diggs was sentenced to three years' imprisonment on each count, said sentences to run concurrent by the counts.

### B. APPEAL

On appeal of his criminal conviction, Representative Diggs has challenged the trial judge's denial of motions for a hearing concerning selective prosecution and for acquittal at the close of the government's case, as well as denial of his motion for judgment notwithstanding the verdict.

Representative Diggs' arguments on appeal may be summarized as follows:

1. The Executive Branch may not predicate a criminal prosecution on alleged violation of the Rules of the House of Representatives. Disciplining a House Member for violating House Rules is a "political question," the resolution of which is reserved solely to the legislature. Criminal conviction on the basis of violations of House Rules represents an unwarranted intrusion into the House's constitutional prerogative to "determine the rules of its proceedings (and) punish its Members . . ." under Article I, Section 5, of the Constitution.

2. The government failed to produce any evidence of the standard of conduct Representative Diggs allegedly sought to violate or evade in his alleged scheme to defraud. The

government tried its case on the theory that intent to defraud, a necessary element of both crimes charged, could be inferred from either conduct related to the payment of Representative Diggs' personal expenses or that related to the payment of his congressional expenses. The government offered no evidence of restrictions or prohibitions on the use of clerk-hire funds to defray congressional expenses. Rather, the evidence showed that it was not an uncommon practice to use clerk-hire funds for congressional expenses. Absent such a standard which Representative Diggs may have sought to avoid, there can be no inference of intent to defraud and, therefore, no conviction.

No counts of the indictment charged use of clerk-hire funds solely for personal expenses. Rather, all alleged misuse of funds for personal and congressional expenses. That some clerk-hire funds were used for congressional expenses was not contested by the defendant. The trial judge erred in not recognizing the distinction between the two and instructing the jury that it should infer intent to defraud if it found that clerk-hire funds were used for either congressional or personal expenses. The effect of such an instruction was to direct a verdict against the defendant on the issue of intent. Such an invasion of the province of the jury warrants reversal of the conviction.

3. The False Statement counts were premised on Representative Diggs' failure to disclose on payroll authorization forms (1) that Jean Stultz, Felix Matlock and Ofield Dukes were paying expenses; and (2) that Jeralee Richmond and George Johnson were providing both congressional and personal services. The government was obligated to prove that these omissions were material, that the omitted material had to affect the decisions or operations of the House Office of Finance. The Chief of the Office of Finance testified that the information allegedly concealed was not called for by the payroll authorization forms and was immaterial to the decisions and operations of his office. Since the omissions were not shown to be material, the convictions for False Statements must be reversed.

4. The False Statement convictions were based on the payroll authorization forms for employees who paid expenses for Representative Diggs and for employees who provided both congressional and personal services. When any of those employees received his congressional check through the mail, the government also charged Mail Fraud. The mailing of salary checks was routine and incidental to any alleged scheme to defraud. There were no mailings essential to the scheme, upon which a Mail Fraud conviction could stand.

5. The trial judge erred in denying Representative Diggs' motion for discovery and an evidentiary hearing on his allegation of selective prosecution. Representative Diggs should have been afforded the opportunity to explore why, in his case, the Executive Branch undertook to intrude upon the House's administration of its own affairs while, in other in-

distinguishable cases, the alleged improprieties were left to Congress to deal with.

The government's response to Representative Diggs' argument on appeal may be summarized as follows:

1. The prosecution of Representative Diggs was misconstrued by the appellant as being based on a violation of internal House Rules, and therefore a violation of the principle of separation of powers. In fact, Representative Diggs was prosecuted for devising and directing a scheme to defraud the United States through the use of employee salary kickbacks and the payment of congressional salaries to other persons to perform personal and private business services. The use of evidence relating to a breach of House Rules, *inter alia*, to prove intent to defraud, does not contravene the prerogative of the House to "determine the rules of its proceedings [or] punish its Members" under Article I, Section 5, of the Constitution.

2. In order to prove intent to defraud, the government need not, as appellant argues, prove the violation of some underlying statute or regulation. The existence of a scheme to defraud, in whatever form, and the question of criminal intent are for the jury to decide from the totality of the evidence, regardless of whether the scheme includes violation of another law. Contrary to appellant's assertion that no evidence was offered of restrictions or prohibitions on the use of clerk-hire funds, Advisory Opinion Number 2 of the Committee on Standards of Official Conduct, clearly limiting the use of clerk-hire funds, was offered and received into evidence.

3. The facts omitted from the payroll authorization forms were "material" within the meaning of the False Statement statute because the facts concealed could have influenced the exercise of a governmental function.

4. There was clear evidence from which the jury could find under the Mail Fraud statute (1) that it was "reasonably foreseeable" that the mails could be used to carry payroll checks from Washington, D.C., to Detroit, Mich., and (2) that the mailing of the checks which contained the proceeds of the fraud was "in furtherance of" the scheme to defraud.

5. The appellant failed to allege or establish *prima facie* that he was prosecuted for impermissible reasons. It was, therefore, not improper to deny his motion to dismiss for selective prosecution without an evidentiary hearing or further discovery. General assertions of possible future abuses of prosecutorial discretion do not justify a fishing expedition through the files of the Department of Justice.

Oral argument on Representative Diggs' appeal was heard by a panel of three judges in the U.S. Court of Appeals for the District of Columbia on June 11, 1978. A decision is expected this Fall.

#### PART V—SUMMARY OF EVIDENCE

The principal evidence considered by the Committee was the transcript of the trial of Rep. Diggs and the admissions contained in Representative Diggs' letter of June 27, 1979.

## A. SUMMARY OF TRIAL TESTIMONY

On October 7, 1979, Representative Diggs was convicted in the United States District Court for the District of Columbia of 18 counts of violating 18 U.S.C. 1001 (false statement) and 11 counts of violating 18 U.S.C. 1341 (mail fraud). Of those counts, five centered on Representative Diggs' employment of Ms. Jean Stultz, six on his employment of Mr. Felix Matlock, two on his employment of Mr. Ofield Dukes, six on his employment of Ms. Jeralee Richmond, and ten on his employment of Mr. George G. Johnson.

The evidence from Representative Diggs' trial may best be summarized by separately reviewing the testimony relevant to each of the five employees alleged to have been involved in the alleged salary kickback scheme: Jean Stultz, Felix Matlock, Ofield Dukes, Jeralee Richmond and George G. Johnson.<sup>17</sup>

*Ms. Jean Stultz*

1. Concerning those charges relating to her own involvement, Ms. Jean Stultz testified under oath at Representative Diggs' trial substantially as follows:

Ms. Stultz met Representative Diggs while working for the Democratic National Committee in Miami in July, 1972. She joined Representative Diggs' staff in October, 1972, as a legislative assistant at a salary of \$11,000 (Vol. II at 147).<sup>18</sup> Three or four months later, she was appointed personal secretary to Representative Diggs and her salary was increased to approximately \$14,000. Her responsibilities as personal secretary to Representative Diggs included maintaining his appointment calendar (Id. at 153) and handling financial matters for both his congressional office and for Representative Diggs personally (Id. at 154).

In April or May, 1973, Ms. Stultz was promoted to office manager (Id. at 155) of Representative Diggs' congressional staff.

Ms. Stultz was subsequently appointed by Representative Diggs to the staff of the House District Committee, of which Representative Diggs was Chairman. Although she received a second salary for this position, she performed no duties for the District Committee, but understood her nominal position to be that of liaison between Representative Diggs' congressional and committee staffs (Id. at 157).

Some time in 1973, Representative Diggs personally explained to Ms. Stultz that there existed certain of his bills which needed to be paid, that he was going to increase her salary and that he would tell her which of his bills should be paid (Id. at 158). Ms. Stultz then began to receive paychecks from both the congressional and committee staff payrolls (Id. at 159, 382), giving her a total salary in excess of \$30,000 per year (Id. at 161).

Under the bill-paying arrangement developed between Representative Diggs and Ms. Stultz, she would present Representative Diggs a list of creditors each month and he would direct her to pay certain of the bills from what she referred as the "special account" (Id. at 163). Ms. Stultz identified numerous of her checks used to pay Representative Diggs' personal expenses under this arrangement (Id. at

<sup>17</sup> Vol. II of this Report, separately bound, contains excerpts from the transcripts of Representative Diggs' trial.

<sup>18</sup> All transcript references are to vol. II.

170-178) as well as her personal checks used to purchase cashier's checks and money orders which were then used to pay Representative Diggs' bills (Id. at 180). Among the transactions in which Ms. Stultz paid expenses for Representative Diggs with her salary overage were the following:

- (1) \$1,000 for a portrait of Representative Diggs to be hung in the District Committee office (Id. at 184; Govt. Exh. 25-A, 25-B);<sup>19</sup>
- (2) \$700 Michigan Bell Telephone bill (Id. at 187; Govt. Exh. 26-A, 26-B);
- (3) \$525 bill from Barnett Catering for catering a reception (Id. at 188-89; Govt. Exh. 27-A, 27-B);
- (4) \$115.65 bill from Gandel's Liquor for the same reception (Id. at 189-190; Govt. Exh. 28, 45-AA);
- (5) \$51 bill from "Call Carl" for repair work on Representative Diggs' car (Id. at 191-92, Govt. Exh. 28);
- (6) \$900 to the House Majority Room for printing services (Id. at 192-93; Govt. Exh. 30-A, 30-B), and
- (7) \$13.59 bill from Detroit Edison (Id. at 193-94; Govt. Exh. 31-A).

The payroll authorization forms which initiated all staff salary changes were normally signed by Representative Diggs, but Ms. Stultz did recall signing at least three such forms herself (Id. at 236-38). Ms. Stultz identified Representative Diggs' signature on all payroll authorization forms relevant to the charges (Id. at 313-17).

2. John Lawler, Chief of the Office of Finance, testified under oath substantially as follows:

The Office of Finance is the disbursing office for congressional staff payrolls. A payroll authorization form is the document used to add or delete an employee from a personal or committee staff payroll or to adjust an employee's salary (Id. at 8-11).

Mr. Lawler identified the payroll authorization forms signed by Representative Diggs affecting changes in Jean Stultz's congressional staff salary from October 13, 1972, through August 31, 1976 (Id. at 25-27; Govt. Exh. 1-A-1-L), and verified the issuance of Treasury checks based upon those authorizations (Id. at 28-29; Govt. Exh. 2). Mr. Lawler also identified payroll authorization forms signed by Representative Diggs affecting Ms. Stultz's District Committee salary from April 1, 1973, through Sept. 30, 1974 (Id. at 29-30; Govt. Exh. 4-1-4-E), and checks issued in accordance with those authorizations (Id. at 31-32; Govt. Exh. 5).

3. Mr. Robert B. Washington, ex-General Counsel of the House District Committee, testified under oath substantially as follows:

Ms. Jean Stultz was actively involved in the operation of the House District Committee (Id. at 938-40). She coordinated Representative Diggs' calendar and acted as liaison between the Committee staff and Representative Diggs' personal staff (Id. at 938-39). Ms. Stultz also attended several meetings between Robert B. Washington and Representative Diggs relevant to Committee business (Id.).

<sup>19</sup> Total cost of the portrait was \$2,270; payment was made with two cashier's checks from Riggs National Bank. Ms. Stultz recalled having purchased one of the checks for \$1,000, with her salary overage. The second, for \$1,270, was purchased under circumstances which also suggest it was purchased by Ms. Stultz with her inflated salary.

4. Representative Diggs testified under oath substantially as follows:

Ms. Stultz, as his personal secretary, was aware of Representative Diggs' financial difficulties (Id. at 1090-91). They had discussed the portrait of Representative Diggs being painted for the District Committee office, and Ms. Stultz offered to make part of her salary available to pay for the portrait (Id. at 1092). Representative Diggs told Ms. Stultz she could do whatever she liked with her salary (Id.). Ms. Stultz did pay for the portrait (Id. at 1093).

Ms. Stultz eventually began to pay office expenses and Representative Diggs' personal expenses from her salary (Id. at 1095-96). Such payments were completely voluntary and not a condition of her employment (Id. at 1101). Although Ms. Stultz's initial payments were of only Representative Diggs' office expenses, she began paying Representative Diggs' personal expenses at Representative Diggs' request (Id. at 1229-30). Representative Diggs did not consider Ms. Stultz's use of her salary in this manner to be in the form of a loan (Id. at 1232).

Representative Diggs was aware of the fact that Stultz, Matlock, and Dukes paid his office expenses from their salaries (Id. at 1234).

#### *Felix Matlock*

1. Ms. Jean Stultz testified under oath substantially as follows:

As office manager, Ms. Stultz had a supervisory relationship with Felix Matlock, an employee in Representative Diggs' District Office in Detroit (Id. at 240). Some time in 1975, Representative Diggs suggested to her that the salary of one of his District Office employees be increased for the purpose of paying his bills (Id. at 244). With the recommendation of Ms. Stultz that Matlock was the most loyal of the District Office employees (Id.), Representative Diggs increased Matlock's salary by submission of a payroll authorization form (Id. at 245). Subsequent to this increase in salary, a procedure was established whereby Representative Diggs instructed Ms. Stultz as to which bills Matlock was to pay, and Ms. Stultz relayed the instructions to Matlock (Id. at 246).

2. Felix Matlock testified under oath substantially as follows:

Mr. Matlock had been employed in Representative Diggs' District Office since 1965. In 1973 and 1974, he infrequently paid office expenses of Representative Diggs from his own salary at the direction of Jean Stultz (Id. at 483, 486). His paycheck was regularly increased to facilitate his making these payments of Representative Diggs' expenses (Id. at 484).

In mid-1975, Mr. Matlock's payment of District Office expenses became frequent (Id. at 487). To enable him to make these payments, Matlock's salary was increased from approximately \$15,000 per year in 1975 to a maximum of \$35,000 per year by the end of 1976 (Id. at 487-488). To allow him to satisfy his increased income tax liability, Matlock retained 7 percent of the salary overage (Id. at 489).

After Ms. Stultz's resignation at the end of August, 1976, Matlock continued to pay District Office expenses of Representative Diggs with his inflated salary, receiving his instructions as to what bills to pay directly from Representative Diggs (Id. at 525).

Typifying the sort of bills paid by Matlock for Representative Diggs under this arrangement are the following:

- (1) \$85 to Merle Staff Sign Co. for office sign painting (Id. at 496; Govt. Exh. 47-G);
- (2) \$277 to WJLB for Congressman Diggs' radio program (Id. at 496-97; Govt. Exh. 47-H);
- (3) \$70.30 to One-Stop Locksmith (Id. at 497; Govt. Exh. 47-I);
- (4) \$200 to Michigan Bell (Id.; Govt. Exh. 47-J);
- (5) \$14 to Borin (sic) Oil Company (Id. at 498; Govt. Exh. 48-P);
- (6) \$38.85 to Edison Company (Id.; Govt. Exh. 48-B);
- (7) \$101.46 to Jim Riehl Leasing for lease of mobile van used by District Office (Id. at 499; Govt. Exh. 48-D);
- (8) \$500 to WJLB (Id. at 500; Govt. Exh. 48-M);
- (9) \$400 to House Recording Studio for taping programs (Id. at 501; Govt. Exh. 48-P);
- (10) \$300 to WJLB for Representative Diggs' radio program (Id.; Govt. Exh. 48-Q).

Mr. Matlock stopped paying office expenses in January, 1977, at the direction of Representative Diggs and Randall Robinson, Representative Diggs' replacement for Ms. Stultz as his administrative assistant (Id. at 528-29). Matlock's salary was reduced at that time to \$20,000 per year (Id. at 529) by a payroll authorization form signed by Representative Diggs (Id. at 39-42, 315-16).

3. John Lawler, Chief of the Office of Finance, testified under oath substantially as follows:

Mr. Lawler identified payroll authorization forms signed by Representative Diggs affecting changes in the salary of Felix Matlock from Jan. 1, 1973, through January 1, 1977 (Id. at 39; Govt. Exh. 7-A-7-R), and verified the issuance of Treasury checks in accordance with those authorizations (Id. at 39-42; Govt. Exh. 2, 9A-9I).

4. Representative Diggs testified under oath substantially as follows:

Mr. Felix Matlock personally paid the office expenses of Representative Diggs' District Office and was then reimbursed with increases in his congressional staff salary (Id. at 1111). Representative Diggs denied that it was he who directed which creditors were to be paid by Matlock (Id. at 1239). Representative Diggs confirmed that the pay increase to Matlock's salary effective August 1, 1975, was for the purpose of Matlock paying District Office expenses (Id. at 1246). Representative Diggs recalled communicating directly with Matlock after Ms. Stultz's resignation, and he confirmed that Matlock continued to pay Representative Diggs' District Office expenses during that period, but denied that he instructed Matlock on which bills to pay (Id. at 1253-54).

#### *Mr. Ofield Dukes*

1. Jean Stultz testified under oath substantially as follows:

Mr. Ofield Dukes' starting salary on Representative Diggs' staff was \$12,000 per year (Id. at 250). His salary was increased by Representative Diggs to allow him to pay certain bills of Representative Diggs, including bills to the House Recording Studio, the Michigan Chronicle, and radio station WJLB (Id. at 251).

2. Ofield Dukes testified under oath substantially as follows:

Mr. Dukes joined Representative Diggs' staff in the spring of 1973 at a salary of \$12,000 per year (Id. at 551). His responsibilities in-

cluded development of all program activities as well as more general legislative functions.

Mr. Dukes on occasion personally paid expenses incurred in the performance of his staff duties and was reimbursed by increases in his salary (Id. at 556).

Among expenses which Dukes paid and for which he was reimbursed with salary increases were the following:

- (1) Photographic services expenses relevant to a 1973 Congressional Black Caucus dinner (Id. at 556);
- (2) Travel expenses for a trip to the National Black Assembly (Id.);
- (3) Outstanding bills from the Michigan Chronicle (Id. at 557-65; Govt. Exh. 56-A, B and C);
- (4) \$224 WJLB bill (Id. at 570-71; Govt. Exh. 60).

In 1975, Dukes' total salary for his employment on Representative Diggs' staff was \$21,000 per year, of which he considered \$12,000 to be his true salary (Id. at 577).

In February, 1978, Ofield Dukes resigned from the congressional staff of Representative Diggs (Id. at 552).

3. John Lawler, Chief of the Office of Finance, testified under oath substantially as follows:

Mr. Lawler identified payroll authorization forms signed by Representative Diggs affecting changes in the salary of Ofield Dukes (Id. at 44-45; Govt. Exh. 10-A-10-P) and the Treasury checks paid in accordance with those payroll authorizations from April, 1973, through December, 1977 (Id. at 45-47; Govt. Exh. 11, 12A-12R).

4. Representative Charles Diggs testified under oath substantially as follows:

Representative Diggs hired Ofield Dukes as Director of Special Projects (Id. at 1109). Dukes was regularly reimbursed for expenses he incurred with salary increases (Id. at 1110, 1234). Representative Diggs was aware of the fact that Ms. Stultz, and Messrs. Matlock, and Dukes paid some of his office expenses with their salaries (Id. at 1234).

#### *Ms. Jeralee Richmond*

1. Jean Stultz testified under oath substantially as follows:

Ms. Stultz first had contact with Jeralee Richmond in 1974, at which time she understood Richmond to be an employee of the House of Diggs Funeral Home (Id. at 300-01). Ms. Stultz's initial contacts with Ms. Richmond "regarded whatever was happening at the House of Diggs because there was no Congressional work that she was doing, to my knowledge" (Id. at 301).

Ms. Stultz identified payroll authorization forms, signed by Representative Diggs (Id. at 312-16), affecting Jeralee Richmond's salary from July 1, 1974, when Ms. Richmond was first added to the payroll (Id. at 303; Govt. Exh. 13-A-13-G). Shortly after Ms. Richmond was added to the payroll, her salary was increased at Representative Diggs' direction, to reimburse her for back pay (Id. at 304).

2. Jeralee Richmond testified under oath substantially as follows:

Previously an employee of the House of Diggs and of Diggs Enterprises, Jeralee Richmond in May, 1974, contacted Representative Diggs by telephone seeking employment (Id. at 654-55). Within a week of that phone conversation, Ms. Richmond met with Representative Diggs and Mrs. Juanita Diggs in Detroit, where they discussed the needs of

the House of Diggs Funeral Home (Id. at 656). At the end of that meeting, she was hired to work at the House of Diggs and was told by Representative Diggs that she would be paid from his Congressional payroll (Id. at 657). She also understood that, as in her previous employment at the House of Diggs, providing constituency services was part of the job (Id. at 666).

Ms. Richmond began work in May, 1974 (Id. at 657). Her responsibilities included working on the accounts receivable of the House of Diggs as well as handling any constituency problems which were brought to the funeral home (Id. at 658-59).

Between July, 1974, and August, 1976, at which time she began to work full-time at the District Office, approximately 20 percent of Ms. Richmond's time was spent on constituency matters (Id. at 659). During that period Representative Diggs told Ms. Richmond where to work (Id. at 660). She received no salary from the House of Diggs during that period (Id. at 660-61).

Ms. Richmond's salary was paid by U.S. Treasury checks, which she identified (Id. at 661-63 and 149; Govt. Exh. 15-A-15-M).

Some time after January, 1976, Ms. Richmond began to spend one day per week working at Representative Diggs' District Office (Id. at 671). In August, 1976, she began working full-time at the District Office (Id. at 672).

3. John Lawler testified under oath substantially as follows:

Mr. Lawler identified payroll authorization forms signed by Representative Diggs affecting the salary of Jeralee Richmond (Id. at 47-48; Govt. Exh. 13-A-13-G) from July 1, 1974, to June 1, 1977. He also verified the issuance of U.S. Treasury checks pursuant to those authorizations (Id. at 49-52; Govt. Exh. 14, 15-A-15-M).

4. Representative Diggs testified under oath substantially as follows:

Representative Diggs hired Jeralee Richmond because he "needed her in two capacities" (Id. at 1072). He needed her "at the funeral home as a bookkeeper to take care of the books and to do in addition to that what has been traditionally done by her in the past: handle constituent services to deal with the people that came into the funeral home seeking resolutions of their living problems and to make herself available for these kinds of services whenever they were needed." (Id.). Ms. Richmond received no salary from the House of Diggs (Id. at 1174). Representative Diggs considered the employment arrangement with Ms. Richmond to be such that she was paid "for her availability to serve my constituents" (Id. at 1175); what she did with the remainder of her time was viewed by Diggs as "not my concern," (Id.). Representative Diggs accepted as accurate Jeralee Richmond's estimate that 20 percent of her time was spent on constituency problems (Id.).

*Mr. George G. Johnson*

1. Jean Stultz testified under oath substantially as follows:

Mr. George Johnson was Representative Diggs' accountant (Id. at 306). Representative Diggs was indebted to Johnson when he directed that Johnson be added to his congressional payroll (Id. at 306-07). Ms. Stultz recalls Representative Diggs saying at the time, "See if I can cut the spill (sic) down" (Id. at 307).

Johnson's salary fluctuated monthly, depending on projections of Representative Diggs' bills and other employee's salaries (Id.). He

was on the staff payroll from July 1, 1973, to December of 1974 (Id. at 308).

Ms. Stultz was aware of no legislative duties performed by Johnson while he was on the payroll (Id. at 308). Johnson was terminated at his own request (Id. at 309).

2. George Johnson testified under oath substantially as follows:

Mr. George Johnson, a C.P.A., had provided professional accounting services to Representative Diggs and to the House of Diggs since 1971 (Id. at 681-82).

In the spring of 1973, when the accounts of Representative Diggs and the House of Diggs were in arrears in the amount of \$2,000-\$10,000 (Id. at 682), Johnson and Representative Diggs discussed the outstanding bills (Id. at 684), and the possibility of Johnson's joining Representative Diggs' staff (Id.). Johnson was added to the staff on July 1, 1973 (Id. at 685).

Mr. Johnson identified payroll checks which he began receiving in July, 1973 (Id.; Govt. Exh. 18-A-18-H). Although at times the lack of financial or accounting work as to congressional matters being assigned Johnson was discussed by Representative Diggs and Johnson, none was forthcoming (Id. at 686).

Mr. Johnson's salary was not stable during this period, but fluctuated from a low of about \$130 to a high of approximately \$2,700 (gross) per month (Id. at 687).

During this same period, Johnson continued to provide accounting services to the House of Diggs, the value of which exceeded the congressional salary he was receiving (Id.). When he brought that fact to the attention of Representative Diggs, his next monthly check "went up" (Id. at 688).

Mr. Johnson eventually began to credit his congressional salary to the House of Diggs account (Id. at 689).

At times, Johnson discussed with Representative Diggs problems such as minority development (Id. at 691), the Inner City Business Improvement Forum (Id. at 692), black opportunity with respect to the Renaissance Center (Id. at 693), and the policies of the Small Business Administration (Id. at 695).

Although Johnson was crediting his salary to the House of Diggs account, he submitted a bill for \$2,400 to Representative Diggs for preparation of Representative Diggs' personal tax returns in 1972 and 1973, and preliminary work for Representative Diggs in 1974 (Id. at 700). When this amount was not paid, Johnson filed suit against Representative Diggs (Id. at 703).

Mr. Johnson at one time declined an invitation to be included in a newspaper picture of Representatives Diggs' staff (Id. at 705).

3. John Lawler testified under oath substantially as follows:

Mr. Lawler identified the payroll authorization forms signed by Representative Diggs affecting Johnson's salary (Id. at 52; Gov't. Exh. 16-A-16-T7) and verified the issuance of U.S. Treasury checks pursuant to those authorizations (Id. at 53-56; Govt. Exh. 17, 18-A-18-H).

4. Representative Diggs testified substantially as follows:

Representative Diggs hired George G. Johnson to draw upon his knowledge and expertise with respect to black economic development projects (Id. at 1078) and met with him regularly on these as

well as personal matters (Id. at 1079). Representative Diggs never directed George Johnson to credit his salary to Representative Diggs' personal account (Id. at 1080) and continued to receive bills from Johnson for personal tax services after Johnson was added to the payroll (Id. at 1081-82).

Representative Diggs did not mention to Ms. Stultz that putting Johnson on the payroll might reduce his bill from Johnson (Id. at 1154).

Representative Diggs conceded Johnson's congressional salary fluctuated monthly, depending on the availability of funds each month (Id. at 1162).

Appendix F to this Report contains summary exhibits relevant to the pay status of each of the employees involved in the bill-paying operation, as well as charts reflecting the use of some of the diverted funds.

#### B. REPRESENTATIVE DIGGS' LETTER TO THE COMMITTEE, DATED JUNE 27, 1979

The following letter from Representative Diggs was presented to the Committee in open session on June 29, 1979:

CONGRESS OF THE UNITED STATES,  
HOUSE OF REPRESENTATIVES,  
*June 27, 1979.*

DEAR MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT: After further consideration of the charges brought against me by this Committee, and in the interest of settling and disposing of these charges without a protracted and costly hearing, I wish to make the following representations to the Committee:

I admit that I am guilty of violating House Rule XLIII, Clauses 1 and 8, by misusing my clerk-hire allowance, in that I knowingly authorized increases in the salary of Ms. Jean Stultz during her employment on my staff in order to enable her to pay certain of my personal expenses. Through this misuse of my clerk-hire funds, I was unjustly enriched to the extent of \$11,646.64.

In the employment of Ms. Jeralee Richmond from July, 1974, through August, 1976, I did not intentionally violate any House Rule or regulation. I acknowledge, however, that I personally benefitted from the services of Ms. Richmond to the extent of \$12,015.30.

In the employment of Mr. George Johnson from July, 1973, through December, 1974, I did not intentionally violate any House Rule or regulation. I acknowledge, however, that I personally benefitted from the services of Mr. Johnson to the extent of \$15,615.04.

In June and July, 1976, my employee Mr. Felix Matlock paid certain of my personal expenses, totaling \$194.68. In December, 1975, my employee Mr. Ofield Dukes paid a personal expense of mine of \$560.00. Mr. Matlock and Mr. Dukes were reimbursed for these expenditures by salary increases authorized by me. I admit that I was personally enriched by these transactions to the extent of \$754.68.

I recognize that it is within the power of this Committee to conduct a hearing, and that if found guilty, I may be subject to any of the remedies available to the Committee as prescribed by its Rules of Procedure. I wish to state at this time that should the Committee accept this statement in lieu of a trial, I shall accept a Committee recommendation to the House of Representatives of the penalty of censure.

In an effort to make restitution for the personal benefit I received from the matters just discussed, I agree to repay the amount of \$40,031.66 to the House. I would ask only that the Committee bear in mind my financial condition in its determination of a proper method and schedule for repayment.

In order to insure, during the remainder of the Ninety-Sixth Congress, that there is no further question about the use of my clerk-hire allowance, I will have each of my employees certify that the funds he or she receives from clerk-hire funds are received in full compliance with current House Rules.

Finally, I apologize to my colleagues for the discredit I have brought to the House by my conduct. I sincerely regret the errors in judgment which led to this proceeding.

Very truly yours,

CHARLES C. DIGGS, JR.  
*Member of Congress.*

#### PART VI.—RECOMMENDATION

After the Committee ordered a disciplinary hearing, but before the date set for the commencement thereof, Special Counsel for the Committee and counsel for the Member engaged in discussions which led to the Committee's recommended disposition of the proceeding.

The discussions between counsel culminated in an agreement by Representative Diggs, (1) to admit guilt and unjust enrichment with respect to certain violations of House rules, (2) to admit that he had been unjustly enriched, without admitting guilt, from the employment of some members of his staff, (3) to make restitution of amounts which he personally had unjustly received, (4) to apologize to the House for his wrongdoing, and (5) to accept censure therefor. The agreement was formally proposed to the Committee in open session by his counsel, who, in the presence of Representative Diggs, read the letter addressed to the Committee and signed by Representative Diggs appearing, *supra*, p. 16.

Special Counsel recommended that the Statement of Alleged Violations be withdrawn; that Representative Diggs' letter of admissions be accepted, that Representative Diggs be found guilty of violating Rule XLIII Clauses 1 and 8, on the basis of his admissions, and that the Committee recommend to the House that Representative Diggs be censured and he be required to make restitution by execution of an interest-bearing demand promissory note for the full amount of his personal benefit from the misuse of clerk-hire funds.

The recommendations from the Special Counsel to the Committee were accepted and Representative Hamilton moved the following resolution, which was unanimously adopted:

Whereas, Representative Charles C. Diggs, Jr., has admitted that he is guilty of violating House Rule XLIII, Clauses 1 and 8, by misusing his clerk-hire allowance, in that he knowingly authorized increases in the salary of Ms. Jean Stultz during her employment on his staff in order to enable her to pay certain of his personal expenses, and that through this misuse of his clerk-hire funds, he was unjustly enriched to the extent of \$11,646.64; and

Whereas, Representative Charles C. Diggs, Jr., has stated that in the employment of Ms. Jeralee Richmond from July, 1974, through August, 1976, he did not intentionally violate

any House Rule or regulation, he has acknowledged that he personally benefitted from the services of Ms. Richmond to the extent of \$12,015.30; and

Whereas, Representative Charles C. Diggs, Jr., has stated that in the employment of Mr. George Johnson from July, 1973, through December, 1974, he did not intentionally violate any House Rule or regulation, he has acknowledged that he personally benefitted from the services of Mr. Johnson to the extent of \$15,615.04; and

Whereas, Representative Charles C. Diggs, Jr., has stated that in June and July, 1976, his employee, Mr. Felix Matlock, paid certain of his personal expenses, totaling \$194.68, and in December, 1975, his employee, Mr. Ofield Dukes, paid a personal expense of his of \$560.00, for which expenditures they were reimbursed by salary increases authorized by him; and has admitted that he was personally enriched by these transactions to the extent of \$754.68; and

Whereas, Representative Charles C. Diggs, Jr., has stated that should the Committee accept his admissions of the above described conduct in lieu of a trial, he shall accept a Committee recommendation to the House of Representatives of the penalty of censure; and

Whereas, Representative Charles C. Diggs, Jr., has agreed to repay the amount of \$40,031.66 to the House for the personal benefit he received from the above described conduct; and

Whereas, Representative Charles C. Diggs, Jr., has stated that during the remainder of the Ninety-Sixth Congress, he will have each of his employees certify that the funds he or she receives from clerk-hire funds are received in full compliance with current House Rules; and

Whereas, Representative Charles C. Diggs, Jr., has apologized to the House for the discredit he has brought to the House by his conduct: Now, therefore, be it

*Resolved:*

(1) That Representative Charles C. Diggs, Jr., is found to have violated House Rule XLIII, Clauses 1 and 8, by misusing his clerk-hire allowance, in that he knowingly authorized increases in the salary of Ms. Jean Stultz during her employment on his staff in order to enable her to pay certain of his personal expenses, and he was unjustly enriched by this misuse of his clerk-hire funds to the extent of \$11,646.64;

(2) That Representative Charles C. Diggs, Jr., personally benefitted from the employment of Ms. Jeralee Richmond and Mr. George Johnson;

(3) That Representative Charles C. Diggs, Jr., was personally enriched by the payment of certain of his personal expenses by two of his employees, Mr. Felix Matlock and Mr. Ofield Dukes;

(4) That it be recommended to the House of Representatives that Representative Charles C. Diggs, Jr., be censured by the House of Representatives for the above described conduct;

(5) That it be recommended to the House of Representatives that during the remainder of the Ninety-Sixth Congress employees of Representative Charles C. Diggs, Jr., certify to this Committee by affirmation that the funds he or she receives from clerk-hire funds are received in full compliance with current House Rules;

(6) That it be recommended to the House of Representatives that the offer of Representative Charles C. Diggs, Jr., to make restitution be accepted, provided that Representative Diggs executes and delivers to the House a demand promissory note committing him to pay \$40,031.66 with interest equal to that assessed by the Internal Revenue Service on underpayments or assessments of personal income taxes;

(7) That a report be prepared of the Committee's proceedings and findings, which will include a summary of the testimonial portions of the transcript of the federal court trial of Representative Charles C. Diggs, Jr., and exhibits admitted into evidence, in support of the Committee recommendation of censure of Representative Charles C. Diggs, Jr., and it be submitted to the House of Representatives.

An explanation of how Representative Hamilton's resolution relates to the charges of misuse of the Member's clerk-hire contained in the Statement of Alleged Violations is appropriate. The charges alleged the inflation of staff salaries for three different purposes. First, to pay clearly identifiable personal expenses of the Member. Second, to pay expenses related to the Member's official duties but which exceeded the allowances otherwise provided therefor. The third category involved compensation of staff for services rendered for the personal benefit of the Member, e.g., Ms. Jeralee Richmond, who, while rendering some legitimate staff duties, devoted the majority of her time to the affairs of the Member's funeral home; and Mr. George Johnson, who rendered accounting services to the Member personally and to the funeral home.

Representative Diggs has admitted his guilt with respect to the first category, and without admitting guilt to the third category has admitted that he personally benefitted and was unjustly enriched as the result of the use of his clerk-hire allowance for the purposes therein described. Regarding his second category, office related expenses, Representative Diggs maintains that his use of clerk-hire funds for such purposes was not in violation of any House rules.

It should be clearly understood that, in adopting Representative Hamilton's resolution, the Committee was seeking a fair, just and sensible disposition of the proceeding, consistent with the responsibility of the House in the enforcement of its rules. The Committee believes the resolution does just that. Its action in unanimously approving the resolution, however, should not be interpreted as an expression of opinion concerning the legality under either House rules or federal law of any of the actions described in the Statement of Alleged Violations concerning which Representative Diggs has not admitted guilt. Moreover, adoption of the recommendation is not intended in any way

to influence the outcome of the criminal proceedings that remain pending against the Member, or of any civil action which might be commenced with respect thereto.

In determining the punishment of censure, which the Committee has recommended for the Member, various factors were considered. In granting each House the power to punish members "for disorderly behaviour," Article I, Section 5, specifically enumerates only the sanction of expulsion as a form of punishment. The framers of the Constitution recognized the severity of that sanction by requiring a two-thirds vote before it could be imposed. The Committee has previously observed that expulsion has been voted only three times, all occurring during the Civil War when Members left the House to join the Confederacy.

Next to expulsion, the precedents reveal that censure is the most severe form of legislative punishment. This sanction has been voted in the House only once during this century.<sup>20</sup> Forms of punishment deemed less severe than censure, e.g., reprimand or fine, have occasionally been imposed.

In recommending the censure of Representative Diggs, the Committee considered his admission of guilt of serious offenses against the House rules, his apology to the House therefor, his agreement to make restitution of substantial amounts by which he was unjustly enriched, and the nature of the offenses charged.

Accordingly, the Committee recommends that the House adopt a resolution in the following form:

#### HOUSE RESOLUTION

*Resolved:*

- (1) That Representative Charles C. Diggs, Jr. be censured;
- (2) That Representative Charles C. Diggs, Jr. forthwith present himself in the well of the House for the pronouncement of censure;
- (3) That Representative Charles C. Diggs, Jr. be censured with the public reading of this resolution by the Speaker;
- (4) That Representative Charles C. Diggs, Jr. is ordered to execute and deliver to the House an interest-bearing demand promissory note for \$40,031.66, made payable to the Treasury of the United States;
- (5) That Representative Charles C. Diggs, Jr. is ordered, for the remainder of the 96th Congress, to require his employees to certify to the Committee on Standards of Official Conduct that the funds he or she receives from check-hire funds are received in full compliance with current House Rules; and
- (6) That the House of Representatives adopt the Report of the Committee on Standards of Official Conduct dated July 19, 1979, In the Matter of Representative Charles C. Diggs, Jr.

<sup>20</sup> Representative Thomas Blanton was censured in 1921 for use of "grossly indecent and obscene language."

## SUPPLEMENTAL VIEWS OF REPRESENTATIVE F. JAMES SENSENBRENNER, JR.

I support the Committee's recommendation that Charles C. Diggs, Jr. be censured and required to reimburse the United States Treasury for the clerk-hire funds which were converted to personal use.

During the preliminary hearings on this matter, Mr. Diggs, by counsel, attempted to have this Committee dismiss the Statement of Alleged Violations on the ground that he had been re-elected subsequent to his conviction in the United States District Court for the District of Columbia.

There is substantial precedent that Congress cannot discipline a Member for acts committed during a previous Congress about which the Member's constituents had knowledge before his re-election. In effect, this doctrine implies that re-election constitutes forgiveness.

If this proceeding accomplishes nothing else, it overrules the apparent precedents which indicate that Congress will not inquire into acts committed prior to a Member's last re-election.

In this case, Representative Diggs' conviction occurred after the filing deadline for candidates and the August, 1978, primary election in the State of Michigan. The nominees for the general election held subsequent to Mr. Diggs' conviction had already been chosen and consequently, there was no way a citizen of the 13th District of Michigan could have become a candidate for Congress once the jury had found Mr. Diggs guilty.

In this instance, the election involved was really no election since for all practical purposes, the next Congressman in the 13th District of Michigan is chosen by the voters in the Democratic primary election.

The Committee's denial of Mr. Diggs' motion to dismiss the charges against him clearly indicates that Congress is serious about disciplining Members who are alleged to have violated the House rules, no matter when that violation occurred and no matter if an election has intervened. Mr. Diggs' guilty plea vindicates the Committee's position. Should the House adopt the resolution of censure reported by the Committee, it will clearly overrule the precedent which implies that re-election constitutes forgiveness.

If the Committee's resolution is adopted by the House, it will mark only the second time in this century that a Member of Congress has been censured by the House. Furthermore, Mr. Diggs has agreed to reimburse the Treasury for over \$40,000 of clerk-hire funds converted to personal use. The note which he has executed bears interest at the same rate charged taxpayers by the Internal Revenue Service for delinquencies and is payable upon demand. Mr. Diggs has also instructed the House Sergeant-at-Arms to withhold a part of his salary every month so that regular payments will be made on the principal and interest of this note. These actions are unprecedented.

While I personally believe that those who abuse the trust placed in them through the conviction of a felony should be expelled, I am satisfied that the unprecedented severity of the sanctions placed upon Charles C. Diggs, Jr., by this Committee amply demonstrates that this Committee means business in dealing with violations of the Code of Official Conduct.

F. JAMES SENSENBRENNER, Jr.

**STATEMENT PURSUANT TO RULE XI,  
CLAUSE 2(1)(3)(A)**

**The Committee makes no special oversight findings in this report.  
This report was approved by the Committee on Standards of Official  
Conduct on July 18, 1979, by vote of 12 to 0.**

**(23)**



APPENDIX A  
STATEMENT OF ALLEGED VIOLATIONS

April 4, 1979

MOTION BY Mr. Hamilton

Whereas on March 21, 1979, the Committee adopted a motion to conduct an inquiry pursuant to Rule 11(a)(1) to investigate possible violations of House Rules, particularly Rule XLIII, involving misuse by Representative Charles C. Diggs, Jr., of his clerk-hire allowance with respect to employees Jean Stultz, Felix Matlock, Ofield Dukes, Jeralee Richmond and George G. Johnson; and to determine whether such violations had occurred, and if a Statement of Alleged Violations should issue; and

Whereas Representative Diggs and his counsel were immediately notified of this action and informed of the Member's rights pursuant to the Rules of the Committee; and

Whereas by a letter dated March 23, 1979, to the Chairman of the Committee, counsel for Representative Diggs requested that the Committee defer further consideration of the inquiry until the judicial proceedings concerning Representative Diggs have been completed, and requested to be heard on this matter by the Committee in Executive session on March 28, 1979; and

Whereas on March 26, 1979, counsel for Representative Diggs was informed by counsel for the Committee that the Committee's inquiry would also include the investigation of possible violations of House Rule XLIII, involving misuse by Representative Diggs of

his clerk-hire allowance with respect to other employees, including Maria A. Reynolds; and

Whereas on March 27, 1979, counsel for the Committee met with counsel for Representative Diggs to discuss matters relevant to the inquiry; and

Whereas on March 28, 1979, the Committee heard counsel for Representative Diggs on his request to defer the inquiry, and with respect to the allegations for which the inquiry is being held; and

Whereas on March 28, 1979, Representative Diggs's request, that the Committee defer further consideration of its inquiry into possible violations of House Rules until exhaustion of Representative Diggs's judicial appeals, was denied, and the Committee directed counsel and staff to continue the inquiry; and

Whereas staff and counsel to the Committee have completed an inquiry into the possible violations of House Rules by Representative Diggs, and transmitted to the Committee a summary of the evidence received in the inquiry; and

Whereas the Committee has duly considered the summary of the evidence received in the inquiry and the arguments and statements of counsel for Representative Diggs;

Now therefore be it resolved that:

- (1) The Committee has determined on the basis of the evidence received in the inquiry conducted pursuant to Rule 11(a)(1) that there is reason to believe

that violations of the House Rules by Representative Diggs have occurred, and has adopted the attached Statement of Alleged Violations against Representative Diggs; and

- (2) The staff is hereby directed pursuant to Rule 11(b) to transmit to Representative Diggs and his counsel copies of the attached Statement of Alleged Violations; and
- (3) This matter shall proceed in accordance with Rule 12 of this Committee.

April 4, 1979

THE COMMITTEE ON  
STANDARDS OF OFFICIAL CONDUCT

|                                       |   |              |
|---------------------------------------|---|--------------|
| IN THE MATTER OF                      | ) | STATEMENT OF |
|                                       | ) |              |
| REPRESENTATIVE CHARLES C. DIGGS, JR., | ) | ALLEGED      |
|                                       | ) |              |
| Respondent.                           | ) | VIOLATIONS   |

During all times relevant to this statement of alleged violations, Representative Charles C. Diggs, Jr., was a member of the United States House of Representatives.

COUNT ONE

In or about October, 1973, and thereafter through August, 1976, the Respondent, Charles C. Diggs, Jr., conducted himself in a manner which did not reflect creditably on the House of Representatives in violation of Paragraph 1 of the Code of Official Conduct of the House of Representatives, Rule XLIII, the Rules of the House of Representatives. During this time the Respondent increased the salary of his employee Jean Stultz with knowledge that a portion of the increase would be and was used to pay the Respondent's personal expenses.

Count Two

In or about October, 1973, and thereafter through August, 1976, the Respondent, Charles C. Diggs, Jr., conducted himself in a manner which did not reflect creditably on the House of Representatives in violation of Paragraph 1 of the

Code of Official Conduct of the House of Representatives, Rule XLIII, the Rules of the House of Representatives. During this time the Respondent increased the salary of his employee Jean Stultz with knowledge that a portion of the increase would be and was used to pay the Respondent's congressional expenses.

Count Three

In or about October, 1973, and thereafter through August, 1976, the Respondent, Charles C. Diggs, Jr., retained from his clerk hire allowance an employee whose duties were not commensurate with the compensation received, in violation of Paragraph 8 of the Code of Official Conduct of the House of Representatives, Rule XLIII, the Rules of the House of Representatives. During this time the Respondent increased the salary of his employee Jean Stultz with knowledge that the compensation paid was not commensurate with the duties performed by Jean Stultz, and that a portion of her salary would be and was used to pay the Respondent's personal expenses.

Count Four

In or about October, 1973, and thereafter through August, 1976, the Respondent, Charles C. Diggs, Jr., retained from his clerk hire allowance an employee whose duties were

not commensurate with the compensation received, in violation of Paragraph 8 of the Code of Official Conduct of the House of Representatives, Rule XLIII, the Rules of the House of Representatives. During this time the Respondent increased the salary of his employee Jean Stultz with knowledge that the compensation paid was not commensurate with the duties performed by Jean Stultz, and that a portion of her salary would be and was used to pay the Respondent's congressional expenses.

Count Five

In or about August, 1975, and thereafter through December, 1976, the Respondent, Charles C. Diggs, Jr., conducted himself in a manner which did not reflect creditably on the House of Representatives in violation of Paragraph 1 of the Code of Official Conduct of the House of Representatives, Rule XLIII, the Rules of the House of Representatives. During this time the Respondent increased the salary of his District Office employee Felix Matlock with knowledge that a portion of the increase would be and was used to pay the Respondent's personal expenses.

Count Six

In or about August, 1975, and thereafter through December, 1976, the Respondent, Charles C. Diggs, Jr., conducted himself in a manner which did not reflect creditably

on the House of Representatives in violation of Paragraph 1 of the Code of Official Conduct of the House of Representatives, Rule XLIII, the Rules of the House of Representatives. During this time the Respondent increased the salary of his District Office employee Felix Matlock with knowledge that a portion of the increase would be and was used to pay the Respondent's congressional expenses.

Count Seven

In or about August, 1975, and thereafter through December, 1976, the Respondent, Charles C. Diggs, Jr., retained from his clerk hire allowance an employee whose duties were not commensurate with the compensation received, in violation of Paragraph 8 of the Code of Official Conduct of the House of Representatives, Rule XLIII, the Rules of the House of Representatives. During this time the Respondent increased the salary of his District Office employee Felix Matlock with knowledge that the compensation paid was not commensurate with the duties performed by Matlock, and that a portion of the salary would be and was used to pay the Respondent's personal expenses.

Count Eight

In or about August, 1975, and thereafter through December, 1976, the Respondent, Charles C. Diggs, Jr., retained from his clerk hire allowance an employee whose

duties were not commensurate with the compensation received, in violation of Paragraph 8 of the Code of Official Conduct of the House of Representatives, Rule XLIII, the Rules of the House of Representatives. During this time the Respondent increased the salary of his District Office employee Felix Matlock with knowledge that the compensation paid was not commensurate with the duties performed by Matlock, and that a portion of the salary would be and was used to pay the Respondent's congressional expenses.

Count Nine

In or about June, 1973, and thereafter through January, 1976, the Respondent, Charles C. Diggs, Jr., conducted himself in a manner which did not reflect creditably on the House of Representatives in violation of Paragraph 1 of the Code of Official Conduct of the House of Representatives, Rule XLIII, the Rules of the House of Representatives. During this time the Respondent increased the salary of his employee Ofield Dukes, with knowledge that a portion of the increase would be and was used to pay the Respondent's personal expenses.

Count Ten

In or about June, 1973, and thereafter through January, 1976, the Respondent, Charles C. Diggs, Jr., conducted himself in a manner which did not reflect creditably

on the House of Representatives in violation of Paragraph 1 of the Code of Official Conduct of the House of Representatives, Rule XLIII, the Rules of the House of Representatives. During this time the Respondent increased the salary of his employee Ofield Dukes, with knowledge that a portion of the increase would be and was used to pay the Respondent's congressional expenses.

Count Eleven

In or about June, 1973, and thereafter through January, 1976, the Respondent, Charles C. Diggs, Jr., retained from his clerk hire allowance an employee whose duties were not commensurate with the compensation received, in violation of Paragraph 8 of the Code of Official Conduct of the House of Representatives, Rule XLIII, the Rules of the House of Representatives. During this time the Respondent increased the salary of his employee Ofield Dukes, with knowledge that the compensation paid was not commensurate with the duties performed by Ofield Dukes and that a portion of the salary would be and was used to pay the Respondent's personal expenses.

Count Twelve

In or about June, 1973, and thereafter through January, 1976, the Respondent, Charles C. Diggs, Jr., retained from his clerk hire allowance an employee whose duties were not commensurate with the compensation received, in violation

of Paragraph 8 of the Code of Official Conduct of the House of Representatives, Rule XLIII, the Rules of the House of Representatives. During this time the Respondent increased the salary of his employee Ofield Dukes, with knowledge that the compensation paid was not commensurate with the duties performed by Ofield Dukes and that a portion of the salary would be and was used to pay the Respondent's congressional expenses.

Count Thirteen

In or about July, 1974, and thereafter through August, 1976, the Respondent, Charles C. Diggs, Jr., conducted himself in a manner which did not reflect creditably on the House of Representatives in violation of Paragraph 1 of the Code of Official Conduct of the House of Representatives, Rule XLIII, the Rules of the House of Representatives. During this time the Respondent added Jeralee Richmond to the staff of his District Office with knowledge that the majority of her duties would be and were for the benefit of the Respondent's business, The House of Diggs Funeral Home in Detroit, Michigan.

Count Fourteen

In or about July, 1974, and thereafter through August, 1976, the Respondent, Charles C. Diggs, Jr.,

retained from his clerk hire allowance an employee whose duties were not commensurate with the compensation received, in violation of Paragraph 8 of the Code of Official Conduct of the House of Representatives, Rule XLIII, the Rules of the House of Representatives. During this time the Respondent added to the staff of his District Office Jeralee Richmond, with knowledge that the compensation paid was not commensurate with the duties performed by Jeralee Richmond.

Count Fifteen

In or about July, 1973, and thereafter through December, 1974, the Respondent, Charles C. Diggs, Jr., conducted himself in a manner which did not reflect creditably on the House of Representatives in violation of Paragraph 1 of the Code of Official Conduct of the House of Representatives, Rule XLIII, the Rules of the House of Representatives. During this time the Respondent added to his District Office staff George G. Johnson without assigning him attendant duties, and to discharge personal indebtedness of the Respondent.

Count Sixteen

In or about July, 1973, and thereafter through December, 1974, the Respondent, Charles C. Diggs, Jr., retained from his clerk hire allowance an employee whose duties were

not commensurate with the compensation received, in violation of Paragraph 8 of the Code of Official Conduct of the House of Representatives, Rule XLIII, the Rules of the House of Representatives. During this time the Respondent added to his District Office staff George G. Johnson, with knowledge that the compensation paid was not commensurate with the duties performed by George G. Johnson, and was paid to George G. Johnson to discharge personal indebtedness of the Respondent.

COUNT SEVENTEEN

In or about October, 1975, and thereafter through January, 1977, the Respondent, Charles C. Diggs, Jr., conducted himself in a manner which did not reflect creditably on the House of Representatives in violation of Paragraph 1 of the Code of Official Conduct of the House of Representatives, Rule XLIII, the Rules of the House of Representatives. During this time the Respondent added to his District Office staff Maria A. Reynolds without assigning her attendant duties, and to discharge personal indebtedness of the Respondent.

COUNT EIGHTEEN

In or about October, 1975, and thereafter through January, 1977, the Respondent, Charles C. Diggs, Jr., retained from his clerk hire allowance an employee whose duties were not commensurate with the compensation received, in violation of Paragraph

8 of the Code of Official Conduct of the House of Representatives, Rule XLIII, the Rules of the House of Representatives. During this time the Respondent added to his District Office staff Maria A. Reynolds, with knowledge that the compensation paid was not commensurate with the duties performed by Maria A. Reynolds, and was to discharge personal indebtedness of the Respondent.

APPENDIX B

MOTION TO DISMISS FOR LACK OF JURISDICTION AND MEMORANDUM IN  
SUPPORT OF MOTION TO DISMISS FOR LACK OF JURISDICTION

BEFORE THE  
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT  
UNITED STATES HOUSE OF REPRESENTATIVES

In the Matter of )  
)  
)

REPRESENTATIVE CHARLES C. DIGGS, JR., )  
)

Respondent. )  
)  
)

MOTION TO DISMISS FOR LACK OF JURISDICTION

AND

MEMORANDUM IN SUPPORT OF  
MOTION TO DISMISS FOR LACK OF JURISDICTION

David Povich

Robert B. Barnett

Bernard J. Carl

WILLIAMS & CONNOLLY  
1000 Hill Building  
Washington, D.C. 20006  
(202) 331-5000

COUNSEL FOR CONGRESSMAN  
CHARLES C. DIGGS, JR.

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BEFORE THE  
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT  
UNITED STATES HOUSE OF REPRESENTATIVES

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| In the Matter of                      | ) |
|                                       | ) |
| REPRESENTATIVE CHARLES C. DIGGS, JR., | ) |
|                                       | ) |
| Respondent.                           | ) |
|                                       | ) |

MOTION TO DISMISS FOR LACK OF JURISDICTION

Congressman Charles C. Diggs, Jr., by undersigned counsel, respectfully submits that this Committee, and this House, are without jurisdiction to punish him for offenses committed prior to his election to the current Congress. Accordingly, Congressman Diggs moves this Committee to terminate these proceedings for lack of jurisdiction. This Motion is filed pursuant to Committee Rule 12(a) and 12(a)(3).

The arguments and precedents in support of this Motion are fully set forth in a Memorandum in Support of Motion to Dismiss for Lack of Jurisdiction filed this date. Said Motion is hereby incorporated herein by reference.

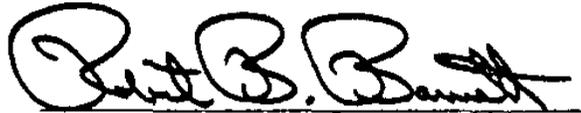
Undersigned counsel respectfully requests the opportunity to present oral argument to this Committee in support of this Motion.

Wherefore, Congressman Charles C. Diggs, Jr. moves this Committee to terminate these proceedings because of a lack of jurisdiction.

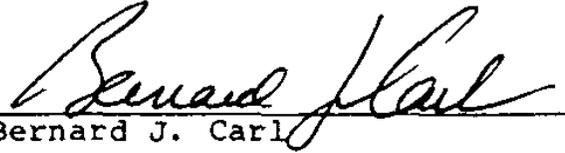
Respectfully submitted,



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COUNSEL FOR CONGRESSMAN  
CHARLES C. DIGGS, JR.

BEFORE THE  
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT  
UNITED STATES HOUSE OF REPRESENTATIVES

|                                       |   |
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| In the Matter of                      | ) |
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| REPRESENTATIVE CHARLES C. DIGGS, JR., | ) |
|                                       | ) |
| Respondent.                           | ) |
|                                       | ) |

MEMORANDUM IN SUPPORT OF  
MOTION TO DISMISS FOR LACK OF JURISDICTION

Congressman Charles C. Diggs, Jr., by undersigned counsel, has this date filed a Motion to Dismiss for Lack of Jurisdiction. This Memorandum is filed in support of said Motion. Congressman Diggs respectfully submits that this Committee, and this House, are without jurisdiction to punish him for offenses committed prior to his election to the current Congress.

In ruling on its jurisdiction, this Committee must confront a fundamental question: Does the right of the people to choose their representatives in Congress prevail over the right of the Congress to discipline its Members? Stated otherwise, does the right of the voters of the 13th Congressional District of the State of Michigan to choose a Representative to the United States House of Representatives, under Article 1, Section 2 of the United States Constitution, supersede the right of the Members of the House of Representatives, under Article 1, Section 5, to discipline a Member?

In the words of Alexander Hamilton, one of the most fundamental principles of representative democracy is "that the people should choose whom they please to govern them." We would submit that the people's choice may not be dictated by others, may not be unconstitutionally restricted by others, and may not be overruled by others. Yet, this Committee and this House, if it were

to expel Congressman Diggs from the 96th Congress, would be dictating, restricting, and overriding the judgment of the voters of the 13th District of the State of Michigan.

Congressman Diggs respectfully submits that fundamental constitutional principles, sound reasons of public policy, the precedents of the House of Representatives, the prior expressions of this Committee, and the views of the United States Supreme Court support the view that the House may not punish Congressman Diggs for conduct occurring prior to his election to the current Congress. The Congress may not substitute its view for the votes of the people.

#### STATEMENT OF FACTS

Charles C. Diggs, Jr. was first elected to the United States House of Representatives in 1954. He has been reelected ~~12~~ times and has served in the House for almost 25 years.

During the 95th Congress, Congressman Diggs was Chairman of the House Committee on the District of Columbia and Chairman of the House International Affairs Subcommittee on Africa. He was also the first Chairman of the Congressional Black Caucus.

Congressman Diggs represents the 13th Congressional District of Michigan. His district encompasses the Detroit inner-city. In 1978, Congressman Diggs was reelected by his constituents with almost 80 percent of the vote.

On March 23, 1978, more than seven months prior to the 1978 election, Congressman Diggs was indicted by a federal grand jury in Washington, D.C. The indictment contained 35 counts. It charged violations of 18 U.S.C. § 1341 (mail fraud) and 18 U.S.C. § 1001 (false statements).<sup>1/</sup> In substance, the indictment charged

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<sup>1/</sup> Six counts were dismissed by the government at the opening of trial.

that Congressman Diggs engaged in a scheme to defraud the United States by misapplying funds from his congressional clerk-hire allowance.

Counts 1 through 11 of the indictment charged that Congressman Diggs engaged in a scheme to defraud the United States, which involved the mailing of congressional salary checks, in violation of 18 U.S.C. § 1341. The first four of these counts charged that Congressman Diggs defrauded the United States by inflating the salary of Felix R. Matlock, one of his congressional employees, so that Mr. Matlock could pay certain of the official expenses of Congressman Diggs' congressional office. Counts 5 through 7 charged that Congressman Diggs improperly paid a congressional salary to Jeralee Richmond, an employee who worked in the Diggs family funeral home business. Counts 8 through 11 charged that Congressman Diggs paid a congressional salary to George G. Johnson, an accountant, who provided personal services to Congressman Diggs, his family, and the family business.

Counts 12 through 29 charged that Congressman Diggs filed materially false and misleading payroll authorization forms with an agency of the United States, the Office of Finance of the House of Representatives, in violation of 18 U.S.C. § 1001. Counts 12 through 16 charged that Congressman Diggs inflated the salary of his office manager, Jean G. Stultz, in order for her to "kickback" money for the Congressman's use in meeting both his official congressional and his personal financial obligations. Counts 17 through 18 charged that Congressman Diggs inflated the salary of Felix R. Matlock, so that Mr. Matlock could pay certain costs of operating the Congressman's district offices. Counts 19 through 20 charged that Congressman Diggs inflated the salary of Ofield Dukes, a public relations consultant, who paid certain congressional expenses. Counts 21 through 26 charged that Congressman Diggs paid a congressional salary to Jeralee Richmond, an employee

who worked in the Diggs family funeral home business. Counts 24 through 29 charged that Congressman Diggs paid a congressional salary to George G. Johnson, who rendered accounting services to the Congressman, his family, and his business.

Congressman Diggs went to trial in September of 1978. The trial lasted for approximately three weeks. On October 7, 1978, a month before the 1978 election, Congressman Diggs was convicted on 29 counts of the indictment.<sup>2/</sup>

As one would expect, the indictment, the charges, the trial, and the conviction were widely reported in the Detroit press and in the national press. The matter was the subject of headline coverage in Detroit newspapers for many weeks.

There can be no dispute that the voters of the 13th District of Michigan were well aware of the alleged conduct of Congressman Diggs, the charges against the Congressman, and his conviction. Yet, on November 7, 1978, the voters of the 13th District overwhelmingly reelected Charles C. Diggs, Jr. as their Representative to the United States House of Representatives. A canvas of the election returns and a copy of the Certificate of Election are attached hereto as Exhibit A.<sup>3/</sup>

<sup>2/</sup> On October 19, 1978, the United States District Court for the District of Columbia imposed concurrent sentences of up to three years on each count, pursuant to 18 U.S.C. § 4201. On November 22, 1978, Congressman Diggs noticed his appeal to the United States Court of Appeals for the District of Columbia Circuit. That appeal is currently pending before the Court.

<sup>3/</sup> Following his conviction, Congressman Diggs, pursuant to House Rule XLIII, Clause 10, refrained from participation in the business of each committee of which he was a member, temporarily gave up his committee chairmanships, and refrained from voting on the House floor. Following his reelection, Congressman Diggs resumed participation in committee business and resumed voting on the House floor. See House Rule XLIII, Clause 10. Congressman Diggs did not seek to regain his committee chairmanships.

Congressman Diggs took the oath at the opening of the 96th Congress. On March 1, 1979, a Member offered a privileged resolution. The Resolution, House Resolution 142, called for the expulsion of Congressman Diggs from the House of Representatives. By a vote of 322 to 77, the House referred the Resolution to the Committee on Standards of Official Conduct.

On March 21, 1979, the Committee on Standards of Official Conduct adopted a motion to conduct an inquiry, pursuant to Committee Rule 11(a)(1), to investigate possible violations of the House Rules by Congressman Diggs. Congressman Diggs and undersigned counsel were notified of this action and informed of Congressman Diggs' rights pursuant to Committee Rules.

By letter dated March 23, 1979, Congressman Diggs, by undersigned counsel, requested that the Committee on Standards defer further action on the matter until the judicial proceedings concerning Congressman Diggs are completed. Counsel was heard by the Committee on this subject in executive session on March 28, 1979. The Committee, by vote of 9 to 3, refused to defer the matter pending completion of judicial proceedings.

On April 4, 1979, the Committee adopted a Statement of Alleged Violations. The Statement included 18 counts. The Statement alleged violations of House Rule XLIII, Clause 1, and House XLIII, Clause 8. The counts covered alleged abuses by Congressman Diggs of his clerk-hire allowance. The Statement drew a careful dichotomy between misuse of the clerk-hire allowance for official expenses and misuse for personal expenses. The charges covered in the Statement went beyond the scope of the grand jury indictment and federal court trial of Congressman Diggs.

Pursuant to Committee Rule 12(a), Congressman Diggs was given 21 days to file motions. Congressman Diggs has this date filed a Motion to Dismiss for Lack of Jurisdiction pursuant to

Committee Rule 12(a)(3). This Memorandum is submitted in support of said Motion.

CONSTITUTIONAL PRINCIPLES

Under Article 1, Section 1 of the United States Constitution, "[a]ll legislative powers . . . shall be vested in a Congress of the United States which shall consist of a Senate and House of Representatives." Under Article 1, Section 2 of the Constitution, "[t]he House of Representatives shall be composed of Members, chosen every second year by the people of the several States."

James Madison, in The Federalist Papers, describes the House of Representatives as the assembly "elected immediately by the great body of the people." Madison, The Federalist Papers No. 39, p. 242 (New American Library ed. 1961). According to Madison, the House of Representatives is particularly important because it "will derive its power from the people of America." Id. at 244. The right of the people to elect the Members of House of Representatives "is very justly regarded as a fundamental article of republican government." Id., No. 52, at 326. Before the New York Ratifying Convention, Alexander Hamilton emphasized:

"The true principle of a republic is that the people should chose whom they please to govern them. Representation is imperfect in proportion as the current of popular favor is checked. This great source of free government, popular election, should be perfectly pure, and the most unbounded liberty allowed." 2 Elliot's Debates on the Federal Constitution 257 (1876)

The United States Supreme Court has defined the right to vote for Members of the Congress as having "its foundation in the Constitution of the United States." Ex parte Yarbrough, 110 U.S. 651, 663 (1884).

By electing Representatives to the House of Representatives, the people not only exercise a fundamental tenet<sup>7</sup> of representative democracy, they also provide a constitutional check on the quality, conduct, and loyalty of the Members of the House. Members of the House of Representatives are elected every two years. Through biennial elections, the Constitution ties the Members closely to their constituency by making them clearly and immediately accountable. "As it is essential to liberty that the government in general should have a common interest with the people, so it is particularly essential that [the House of Representatives] should have an immediate dependence and an intimate sympathy with, the people. Frequent elections are unquestionably the only policy by which this dependence and sympathy can be effectually assured." Madison, The Federalist Papers No. 52, p. 327 (New World Library ed. 1961).

The framers of our Constitution recognized that Members of Congress could engage in misconduct, act disloyally, or lose touch with their constituents. The framers wisely included a check in the United States Constitution to guard against this possibility. As stated by James Madison, "[t]he means relied on in this form of government for preventing . . . degeneracy are numerous and various. The most effectual one is such a limitation of the term of appointments as will maintain a proper responsibility to the people." Id. at 351. Madison further elaborates on the relationship between Members of the House and their constituents:

" . . . [T]he House of Representatives is so constituted as to support in the members an habitual recollection of their dependence on the people. Before the sentiments impressed on their minds by the mode of their elevation can be effaced by the exercise of power, they will be compelled to anticipate the moment when their power is to cease, when their exercise of it is to be reviewed, and when they must descend to the level from which they were raised;

there forever to remain unless a faithful discharge of their trust shall have established their title to a renewal of it." Id. at 352.

Thus, the right of the people to elect their Representatives to Congress is fundamental and essential to representative government. The election, particularly the biennial elections of Members to the House of Representatives, also provides a built-in check on the conduct of Members of Congress.

The Constitution contains another check on misconduct by Members of Congress. Under Article I, Section 5, each House of Congress may "punish its Members for disorderly behaviour, and, with the concurrence of two thirds, expel a Member." This disciplinary power is extremely important. As noted by Mr. Justice Story, "a Member might be so lost to all sense of dignity and duty, as to disgrace the house by the grossness of his conduct, or interrupt its deliberations by perpetual violence or clamor, the power to expel for very aggravated misconduct [is] also indispensable, not as a common, but as an "ultimate redress for the grievance." Story, Commentaries on the Constitution of the United States (1858).

This disciplinary power, although clear and ever-present, has been sparingly used. The House, for instance, has only expelled three Members in its history. In each case, expulsion was for treason. One must assume that this sparing use of the expulsion power, which is paralleled in the infrequent use of other forms of punishment, reflects a fundamental uncertainty and uneasiness about imposing discipline on a fellow Member.

This uneasiness is understandable. A Member of the House is elected by his constituents to represent them. In making their selection, the constituents exercise a fundamental right of democracy protected by the United States Constitution. For the representatives of other constituencies to judge the fitness of the

representative selected by a particular constituency undercuts this fundamental right.<sup>4/</sup>

This uneasiness is reflected throughout the history of the House of Representatives. During the 35th Congress, a Special Committee was appointed to consider the case of Congressman Orsamus B. Matteson of New York. In an oft-quoted passage, the Committee expressed its uncertainty about its power to discipline.

"The powers and privileges of this House are defined by the Constitution formed by the people. The exercise of other powers would be a violation of their rights. The assertion of power in this case is but entering upon a fearful contest with the American people to deprive them of their rights and privileges. To exert it would be a flagrant usurpation of powers never granted to this body, and would ultimately annihilate the power of the people in this choice of their representatives. It is a question of usurpation upon the one side, and American freedom upon the other.

While this House should scrupulously guard and protect its own privileges and purity, it should be equally cautious not to invade the privileges of the people. Can any reasonable doubt be entertained as to the power claimed, it should be permitted to remain with the people, who, wisely under our system of government, are confided with the duty of selecting their representatives every two years." H. Rep. 179, 35th Cong., 1st Sess. pp. 4-5 (Mar. 22, 1958).  
(emphasis added)

During the 42nd Congress, the Committee on the Judiciary, in considering the cases of Congressman Oakes Ames, a Member from Massachusetts, and Congressman James Brooks, a Member from New York, again reflected on this problem.

"This is a Government of the people, which assumes that they are the best judges of the social, intellectual, and moral qualifications of their representatives, whom they are to chose, not anybody else to choose for them; and we, therefore, find in the people's Constitution and

<sup>4/</sup> Before the New York Ratifying Convention, Robert Livingston said, "the people are the best judges [of] who ought to represent them. To dictate and control them, to tell them whom they shall not elect, is to abridge their natural rights."  
2 Elliot's Debates on the Federal Constitution 292-93 (1876).

frame of government they have, in the very first article and second section, determined that 'the House of Representatives shall be composed of Members chosen every second year by the people of the States,' not by Representatives chosen for them at the will and caprice of Members of Congress from other States according to the notions of the 'necessities of self-preservation and self-purification,' which might suggest themselves to the reason or the caprice of the Members from other States in any process of purgation or purification which two-thirds of the Members of either House may 'deem necessary' to prevent bringing 'the body into contempt and disgrace.'" H. Rep. 81, 42d Cong., 3d Sess., p. 8 (Feb. 24, 1873). (emphasis added)

Even the Select Committee which, during the same Congress, recommended the expulsion of Congressman Ames and Congressman Brooks qualified its views on the power of the House to expel a Member. The Committee noted that it had "no occasion in this Report to discuss the question as to the power or duty of the House in a case where constituency, with the full knowledge of the objectional character of a man, has selected him to be their Representative." H. Rep. 77, 42d Cong., 3d Sess. (Feb. 18, 1873). A similar caveat was added to a strong expression as to the plenary power of the House to discipline, during the 63rd Congress. See H. Rep. 570, 63d Cong., 2d Sess. (Apr. 24, 1914).<sup>5/</sup>

The uneasiness reflected in these expressions of past Congresses is easy to understand. Members of Congress are reluctant to override the choice of the voters of a district as to the individual they want to represent them.

5/ "As a matter of sound policy, this extraordinary prerogative of the House, in our judgment, should be exercised only in extreme cases and always with great caution and after due circumspection, and should be invoked with greater caution where the acts of misconduct complained of had become public previous to and were generally known at the time of the Member's election. To exercise such power in that instance the House might abuse its high prerogative, and in our opinion might exceed the just limitations of its constitutional authority by seeking to substitute its own standards and ideals for the standards and ideals of the constituency of the Member who had deliberately chosen him to be their Representative. The effect of such a policy would tend not to preserve but to undermine and destroy representative government." (emphasis added)

In the case at hand, Congressman Charles C. Diggs, Jr. has been elected to represent the voters of the 13th Congressional District of the State of Michigan. Not only have the voters chosen Congressman Diggs to represent them, they have done so with full knowledge of the charges which are the subject of this Committee's inquiry. In electing Congressman Diggs, his constituents have exercised a fundamental prerogative of democratic government. They have the right to choose who will represent them in the United States House of Representatives. That right is protected by Article 1, Section 2 of the United States Constitution.

This Committee has the solemn duty of exercising, through its recommendation, the disciplinary power of the House under Article 1, Section 5 of the Constitution. While that power is important, we would respectfully submit that it does not, and should not, override the power of the people to choose their elected Representative to the United States House of Representatives. For this Congress to punish Congressman Diggs, particularly through expulsion, "would tend not to preserve, but to undermine and destroy representative government." H. Rep. 570, 63d Cong., 2d Sess. (Apr. 24, 1914).<sup>6/</sup>

<sup>6/</sup> House Rule XLIII, Clause 10 seems to accept the notion that reelection of a Member restores his right to full participation in the House. The Rule provides that a Member, who has been convicted of a crime for which a sentence of two years or more might be imposed, should refrain from participation in official business "until judicial or executive proceedings result in reinstatement of the presumption of his innocence or until he is reelected to the House after the date of such conviction." (emphasis added)

In recommending adoption of this amendment to the Rules, this Committee recognized "that the House will not in any way act against a Member for his actions of which his electorate had full knowledge at the time of his election," and, further, stated that the precedents so holding "are proper and should in no way be altered." H. Rep. 92-1039, 92d Cong., 2d Sess., p. 4 (1972).

During debate on the House floor on March 1, 1979, House Majority Leader James Wright expressed the view we argue for today:

"In an unbroken chain of precedents, going back to the year 1799, 180 years of precedent in this Chamber, Congress has held that when a Member's constituents are aware of what he has done and have reelected him nevertheless, so far as our court is concerned, that is the final appeal. That is the sacred court that we honor in this country. . . .

We fought the war for independence, proclaiming our belief in the proposition that taxation without representation is tyranny. One of the gentlemen today has suggested we would not deny representation to the constituents of the gentleman from Michigan if we said they could not have him, that they could elect someone else. Oh, but that is not the same. Representation quite clearly implies the right to be represented by the person of their own choice, not of my choice and not of your choice. . . .

But we do not possess the power to grant to any human being the right to serve in this body. That is not a power given to us. That gift is not ours to bestow. And we would be arrogant in the extreme if we were to presume that our judgment on the question of this Member's fitness to serve should override the rights of his constituency. Under the Constitution of the United States, that power of choice lies with the people. That is where it belongs and that is where, please God, it shall forever remain if we are to be a representative democracy." Cong. Rec., March 1, 1979, pp. 1014-1015.

#### PRECEDENTS OF THE HOUSE OF REPRESENTATIVES

The United States House of Representatives -- on the floor and in its committees -- has frequently confronted the argument at issue in this case. Although there has been some divergence of opinion, the House has frequently, and in the vast majority of cases, found that it did not have the power to punish a Member for conduct occurring prior to the Member's election to the present Congress.<sup>7/</sup> As noted in the House's

<sup>7/</sup> Robert S. Getz, in his book Congressional Ethics, surveyed the precedents and concluded: "In general, both Houses have distrusted their power to punish members for offenses committed prior to their election or for offenses during a previous Congress." Id. at 89. See also McLaughlin, "Congressional Self-Discipline: the Power to Expel, to Exclude, and to Punish," 41 Fordham L. Rev. 43 (1972).

Manual of Procedure, "In general, both Houses have distrusted their power to punish in such cases." Rules of the House of Representatives, H. R. Doc. No. 94-663, 94th Cong., 2d Sess., 30 (1977).<sup>8/</sup>

This section of the Memorandum in Support of Motion to Dismiss for Lack of Jurisdiction will discuss the precedents of the House of Representatives.<sup>9/</sup> While these precedents may not, as a technical matter, bind this Committee, they provide important guidance as this Committee considers this issue. The precedents represent the thinking and judgment of Members of previous Congresses.

The expressions of previous Congresses provide guidance for the conduct of the Members of the current Congress. Because the House of Representatives is an institution of history and tradition, Members of one Congress traditionally give great weight and reverence to precedents of past Congresses.

Matthew Lyon -- 5th Congress (1799)

Matthew Lyon, a Member from Vermont, was convicted of violating a state sedition law while he was a Member of Congress.

<sup>8/</sup> As will be discussed below, some of the precedents draw a distinction between the power to expel and the power to impose other forms of punishment. Even those who adhere to the view that lesser forms of punishment may be imposed for conduct occurring prior to the Member's election to the current Congress frequently deny the power to expel under those circumstances. See Getz, Congressional Ethics (1966).

<sup>9/</sup> This Memorandum does not discuss precedents from the United States Senate. Senate precedents are believed to be irrelevant to this matter.

Since all Members of the House of Representatives are elected every two years, the Courts have long recognized that the House, in contrast to the Senate, is not a continuing body. See, e.g., Eastland v. United States Serviceman's Fund, 421 U.S. 491 (1975); McGrain v. Daugherty, 273 U.S. 135 (1927). As a continuing body, the Senate may properly take cognizance of conduct occurring during a previous Congress. Because the House is not a continuing body, prior conduct does not have a "carryover" effect, and an intervening election assumes a greater importance.

Following the conviction, Congressman Lyon was reelected to the House. A resolution was introduced during the 5th Congress calling for the expulsion of Congressman Lyon.

The proponents of the resolution argued that the House had an unlimited power of expulsion. They argued that the House could predicate an expulsion upon acts done outside of the House.

The opponents of the resolution of expulsion rejected this view. They argued that Congressman Lyon's constituents had full knowledge of his prosecution and, nevertheless, reelected him to the 5th Congress.

On February 22, 1799, the House voted on the resolution of expulsion. The vote was 49 to 45 in favor of the resolution. Because two-thirds of the Members failed to vote in favor of the resolution, the resolution of expulsion was defeated.<sup>10/</sup>

Orsamus B. Matteson -- 35th Congress (1858)

Orsamus B. Matteson, a Member from New York, was the subject of an investigation during the 34th Congress. It was charged that Congressman Matteson "entered into [a] corrupt combination for the purpose of passing and of preventing the passage of certain measures." A Committee was appointed to investigate the charges. The Committee recommended that Congressman Matteson be expelled from the House.

Before the consideration of the resolution of expulsion, Congressman Matteson resigned from the House. After much

<sup>10/</sup> This incident is not to be confused with a previous attempt to expel Congressman Lyon. In 1798, during the 5th Congress, Congressman Lyon was assaulted on the House floor by another Member with a cane. Congressman Lyon responded by assaulting his attacker with a pair of tongs from the House fireplace. The Committee on Privileges recommended that a resolution of expulsion of the two Members be disagreed to. The Report of the Committee on Privileges was agreed to by a vote of 73 to 21. A motion that the two Members be censured also failed.

discussion as to whether the House had the power to act to discipline a Member who had resigned, the House voted to lay the resolution of expulsion on the table.

Congressman Matteson was elected to the 35th Congress and was seated. On February 25, 1858, the House considered a new resolution of expulsion. Proponents of the resolution argued that the power to expel was without limitation. The opponents of the resolution argued that the House had no power to expel for an offense committed before the Member took his seat in the current Congress. By a vote of 93 to 87, the House referred the matter to a Special Committee.

The Special Committee issued a Report on March 22, 1858. H. Rep. 179, 35th Cong., 1st Sess. (Mar. 22, 1858). The Special Committee noted that the House was "not called upon to expel Mr. Matteson for any cause arising during his present congressional term, but to expel him for causes alleged to have taken place in the 34th Congress". Id. at 2. The Special Committee determined that the proceedings against Congressman Matteson during the 34th Congress constituted no legal disqualification for election to the 35th Congress. The Special Committee then considered whether the House had jurisdiction to expel Congressman Matteson for acts occurring during the previous Congress.

The Special Committee asked, "What offence has Mr. Matteson committed against this House? What act of disorderly behavior is he charged with upon which we are called to decide?" Id. at 4. The Special Committee discussed the proceedings during the 34th Congress and noted that "Mr. Matteson, if any other responsibility attached to him, was amenable to the people of his district." Id.

The Special Committee concluded that it was "inexpedient for this House to take any further action in regard to the

resolutions proposing to expel O. B. Matteson". Id. at 5. The Special Committee explained.

"The powers and privileges of this House are defined by the Constitution formed by the people. The exercise of power in this case is but a violation of their rights. The assertion of power in this case is but entering upon a fearful contest with the American people to deprive them of their rights and privileges. To exert it would be a flagrant usurpation of powers never granted to this body, and would ultimately annihilate the power of the people in the choice of their representatives. It is a question of usurpation upon the one side, and American freedom upon the other.

While this House should scrupulously guard and protect its own privileges and purity, it should be equally cautious not to invade the privileges of the people. Can any reasonable doubt be entertained as to the power claimed, it should be permitted to remain with the people, who, wisely under our system of government, are confided with the duty of selecting their representatives every two years." Id. at 4-5. (emphasis added)

On March 27, 1858, the Report of the Special Committee was considered on the House floor. The subject was laid on the table by a vote of 96 to 69. <sup>11/</sup>

<sup>11/</sup> The Special Committee which investigated Congressman Matteson discussed the case of John Wilkes, a Member of the British House of Commons. See, H. Rep. 179, 35th Cong., 1st Sess., 2-3 (Mar. 22, 1858). Wilkes was expelled from the House of Commons in 1764 for being the author of a seditious libel. During the next Parliament, in 1769, he was again expelled for another libel. After he was reelected, the Parliament passed a resolution, on February 17, 1769, declaring Wilkes incapable of being reelected.

Wilkes was, nevertheless, reelected, but the Parliament declared his election void. Wilkes was again reelected. His opponent petitioned the Parliament to be seated. The Parliament resolved that, although Wilkes had been reelected, the opponent ought to be seated.

After public opinion overwhelmingly condemned this action, the Parliament voted, on May 3, 1782, to expunge the February 17, 1769 resolution. The House of Commons resolved that the prior House actions were "subversive of the rights of the whole body of electors of the kingdom." 22 Parl. Hist. Eng. 1411 (1782).

Oakes Ames and James Brooks -- 42nd Congress (1873)

Oakes Ames, a Member from Massachusetts, and James Brooks, a Member from New York, were involved in the bribery of various Members of Congress in conjunction with the Credit Mobilier scandal. Their actions took place prior to their election to the 42nd Congress, but while they were Members of Congress.

A Select Committee was appointed to investigate the charges. The Select Committee issued a report recommending that Congressman Ames and Congressman Brooks be expelled. H. Rep. 77, 42d Cong., 3d Sess. (Feb. 18, 1873).

The Select Committee expressed the opinion that the House had the power to punish a Member for acts committed prior to his election to the current Congress. Its view, however, (1) was qualified by one important factor and (2) was advisory only.

The Select Committee qualified its opinion by noting that it had "no occasion in this Report to discuss the question as to the power or duty of the House in a case where a constituency, with a full knowledge of the objectionable character of a man, has selected him to be their Representative." Id. at XVI. The Select Committee noted that "in such case the judgment of the constituency would be entitled to the greatest consideration, and that this should form an important element in its determination, is readily admitted." Id. at XVII.

Ultimately, the view of the Select Committee was shown to be advisory only. The Select Committee acknowledged that it was not dealing, as a technical matter, with offenses solely committed prior to the Members' election to the current Congress. The Select Committee found that offenses charged against Congressman Ames and Congressman Brooks were "offenses against the present House". Id. at XVIII. The Select Committee explained that the alleged bribery involved subject matters which would be considered

by the current House. Therefore, the offenses were "of a continuous character." Id. at XVII. Also, Congressman Ames, Congressman Brooks, and most of the Members "upon whom these influences were said to be exerted" continued to be Members of the House. The Committee concluded that "the acts of [Congressman Ames and Congressman Brooks] may properly be treated as offenses against the present House, and so within its jurisdiction upon the most limited rule." Id. at XVIII.

On February 24, 1873, before the recommendations of the Select Committee could be acted upon, the Committee on the Judiciary issued a report. H. Rep. 81, 42d Cong., 3d Sess., (Feb. 24, 1873). The Judiciary Committee reviewed the legal issues considered by the Select Committee and reached opposite conclusions.

The Judiciary Committee concluded that "the power of expelling a Member for some alleged crime, committed, it may be, years before his election, is not within the constitutional prerogative of the House." Id. at 8. The Judiciary Committee explained:

"But the answer seems to us an obvious one that the Constitution has given to the House of Representatives no constitutional power over such considerations of 'justice and sound policy' as a qualification in representation. On the contrary, the Constitution has given this power to another and higher tribunal, to wit, the constituency of the Member. Every intendment of our form of government would seem to point to that. This is a Government of the people, which assumes that they are the best judges of the social, intellectual, and moral qualifications of their representatives, whom they are to choose, not anybody else to choose for them; and we, therefore, find in the people's Constitution and frame of government they have, in the very first article and second section, determined that 'the House of Representatives shall be composed of Members chosen every second year by the people of the States,' not by Representatives chosen for them at the will and caprice of Members of Congress from other States according to the notions of the 'necessities of self-preservation and self-purification,' which might suggest themselves to the reason or the caprice of the Members from other States in any process of purgation or purification which two-thirds of the Members of either

House may 'deem necessary' to prevent bringing 'the body into contempt and disgrace.'

. . . The power itself seems to us too dangerous, the claim of power too exaggerated, to be confided in any body of men; and, therefore, most wisely retained in the people themselves, by the express words of the Constitution.

. . . Our opinion upon the whole matter, therefore, is that the right of representation is the right of the constituency, and not that of the Representative, and, so long as he does nothing which is disorderly or renders him unfit to be in the House while a Member thereof, that, except for the safety of the House, or the Members thereof, or for its own protection, the House has no right or legal constitutional jurisdiction or power to expel the Members.

. . . For the reasons so hastily stated, and many more which might be adduced, your committee conclude[s] that both the impeaching power bestowed upon the two Houses by the Constitution and the power of expulsion are remedial only, and not punitive, so as to extend to all crimes at all times, and are not to be used in any constitutional sense or right for the purpose of punishing any man for a crime committed before he became a Member of the House, or in case of a civil officer, as just cause of impeachment; but we agree the analogy stated by the learned committee on Credit Mobilier is in so far perfect. Both are alike remedial, neither punitive." (emphasis added)

When the matter came to the House floor, a Member offered a substitute resolution. The resolution contained a preamble stating that "grave doubts exist as to the rightful exercise of this House of its power to expel a Member for offenses committed by such Member long before his election thereto, and not connected with such election." The resolution "condemned" Congressman Ames and Congressman Brooks. Ultimately, the resolution was agreed to and the preamble was disagreed to by a vote of 113 to 98.<sup>12/</sup>

<sup>12/</sup> While the votes on the House floor in conjunction with the consideration of the discipline of Congressman Ames and Congressman Brooks could be read as precedents in favor of the power of the House to discipline a Member for actions taken prior to his election to the current House, this view must be qualified by several factors.

(Footnote continued)

William S. King and John G. Schumaker -- 44th Congress (1876)

During the 43rd Congress, the Committee on the Judiciary investigated charges that a large sum of money had been used to secure passage of a subsidy bill through the Congress. The Committee noted that William S. King, a Member, and John G. Schumaker, a Member, had obstructed the investigation.

Congressman King and Congressman Schumaker were elected to the 44th Congress. The Committee on the Judiciary again launched an investigation and issued a Report. H. Rep. 815, 44th Cong., 1st Sess. (Aug. 9, 1876). The Committee noted that the alleged corrupt actions had taken place during the a prior Congress and the Committee went on to unequivocally conclude "that the House of Representatives had no authority to take jurisdiction of violations of law or offenses committed against a previous Congress." (emphasis added) Id. at 2.<sup>13/</sup> The Committee stated

(Footnote continued)

12/ First, the Report of the Select Committee clearly acknowledged that the offenses affected the House which was considering the discipline. Thus, the views of the Select Committee on the question of the power to punish for offenses committed prior to the current Congress are advisory at best. Second, the Committee on the Judiciary explicitly found that the House was without such power. Third, the Credit Mobilier scandal involved a fundamental assault on the House of Representatives as an institution. As a result, emotions ran high and decisions on legal questions seem colored by these emotions. This was noted by Speaker Cannon in rendering a ruling during the 58th Congress. See p. 23, infra. Fourth, the vote of the House disagreeing to the preamble to the resolution of discipline is of little precedential significance. The preamble was of little or no effect. Fifth, the actions of the 44th Congress, discussed below, seem to ignore, if not overrule, the actions of the 42nd Congress involving Congressman Ames and Congressman Brooks. The House of Representatives, though fully aware of its recent action, refused to take jurisdiction of a disciplinary matter in virtually identical circumstances.

13/ Congressman King and Congressman Schumaker were accused of offenses committed prior to their election to Congress and with obstructing the investigation of the 43rd Congress, while Members of that Congress.

that Article 1, Section 5 of the United States Constitution "cannot vest in Congress a jurisdiction to try a Member for an offense committed before his election." Id.

The conclusion of the Committee on the Judiciary is particularly important for several reasons. First, it follows promptly upon, and seems to reject, the action of the House of Representatives during the 42nd Congress involving Congressman Ames and Congressman Brooks. Second, the Committee held that Congress lacked "jurisdiction." That is to say, Congress was without power to take any action on the matter or impose any form of punishment.

William Pitt Kellogg -- 48th Congress (1884)

William Pitt Kellogg, a Member from Louisiana, took the floor during the 48th Congress. He noted that various accusations of misconduct had been raised against him during an investigation by the Committee on Expenditures. He offered a privileged resolution asking the Committee to investigate the charges against him.

Another Member raised a point of order. The Member argued that no question of privilege was involved. John G. Carlisle, the Speaker of the House, rendered a ruling.

"The Chair has intimated heretofore that this House has no right to punish a Member for any offense alleged to have been committed previous to the time when he was elected as a Member of the House. That has been so frequently decided in the House that it is no longer a matter of dispute. The resolution which the gentleman sends up directs the committee to investigate certain charges made against the Member from Louisiana, but does not state the time when the alleged offense was committed, if at all, so that the resolution may be entirely in order, but the gentleman from Louisiana is discussing matters which he admits occurred several years ago and before his election. He can not proceed to discuss such matters without unanimous consent, as was decided in the Forty-sixth Congress in the case of Mr. Chalmers, of Mississippi." See Cong. Rec., May 23, 1884, pp. 4432-39 (emphasis added)

By a vote of 82 to 49, the resolution was referred to the Committee on the Judiciary. The Committee on the Judiciary never issued a report.

Brigham H. Roberts - 56th Congress (1889-1900)

Brigham H. Roberts, a Member from Utah, openly practiced polygamy. When Roberts was elected to the 56th Congress, the House referred the matter to a Special Committee.

The Special Committee issued a Report. H. Rep. 85, 56th Cong., 1st Sess. (Jan. 20, 1900). The majority of the Committee recommended that Congressman Roberts be excluded.

Ultimately, the House voted to exclude Congressman Roberts by a vote of 268 to 50. After Powell v. McCormack, 395 U.S. 486 (1969), the action of exclusion, under these circumstances, would be unconstitutional. Thus, the actions of the House in the case of Congressman Roberts are no longer of relevance.

However, it is interesting and relevant to note one section of the Report of the Special Committee. The Special Committee considered expelling Congressman Roberts, rather than excluding him. The Special Committee rejected this option because the conduct of Congressman Roberts occurred prior to his election to Congress. The Committee noted that "[n]either House of Congress has ever expelled a Member for acts unrelated to him as a Member or inconsistent with his public trust and duty as such." The Committee added, "Both Houses have many times refused to expel where the guilt of the Member was apparent; where the refusal to expel was put upon the ground that the House or Senate, as the case might be, had no right to expel for an act unrelated to the Member as such, or because it was committed prior to his election." Id. at 4.

William Bourke Cockran -- 58th Congress (1904)

William Bourke Cockran, a Member from New York, offered a privileged resolution on April 26, 1904. The resolution called for the creation of a Select Committee to investigate charges that he had been involved in election irregularities.

A point of order was raised that the resolution did not present a question of privilege. The conduct which Congressman Cockran wanted the Select Committee to investigate occurred prior to his election to Congress. Joseph G. Cannon, Speaker of the House, declined to immediately issue a ruling. He retired to examine the precedents.

On April 27, 1904, Speaker Cannon rendered his ruling:

"May the House punish a Member for that which he did in his capacity as a citizen, before his election as Member?"

In view of the high constitutional importance of this question, the Chair on yesterday declined to rule until he had examined the precedents thoroughly. He finds that the question has often arisen, and that while there has been some diversity of opinion, there is in the main a well-defined line of decisions indicating that the House may not take such action." Cong. Rec., Apr. 27, 1904, pp. 5750-51.

In rendering his ruling, Speaker Cannon discussed the cases of Congressman Lyon, Congressman Matteson, Congressman Ames, Congressman Brooks, Congressman King and Congressman Schumaker, Congressman Kellogg, and Congressman Roberts. Speaker Cannon noted that the precedents involving Congressman Ames and Congressman Brooks diverged from the "well-defined line of decisions" of the House. He distinguished the cases of Congressman Ames and Congressman Brooks by noting (1) that the opposite ruling in the case of Congressman King and Congressman Schumaker was "rendered in the full knowledge" of the previous precedent; (2) that the Committee on the Judiciary rendered a contrary opinion on the situation of Congressman Ames and Congressman Brooks; and (3) the case of

Congressman Ames and Congressman Brooks arose in "a period of great popular excitement."

Investigation of Lobbying Activities -- <sup>63rd</sup> ~~54th~~ Congress (1914)

During the 63rd Congress, the Committee on the Judiciary investigated various lobbying activities. The Committee issued a comprehensive Report. H. Rep. 570, 63d Cong., 2d Sess. (Apr. 24, 1914).

The Committee on the Judiciary discussed the question "as to whether or not the House has the power to expel or punish a Member for misconduct in a preceding or former Congress of which he was also a Member." Id. at 3. The Committee reviewed the case of Congressman Ames and Congressman Brooks. The Committee discussed both the views of the Special Committee and the contrary views of the Committee on the Judiciary. The Committee concluded:

"In the judgment of your committee, the power of the House to expel or punish by censure a Member for misconduct occurring before his election or in a preceding or former Congress is sustained by the practice of the House, sanctioned by reason and sound policy and in extreme cases is absolutely essential to enable the House to exclude from its deliberations and councils notoriously corrupt men, who have unexpectedly and suddenly dishonored themselves and betrayed the public by acts and conduct rendering them unworthy of the high position of honor and trust reposed in them.

But in considering this question and in arriving at the conclusions we have reached, we would not have you unmindful of the fact that we have been dealing with the question merely as one of power, and it should not be confused with the question of policy also involved. As a matter of sound policy, this extraordinary prerogative of the House, in our judgment, should be exercised only in extreme cases and always with great caution and after due circumspection, and should be invoked with greater caution where the acts of misconduct complained of had become public previous to and were generally known at the time of the Member's election. To exercise such power in that instance the House might abuse its high prerogative, and in our opinion might exceed the just limitations of its constitutional authority by seeking to substitute its own standards and ideals for the standards and

ideals of the constituency of the Member who had deliberately chosen him to be their Representative. The effect of such a policy would tend not to preserve but to undermine and destroy representative government." Id. at 4-5. (emphasis added) 14/

John W. Langley -- 69th Congress (1925-26)

John W. Langley, a Member from Kentucky, was convicted of conspiracy during the 68th Congress. While his appeal was pending, Congressman Langley was reelected to the House. When he presented his credentials, the matter was referred to a Select Committee.

The Select Committee issued a Report, H. Rep. 30, 69th Cong., 1st Sess. (Dec. 22, 1925). The Committee recommended that the matter be deferred until Congressman Langley completed his appeals from his conviction. In the course of rendering its recommendation, the Committee expressed the following view:

"Without an expression of the individual opinions of the members of the committee, it must be said that with practical uniformity the precedents in such cases are to the effect that the House will not expel a Member for reprehensible action prior to his election as a Member, not even for conviction for an offense. On May 23, 1884 [in the case of Congressman William Pitt Kellogg], Speaker Carlisle decided that the House had no right to punish a Member for any offense alleged to have been committed previous to the time when he was elected a Member and added, 'That has been so frequently decided in the House

14/ Victor L. Berger, a Member from Wisconsin, stood aside while the oath was administered to the Members of the 66th Congress. A Special Committee was appointed to investigate the matter. The Special Committee issued a Report. H. Rep. 413, 66th Cong., 1st Sess. (Oct. 24, 1919).

The Special Committee found Congressman Berger guilty of giving aid and comfort to the enemies of the United States. The Committee recommended that Congressman Berger be excluded. The House voted to exclude Congressman Berger. Congressman Berger was reelected twice. Each time, the House voted to exclude him.

In light of Powell v. McCormack, 395 U.S. 486 (1969), the actions of the House in the case of Congressman Berger would be unconstitutional.

that it is no longer a matter of dispute.'" Id. at 1-2.

The Committee asked that it be allowed to retain jurisdiction of the matter. However, on January 11, 1926, Congressman Langley resigned from the House. By unanimous consent, the Select Committee was discharged from the matter.

Adam Clayton Powell -- 90th Congress (1967)

Adam Clayton Powell, a Member from New York, was accused of contumacious conduct towards the courts of the State of New York and with official misconduct in the management of his congressional office and as Chairman of the House Committee on Education and Labor. During the 89th Congress, a Special Subcommittee on Contracts of the Committee on House Administration conducted an investigation. During the 90th Congress, a Select Committee was appointed to investigate the matter. The Select Committee issued a Report. H. Rep. 27, 90th Cong., 1st Sess. (Feb. 23, 1967).

The Select Committee recommended that Congressman Powell be permitted to take the oath, be censured and condemned by the House, be required to pay a fine, and lose his House seniority. In its Report, the Select Committee concluded that "[t]he power of the House of Representatives upon majority vote to censure and to impose punishments other than expulsion is full and plenary and may be enforced by summary proceedings . . . . This Select Committee is of the opinion that the broad power of the House to censure and punish Members short of expulsion extends to act occurring during a prior Congress." Id. at 29.

The conclusions of the Select Committee on this issue are of dubious precedential value. Its Report is seriously flawed, and its recommendation was rejected by the House.

First, the Select Committee only discusses a small number of the available precedents. Specifically, the Select Committee concentrates its discussion on the cases of Congressman Ames

and Congressman Brooks. As discussed above, see p. 17-20 and fn. 12, supra, these precedents were ignored by a succeeding Congress, may not stand for the proposition cited, and have been repeatedly distinguished. The Select Committee also quotes from H. Rep. 570, 63d Cong., 2d Sess. (Apr. 24, 1914). Id. at 24. However, the Committee quotes selectively from the Report and ignores some extremely important language. Also, the Select Committee relies heavily on precedents from the United States Senate. As discussed above, see p. 11, fn. 6, supra, we believe Senate precedents are irrelevant to the issue at hand.

Despite the flaws in its analysis, the Report of the Select Committee is interesting for several reasons. First, while concluding that a Congress may censure or reprimand for conduct occurring prior to that Congress, the Select Committee seems to exclude the power to expel for such acts. The Select Committee carefully limits its discussion to lesser forms of punishment, implicitly acknowledging serious questions about the power to expel. Id. at 27, 29.

Second, the Committee carefully lists several factors which should be considered when the House decides to punish a Member. The factors include "whether [the conduct] was known to the electorate at the previous election". Id. at 29.

Ultimately, the House voted to exclude Congressman Powell. This action was declared unconstitutional by the United States Supreme Court in Powell v. McCormack, 395 U.S. 486 (1969).

#### Michael Harrington -- 94th Congress (1975)

Michael Harrington, a Member from Massachusetts, allegedly violated rules of the House of Representatives during the 93rd Congress. A resolution of expulsion was introduced during the 94th Congress. It was referred to the Committee on Standards

of Official Conduct. The Committee denied a motion arguing lack of jurisdiction. Later, it was discovered that Congressman Harrington had not violated a House Rule, because the testimony that he allegedly disclosed had not been taken during a valid executive session. As a result, the Committee on Standards of Official Conduct dismissed the proceeding.

Given the ultimate dismissal of the matter, the Committee's earlier ruling is of dubious precedential value. This is particularly true because the same Committee, during the same Congress, expressed a contrary view on the matter. In House Report 94-76, 94th Cong., 1st Sess. (Mar. 18, 1975), the Committee stated:

"Precedents hold that the House will not act in anyway against a Member for any action of which his electorate had full knowledge at the time of his election. The committee feels that these precedents are proper and should in no way be altered." Id. at 4.

Robert L. F. Sikes -- 94th Congress (1976)

Robert L. F. Sikes, a Member from Florida, was accused of various wrongdoings involving stockholdings and conflicts of interest. The Committee on Standards of Official Conduct investigated Congressman Sikes. It issued a Report. H. Rep. 94-1364, 94th Cong., 2d Sess. (July 23, 1976).

The Committee recommended that Congressman Sikes (1) be reprimanded for failure to report ownership of stock in Fairchild Industries, Inc. and the First Navy Bank, and (2) be reprimanded for investment in stock of the First Navy Bank.

The Committee does not appear to have considered the issue of whether Congressman Sikes could be punished for actions occurring during prior Congresses. However, several aspects of its Report are of interest. First, it appears that Congressman Sikes held his stock in Fairchild Industries until July 8, 1975

and in the First Navy Bank until July 19, 1976. Thus, the actions which underlie the recommendations of the Committee could be said to extend to the Congress considering the disciplinary action. Second, the Committee rejected the argument that Congressman Sikes should be disciplined for sponsoring legislation which involved a "significant conflict of interest." Id. at 4. The Committee recommended against discipline, inter alia, because "at least to some extent [Congressman Sikes' actions] appear to have been known to Representative Sikes' constituency which has continually re-elected him to Congress." Id. at 5.

On July 29, 1976, the House voted to reprimand Congressman Sikes. Again, there appears to have been no discussion of the issue involved in this case.

#### PRECEDENTS FROM THIS COMMITTEE

On several occasions, this Committee has expressed its view on the question at issue in this case. This Committee has, explicitly and implicitly, acknowledged the impropriety of imposing punishment on a Member for conduct occurring prior to his election to the current Congress.

As with the precedents of the House of Representatives, discussed above, the past precedents of this Committee are not binding, as a technical matter, on the current Members of this Committee. However, the current Members of this Committee should look to past expressions by this Committee as representing the views of those who have confronted similar issues in the past. Moreover, the expressions of this Committee serve as a guide to Members of the House of Representatives in their conduct. If the past views of this Committee are ignored by the current Members of this Committee, the informing and guidance functions are lost.

House Report 92-1039 -- 92nd Congress, 2nd Session (May 23, 1972)

During the 92nd Congress, this Committee considered House Resolution 933. The Resolution sought to "express the sense of the House with respect to actions which it feels Members, who are convicted of certain serious crimes, should take during the period of any appeals process when there is no presumption of innocence." H. Rep. 92-1039, 92d Cong., 2d Sess. (May 3, 1972). Specifically, the Resolution expressed the "sense of the House" that such a Member should refrain from Committee activities and voting on the floor of the House.

In its Report, this Committee concluded that a Member, who had been convicted of a serious crime, should resume Committee activity and resume voting on the House floor when the presumption of innocence is restored (i.e. by reversal of his conviction) or when he is reelected to the House. The Committee went on to unequivocally state, "Precedents, without known exception, hold that the House will not act in any way against a Member for any actions of which his electorate had full knowledge at the time of his election. The committee feels that these precedents are proper and should in no way be altered." Id. at 4.

The House of Representatives never acted on the Report of the Committee on Standards of Official Conduct during the 92nd Congress.

House Report 93-616 -- 93rd Congress, 1st Session (Oct. 31, 1973)

During the 93rd Congress, this Committee submitted an identical Report to the House. H. Rep. 93-616, 93d Cong., 1st Sess. (Oct. 31, 1973). The Report accompanied House Resolution 128. The Resolution paralleled House Resolution 933 from the previous Congress.

Again, this Committee expressed its view on the precedents of the House and the power of the House to punish a Member for conduct occurring prior to his election to the current House. The Committee stated, "Precedents, without known exception, hold that the House will not act in anyway against a Member for any actions of which his electorate had full knowledge at the time of his election. The Committee feels that these precedents are proper and should in no way be altered." Id. at 4.

On November 14, 1973, the full House of Representatives passed House Resolution 128 by a vote of 388 to 18. During the debate on the House floor, the absence of power in the House to punish for conduct occurring prior to reelection was favorably discussed and debated. See Cong. Rec., Nov. 14, 1973, p. 36945. In passing House Resolution 128, the full House of Representatives, in 1973, adopted the view of this Committee.

House Report 94-76 -- 94th Congress, 1st Session (Mar. 18, 1975)

During the 94th Congress, this Committee considered House Resolution 46. The Resolution provided:

"A Member of the House of Representatives who has been convicted by a court of record for the commission of a crime for which a sentence of two or more years' imprisonment may be imposed should refrain from participation in the business of each committee of which he is a member and should refrain from voting on any question at a meeting of the House, or of the Committee of the Whole House, unless or until judicial or executive proceedings result in reinstatement of the presumption of his innocence or until he is reelected to the House after the date of such conviction."  
(emphasis added)

As explained in the Committee's Report, rather than expressing the "sense of the House," House Resolution 46 was designed to become a part of the Rules of the House. While not mandating that a Member convicted of a serious crime refrain from participation in committee business and refrain from voting on the House floor,

the amendment to the House Rules would constitute a strong advisory in that direction.

Again, the Committee expressed its view on the power of the House to punish a Member for conduct occurring prior to his election to the current Congress. The Committee stated, "Precedents hold that the House will not act in anyway against a Member for any actions of which his electorate had full knowledge at the time of his election. The committee feels that these precedents are proper and should in no way be altered." Id. at 4.

On April 16, 1975, the House passed House Resolution 46 by a vote of 360 to 37. During the debate on the House floor, Members discussed and cited with approval the notion that the House cannot punish a Member for conduct occurring prior to his election to the House. Conq. Rec., Apr. 16, 1975, pp. 10339-10345.<sup>15/</sup>

House Rule XLIII constitutes an affirmative recognition by the House, of the curative effect of reelection of a Member. While the House feels that a conviction should limit a Member's rights, it clearly feels that reelection removes any limitations.<sup>16/</sup>

<sup>15/</sup> On February 28, 1979, the House Democratic Caucus tabled a proposal to amend Rule XLIII to remove the language restoring rights after reelection.

<sup>16/</sup> The actions of this Committee with respect to Congressman Michael Harrington during the 94th Congress are discussed above. These actions are of dubious precedential value. The proceeding against Congressman Harrington was ultimately dismissed because there was no violation of the House Rules, and, as a result, this Committee did not have jurisdiction. Also, during the 94th Congress, this Committee was clearly on record with respect to the issue in this case. See H. Rep. 94-76, 94th Cong., 1st Sess. (Mar. 18, 1975).

PRECEDENTS FROM THE UNITED STATES SUPREME COURT

The United States Supreme Court has never explicitly ruled on the question of whether the House may, under Article 1, Section 5 of the United States Constitution, punish a Member for conduct occurring prior to his election to the current House. However, the United States Supreme Court had the occasion to comment on the issue in the context of interpreting the power of the House, under Article 1, Section 5, to judge the qualifications of its Members.

In Powell v. McCormack, 395 U.S. 486 (1969), the United States Supreme Court ruled that, in judging the qualifications of Congressman Adam Clayton Powell of New York, the House could not add to the standing requirements of age, citizenship, and residence contained in Article 1, Section 2 of the Constitution. Thus, the action of the House in excluding Congressman Powell was held to be unconstitutional.

Before the Supreme Court, the House argued that, because Congressman Powell was excluded by a vote of greater than two-thirds, the action of the House should be construed to be an expulsion. The House argued that an expulsion under the circumstances would be proper. The Supreme Court refused to construe the House's action as an expulsion.

The Supreme Court, however, discussed the power of expulsion at great length. The Court was careful to note that it was expressing "no view on what limitations may exist on Congress' power to expel or otherwise punish a Member once he has been seated." Id. at 507, n. 27.

The Supreme Court stated:

"The misconduct for which Powell was charged occurred prior to the convening of the 90th Congress. On several occasions the House has debated whether a member can be expelled for actions taken during a prior Congress and

the House's own manual of procedure applicable in the 90th Congress states that 'both Houses have distrusted their power to punish in such cases.' Rules of the House of Representatives, H. R. Doc. No. 529, 89th Cong., 2d Sess., 25 (1967); see G. Galloway, History of the House of Representatives 32 (1961). The House rules manual reflects positions taken by prior Congresses. For example, the report of the Select Committee appointed to consider the expulsion of John W. Langley states unequivocally that the House will not expel a member for misconduct committed during an earlier Congress:

'[I]t must be said that with practical uniformity the precedents in such cases are to the effect that the House will not expel a Member for reprehensible action prior to his election as a Member, not even for conviction for an offense. On May 23, 1884, Speaker Carlisle decided that the House had no right to punish a Member for any offense alleged to have been committed previous to the time when he was elected a Member, and added, 'That has been so frequently decided in the House that it is no longer a matter of dispute.'" H. R. Rep. No. 30, 69th Cong., 1st Sess. 1-2 (1925).

Members of the House having expressed a belief that such strictures apply to its own power to expel, we will not assume that two-thirds of its members would have expelled Powell for his prior conduct had the Speaker announced that House Resolution No. 278 was for expulsion rather than exclusion." Id. at 508-510.

In a lengthy footnote, the Supreme Court reviewed similar expressions by other Congresses.

"Other Congresses have expressed an identical view. The Report of the Judiciary Committee concerning the proposed expulsion of William S. King and John G. Schumaker informed the House:

'Your committee are [sic] of opinion that the House of Representatives has no authority to take jurisdiction of violations of law or offenses committed against a previous Congress. This is purely a legislative body, and entirely unsuited for the trial of crimes. The fifth section of the first article of the Constitution authorizes 'each house to determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.' This power is evidently given to enable each house to exercise its constitutional function of legislation unobstructed. It cannot vest in

Congress a jurisdiction to try a member for an offense committed before his election; for such offense a member, like any other citizen, is amenable to the courts alone.' H. R. Rep. No. 815, 44th Cong., 1st Sess. 2 (1876).

See also 15 Cong. Rec. 4434 (1884) (ruling of the Speaker); H. R. Rep. No. 81, 42d Cong., 3d Sess., 8 (1873) (expulsion of James Brooks and Oakes Ames); H. R. Rep. No. 179, 35th Cong., 1st Sess., 4-5 (1858) (expulsion of Orsamus B. Matteson)." Id. at 509, fn. 29.

While the language of Powell v. McCormack does not constitute a ruling by the United States Supreme Court on this question, it is extremely useful for present purposes. The United States Supreme Court, the highest judicial tribunal in the land, reviewed the precedents of the United States House of Representatives and found a clear line of expressions by the House to the effect that a Member may not be expelled for conduct during a prior Congress.

#### CONCLUSION

In summary, the nature of our constitutional system, sound reasons of public policy, the precedents of the United States House of Representatives, expressions of opinion by this Committee, and the views of the United States Supreme Court argue in favor of the position taken by Congressman Charles C. Diggs, Jr., in this case. Congressman Diggs may not, and should not, be disciplined for conduct occurring prior to his election to the current Congress.

When the voters of the 13th Congressional District of the State of Michigan elected Congressman Diggs to the 96th Congress, they made an informed choice. The voters were fully aware of the conduct of Congressman Diggs, the charges against Congressman Diggs, and his conviction in federal court. Nevertheless, the voters of the 13th District chose Congressman Diggs as their

Representative in the United States House of Representatives for the 96th Congress.

In choosing Congressman Diggs to represent them in the United States House of Representatives, the voters of the 13th District were exercising a fundamental right under the United States Constitution. Under Article 1, Section 2 of the United States, they were choosing the individual to represent them in the "people's assembly." They chose the individual who would voice their concerns, vote their wishes, structure laws to tailor their needs, solve their problems, and help them in dealing with the federal government. This Committee may not, under its Article 1, Section 5 disciplinary power, overrule the choice of the voters of the 13th Congressional District of the State of Michigan. To do so would be to strike a blow at the very foundations of representative government.

This principle has never been better stated than by the Committee on the Judiciary during the 42nd Congress. The Committee stated:

"This is a Government of the people, which assumes that they are the best judges of the social, intellectual, and moral qualifications of their representatives, whom they are to choose, not anybody else to choose for them; and we, therefore, find in the people's Constitution and frame of government they have, in the very first article and second section, determined that 'the House of Representatives shall be composed of Members chosen every second year by the people of the States,' not by Representatives chosen for them at the will and caprice of Members of Congress from other States according to the notions of the 'necessities of self-preservation and self-purification,' which might suggest themselves to the reason or the caprice if the Members from other States in any process of purgation or purification which two-thirds of the Members of either House may 'deem necessary' to prevent bringing 'the body into contempt and disgrace.'" H. Rep. 81, 42d Cong., 3d Sess., p. 8 (Feb. 24, 1873).

Wherefore, Congressman Charles C. Diggs, Jr., by under-  
signed counsel, respectfully requests that this Committee terminate  
these proceedings for lack of jurisdiction.

Respectfully submitted,



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APPENDIX C

RESPONSE OF SPECIAL COUNSEL TO THE COMMITTEE TO REPRESENTATIVE  
DIGGS' MOTION TO DISMISS FOR LACK OF JURISDICTION

BEFORE THE  
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT  
UNITED STATES HOUSE OF REPRESENTATIVES

In the Matter of )  
 )  
 )  
 REPRESENTATIVE CHARLES C. DIGGS, JR., )  
 )  
 Respondent. )

RESPONSE OF SPECIAL COUNSEL  
TO THE COMMITTEE TO  
REPRESENTATIVE DIGGS'S MOTION  
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Response of Special Counsel to the Committee to  
Representative Diggs's Motion to Dismiss For  
Lack of Jurisdiction

I. Background

On April 4, 1979, the Committee on Standards of Official Conduct (Committee) adopted a Statement of Alleged Violations (Statement) charging Representative Diggs with misuse of his clerk-hire allowance in violation of various provisions of the Code of Official Conduct of the House of Representatives, Rule XLIII.

Representative Diggs has filed inter alia a Motion to Dismiss the Statement on the grounds that neither the Committee nor the House has jurisdiction to punish him for offenses committed prior to his election to the current Congress.

II. The Jurisdictional Issue

The jurisdictional issue which this Committee must presently decide is whether the House has the power to impose any form of sanction on the Member for violations of the Code of Official Conduct which he may have committed prior to the 96th Congress. If such power is found to exist, it naturally follows that the Committee currently has jurisdiction to continue with its investigation of the Member. This issue should not be confused with the question of whether the House might have the power to expel him for such conduct, a question which need not presently be determined.

A. Power to Impose a Given Sanction is  
Irrelevant to the Issue of Jurisdiction

Though the Member's jurisdictional motion asserts the general proposition that the Committee and the House are without

jurisdiction to invoke any form of punishment for offenses committed prior to his election to the current Congress, the major thrust of the supporting Memorandum is that Congress cannot or should not expel a member for such past offenses. To do so, it is argued, would infringe on the right of the Member's constituents to choose who will represent them.

Rule 17(a)(1)(A) of the Committee's Rules of Procedure provides that after a disciplinary hearing has been conducted respecting the allegations contained in the Statement:

...the Committee shall consider each count contained in the Statement and with respect to each count as originally drawn or as amended shall vote on a motion that the count has been proved. A Count shall not be proved unless at least a majority of the Committee vote for a motion that the count has been proved. A count which is not proved shall be considered as dismissed by the Committee.

If the Committee determines that one or more of the counts has been proved, Rule 17(b)(1) of the Committee's Rules of Procedure provides that it may recommend expulsion, censure, reprimand, fine or other sanctions or limitations on the rights, powers and privileges of the Member.

The foregoing rules provide for a number of eventualities. The Member may be absolved of all counts contained in the Statement or, if he is found to have violated the Code of Official Conduct, any number of various sanctions short of expulsion might be imposed.

Accordingly, whatever merit the Member's expulsion argument may have, it is irrelevant to the issue of whether the Committee and Congress have jurisdiction to investigate the charges contained in the Statement and to impose some form of sanction.

B. Challenge Of the Power to Expel  
the Member is Premature

Even if the Member's challenge with respect to Congress' power to expel him is, in some sense, relevant to the issue of jurisdiction, such challenge is premature.

Rule 16(a) of the Committee's Rules of Procedure establishes a two phase disciplinary hearing to consider allegations raised in the Statement. As set forth in that Rule:

The first phase shall be for the purpose of determining whether or not the counts in the Statement have been proved. The second phase shall be for the purpose of determining what action to recommend to the House with respect to any Count found to have been proved (emphasis supplied).

Section (f) of Rule 16 reads:

Phase two of a disciplinary hearing shall consist of oral and/or written submissions by counsel for the Committee and counsel for the respondent as to the sanction the Committee should recommend to the House of Representatives with respect to any count of the Statement of Alleged Violations which has been proved.

The "phase two" proceeding described in Rule 16(f) is the appropriate time for this Committee to consider and decide whether the power to expel the Member in this case exists and, if so, whether it is the appropriate sanction to recommend to the House in view of the evidence developed during the "phase one" proceeding and all other circumstances. Should the Committee rule on that issue now, it would be expressing an opinion on a most important constitutional issue it may not have to decide or choose to reach in this proceeding.

In view of the foregoing, and mindful of the admonition of the Supreme Court to avoid, whenever possible "decid[ing] constitutional questions unnecessarily,"<sup>1/</sup> we urge that consideration of that portion of the Member's jurisdictional motion relating to the power to expel should be deferred until such time as it might be incumbent upon the Committee to decide the issue.

For the present, it is necessary to consider only the question of whether Congress has the power to impose any form of sanction on an individual who is currently a Member, for acts of misconduct relating to his official duties which occurred during a prior Congress.

As to that question, it is the opinion of your special counsel that if an individual, while a Member of the House, conducts himself in a manner which is inconsistent with the public trust and duty of his office and which violates the Code of Official Conduct, such individual is subject to disciplinary action by the House, even if such conduct occurred prior to the Member's last election.

III. Power of the House to Investigate and Discipline a Member for Misconduct Engaged in During a Prior Congress Which Relates to His Official Duties

A. Relevant Provisions of the Constitution and House Rules

Article I, Section 5, Clause 2 of the United States Constitution provides:

"Each House may punish its Members for disorderly behavior, and, with the concurrence of two-thirds, expel a Member."

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<sup>1/</sup> Bower v. United States, 422 U.S. 916, 920 (1975); See F.C.C. v. Pacifica Foundation, 98 S.Ct. 3026, 3033 (1978).

This grant of power is not limited in any way by its terms to permit punishment (or expulsion) only for acts committed during the current Congress. Accordingly, it is not surprising that the House also placed no such limitation on the Committee in delegating to it the power to investigate and make recommendations prior to exercising the House's authority under Article I, Section 5, Clause 2.

Under Rule X of the House Rules, entitled "Establishment and Jurisdiction of Standing Committees" (emphasis supplied), the Committee is provided with the jurisdiction to inter alia:

...investigate, subject to subparagraph (2) of this paragraph, any alleged violation, by a Member, officer, or employee of the house, of the Code of Official Conduct or of any law, rule, regulation, or other standard of conduct, applicable to the conduct of such Member, officer, or employee in the performance of his duties or the discharge of his responsibilities and, after notice and hearing, to recommend to the House by resolution or otherwise, such action as the committee may deem appropriate to the circumstances... Rule X4(e)(1)(B).

The only limits which this rule places on the Committee's power to investigate and make recommendations in connection with alleged misconduct by a Member are certain procedural requirements, not here relevant, and the limitation contained in Rule X 4(e)(2)(C) that no investigation be undertaken which would result in an ex post facto application of any law, rule, regulation or standard of conduct. Hence, the suggestion of a lack of jurisdiction to investigate and punish a Member for misconduct committed during a prior Congress finds no support in either the Constitution or the House Rules.

## B. Precedents of the House of Representatives

In discussing the precedents of the House which relate to the question of jurisdiction, counsel for the Member correctly point out that such precedents in no way bind the Committee's determination of the jurisdictional issue that has been raised. It further correctly states that the precedents express a considerable divergence of opinion as to whether, or under what circumstances, a Member may be punished for misconduct occurring prior to the session of Congress which is considering such punishment. However, such precedents do not support counsels' conclusion that "in the vast majority of cases, [the House] found that it did not have the power to punish a Member for conduct occurring prior to the Member's election to the present Congress." Rather, they demonstrate that the House has been acutely aware that while it has plenary power to impose sanctions on a Member, as a matter of policy that power should only be exercised "in extreme cases and always with great caution and after due circumspection... ." <sup>2/</sup>

### Mathew Lyon - 5th Congress (1799)

The first case cited by the Member in support of his jurisdictional motion is that of Mathew Lyon with respect to whom an expulsion resolution was offered on the basis of his conviction for violating a state sedition law. The extent of the House's power to expel was debated.

Ultimately the House voted 49-45 in favor of the resolution. Though this vote was short of the two-thirds required for expulsion, it indicates that a majority of the House,

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<sup>2/</sup> H. Rept. 570, 63rd Cong., 2d Sess. (April 24, 1914).

acting only ten years following the adoption of the Constitution, was of the opinion that it had the power to punish for conduct committed prior to the Member's last election, including the power to impose the ultimate sanction of expulsion.

Orsamus B. Matteson 35th Congress (1858)

A resolution to expel Representative Matteson was submitted to the 35th Congress for alleged corruption in connection with legislation pending before the prior Congress. The report filed by the majority of the Committee to whom the matter was referred contains language supportive of the Member's jurisdictional argument. The report filed by the minority is to the contrary. Ultimately the House voted to table the reports. The significance of the majority report is diminished by the fact that expulsion was the exclusive sanction being considered.

Oakes Ames & James Brooks - 42nd Congress (1873)

Resolutions of expulsion were made with reference to these Members resulting from their involvement with the Credit Mobilier scandal during a prior Congress. The Select Committee to whom the matter was referred made the following observations with respect to the power of the House to impose sanctions for offenses committed prior to the session seeking to impose the sanctions:

The committee have no occasion in this report to discuss the question as to the power or duty of the House in a case where a constituency, with a full knowledge of the objectionable character of a man, have selected him to be their representative. It is hardly a case to be supposed that any constituency, with a full knowledge that a man had been guilty of an offense involving moral turpitude, would elect him. The majority of the committee are not prepared to concede such a man could be forced

upon the House, and would not consider the expulsion of such a man any violation of the right of the electors, for while the electors have rights that should be respected, the House as a body has rights also that should be protected and preserved. But that in such case the judgment of the constituency would be entitled to the greatest consideration, and that this should form an important element in its determination, is readily admitted.

It is universally conceded, as we believe, that the House has ample jurisdiction to punish or expel a Member for an offense committed during his term as Member, though committed during a vacation of Congress and in no way connected with his duties as a Member. Upon what principle is it that such a jurisdiction can be maintained? It must be upon one or both of the following: That the offense shows him to be an unworthy and improper man to be a Member, or that his conduct brings odium and reproach upon the body. ... (emphasis supplied). H. Rept. No. 77, 42d Cong., 3rd Sess. (1872).

The Committee also saw a close analogy between the power of impeachment and the power to expel.

The great purpose of the power of impeachment is to remove an unfit and unworthy incumbent from office, and though a judgment of impeachment may to some extent operate as punishment, that is not its principal object. Members of Congress are not subject to be impeached but may be expelled, and the principal purpose of expulsion is not as punishment, but to remove a Member whose character and conduct show that he is an unfit man to participate in the deliberations and decisions of the body, and whose presence in it tends to bring the body into contempt and disgrace.

In both cases it is a power of purgation and purification to be exercised for the public safety, and, in the case of expulsion, for the protection and character of the House.... The office of the power of expulsion is so much the same as that of the power to impeach that we think it may be safely assumed that whatever would be a good cause of impeachment would also be a good cause of expulsion.

It has never been contended that the power to impeach for any of the causes enumerated was intended to be restricted to those which might occur after appointment to a civil office, so that a civil officer who had secretly committed such offense before his appointment should not

be subject upon detection and exposure to be convicted and removed from office. Every consideration of justice and sound policy would seem to require that the public interests be secured, and those chosen to be their guardians be free from the pollution of high crimes, no matter at what time that pollution has attached.

If this be so in regard to other civil officers, under institutions which rest upon the intelligence and virtue of the people, can it well be claimed that the law-making Representative may be vile and criminal with impunity, provided the evidences of his corruption are found to antedate his election. Id.

Following the report of the Committee, but before house action on the recommendations, the majority of the Judiciary Committee issued a report in which it opposed the views expressed by the Special Committee on the analogy between impeachment and expulsion and on the power of the House to expel. The substance of the Judiciary Committee's remarks is contained in the Member's Memorandum at 18-19. However, it is important to note that the Judiciary Committee's comments with respect to jurisdiction, on which the Member places considerable reliance, are devoted exclusively to the power to expel which, as noted earlier, need not be presently dealt with.

After considering the reports of both Committees, the House adopted a substitute resolution providing for censure. The substitute contained a preamble reciting that two elections had intervened since the misconduct and expressing "grave doubts" as to the rightful exercise of the House's power to expel a Member "for offenses committed by such Member long before his election thereto, and not connected with such election." The preamble was disagreed to by a vote of 113 to 98. Ultimately Ames and Brooks were censured by the overwhelming margin of 182 to 36 and 174 to 32 respectively.

In its supporting Memorandum, counsel for the Member seeks, by various innovative means, to mitigate the effect of this precedent wherein not only a committee, but the whole House, both in its vote to censure and to delete the preamble, expressed its unequivocal opinion that it had the power to punish a Member for misconduct occurring during a prior Congress. For the reasons expressed below, these arguments do nothing to lessen the precedential significance of this case.<sup>3/</sup>

William S. King and John G. Schumaker  
44th Congress (1876)

In the Forty-third Congress, the Ways & Means Committee inquired into alleged bribery to procure mail subsidies

<sup>3/</sup> First, the argument is made that the Select Committee's report was merely advisory because it considered the past offenses to have a continuing effect on the House. It is clear that all Committee reports are advisory in the sense that their power is limited to providing recommendations to the House. There was certainly nothing "advisory" about the House action censuring Ames and Brooks. Further, the Committee based its jurisdiction in part on the principle that the House had the power to punish or expel a Member for an offense that "...shows him to be an unworthy and improper man to be a Member, or that his conduct brings odium and reproach upon the body." Second, the Judiciary Committee report is cited. As noted, supra, that report dealt solely with the power to expel. Further, while the conclusions contained therein may have affected the determination of the House to censure rather than expel, it did not deter the House from imposing sanctions. Third, it is asserted that the case is distinguishable in that the Credit Mobilier scandal involved a fundamental and institutional assault on the House. It is not unreasonable to assume that there are those who would deem the alleged conduct of the Member to be a fundamental assault on the integrity of the House. Fourth, it is argued that a vote whereby the House expressly rejected the precise argument which the Member here seeks to assert viz that "grave doubts exist as to the ... power to expel a Member for offenses committed by such Member long before his election thereto. ..." is of little precedential value. Such an argument blinks at reality. Fifth, it is asserted that the actions of the 44th Congress with respect to Congressmen King and Schumaker ignored, if not overruled, the actions involving Congressmen Ames and Brooks. As the discussion below will indicate, no such conclusion can be drawn from the King and Schumaker cases.

during the Forty-second Congress. King and Schumaker were uncooperative and obstructed the investigation. The Committee's report was sent to the Clerk of the House of the Forty-fourth Congress and was taken under advisement by the Judiciary Committee.

It is not surprising that the report of that Committee,<sup>4/</sup> which two Congresses earlier in the case of Congressmen Ames and Brooks, had asserted that Congress was without jurisdiction to expel a Member for offenses committed against a previous Congress, arrived at a similar conclusion without mentioning the Ames and Brooks case. What it did cite as precedent was the case of Senator Marshall against whom sanctions were unsuccessfully sought for alleged perjury committed prior to his election to the Senate.<sup>5/</sup> Apparently, the House failed to take any action on the report.<sup>6/</sup> Accordingly, it is somewhat surprising that counsel for the Member relies on this report for the proposition that it "reject[ed] the action of the House of Representatives during the 42nd Congress..." when, in fact, the report: 1) relies on clearly distinguishable precedent that, according to counsel, is irrelevant 2) was never voted on by the House 3) was adopted by a committee which a few years earlier had adopted a report expressing a similar view that was twice rejected by the full House.

<sup>4/</sup> H. Rept. No. 815, 44th Cong., 1st Sess. (1876). It is to be noted that the report was adopted by a vote of 16-7.

<sup>5/</sup> Counsel for the Member has expressed the view that Senate precedents are "irrelevant to this matter." See Memorandum at 13 n. 9.

<sup>6/</sup> See House of Representatives Exclusion, Censure & Expulsion Cases from 1789-1973, 93rd Cong., 1st Sess. (1973) at 122.

William P. Kellogg - 48th Congress (1884)

Representative Kellogg requested that a House Committee be directed to investigate allegations of his improper conduct five years earlier in connection with the "star route cases". The alleged improper conduct occurred while Kellogg was a Member of the Senate.<sup>7/</sup> Accordingly, the ruling of Speaker Carlisle that the House had no right to punish a Member for offenses committed "previous to the time when he was elected as a Member of the House" is inapposite to Mr. Digg's assertion that the House may not punish him for acts committed while he was a Member of a prior Congress.

Brigham H. Roberts - 56th Congress (1889-1900)

Representative-elect Roberts was excluded from the Congress based on his prior conviction for, and continuing practice of polygamy.

Counsel for the Member cites the following language from the Special Committee Report,<sup>8/</sup> apparently finding it to be of some support to their position:

... [n]either House of Congress has ever expelled a Member for acts unrelated to him as a Member or inconsistent with his public trust and duty as such.

\* \* \*

Both House have many times refused to expel where the guilt of the Member was apparent; where the refusal to expel was put upon the ground that the House or Senate, as the case might be, had no right as such, or because it was committed prior to his election. Id. at 4.

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<sup>7/</sup> Kellogg was serving in the Senate from 1877 to 1883.

<sup>8/</sup> H. Rept. No. 85, 56 Cong., 1st Sess. (1900).

It is unclear how this language forwards the respondent Member's jurisdictional argument. First, it cannot be disputed that the Statement of Alleged Violations charges conduct that "relate(s) to him as a Member" and describes conduct "inconsistent with his public trust and duty". Second, the language suggesting that the House had no right to expel for acts committed prior to a Member's election must be read in the context of the Roberts case which involved his conduct while a private citizen prior to his election to Congress. Third, the language concerns the power to expel which, as noted previously, is not yet relevant.<sup>9/</sup>

William B. Cockran - 58th Congress (1904)

Representative Cockran sought an investigation of allegations that he had been involved in election irregularities prior to his election to Congress. Speaker Joseph Cannon thus posed the question, "may the House punish a Member for that which he did in his capacity as a citizen before his

<sup>9/</sup> It is interesting that counsel for the Member should rely on the Roberts Case. For while it is true that the recommendation of the majority of the Special Committee, which the House adopted, to exclude Roberts is of questionable constitutional validity after the Court's holding in Powell v. McCormack, 395 U.S. 486 (1969), it might well be argued that the Powell case vindicated the Special Committee's minority view: "It seems to us settled, upon reason and authority, that the power of the House to expel is unlimited... [W]e believe that Mr. Roberts has the legal constitutional right to be sworn in as a Member, but the facts are such that we further believe the House in the exercise of its discretion is not only justified but required by every proper consideration involved, to expel him promptly after he becomes a Member," (Emphasis supplied.) Id. at 77. Thus, the question before the House in the Roberts case was whether it should exclude or expel him. There appears to have been no question but that the House assumed the power to punish Roberts for offenses committed prior to his election.

election as a Member" (emphasis supplied) Cong. Rec. April 27, 1904, pp. 5750-51.

Accordingly, the Cockran case is inapposite to that of the Member in that the Statement of Alleged Violations concerns his conduct in his official capacity as a Member.

Richard S. Whaley - 63rd Congress (1913)

Charges of violations of various Corrupt Practice Acts during Representative Whaley's election campaign were brought by a non-Member of Congress. The Committee on Elections determined that the charges should be dismissed for lack of evidence and because they were brought in an untimely fashion. The House concurred.

As noted previously, the power of the House to expel the Member need not now be decided. However, since counsel for the Member has relied so extensively on cases involving this issue it is appropriate to cite from that portion of the Committee on Elections report which deals with this subject:

The power of expulsion is a necessary and incidental inherent in all legislative bodies. It is a power of protection. It necessarily abides in the House in order that it may perform its high functions and is necessary to the safety of the State. A Member may be wholly unfit through some physical disorder or mental derangement to perform the duties of his office. His conduct may be so disorderly as to obstruct the business of the House. He may commit a crime or may be disloyal or do many things which would render him ineligible as a Member. The precedents are numerous that in cases like these the power to expel a Member is invaluable. This power may be exercised for misconduct on the part of a Member committed in any place and either before or after conviction in a court of law. From a careful survey of the precedents of the House and Senate, its extent seems to be unlimited. It seems

to be a matter purely of discretion to be exercised by a two-thirds vote. Of course, this unlimited power must be fairly, intelligently, and conscientiously made with due regard to the propriety, honor, and integrity of the House and the rights of the individual Member affected. For an abuse of this discretion there is no appeal. (Emphasis supplied.) H. Rept. 158, 63rd Cong., 2d Sess. (1913).

Investigation of Lobby Activities - 63rd Congress (1914)

A Member of the Sixty-third Congress who, together with many other public officials, had been accused of being improperly influenced by lobbyists succeeded in having a committee convened to investigate the matter. The committee ultimately concluded that one Member had been subject to improper influence.

A motion was then made to conduct an inquiry into whether the Member should be expelled. It was referred to the Committee on the Judiciary which ultimately determined that while the evidence against the Member did not warrant expulsion, it did warrant censure. The Member resigned prior to House consideration of the Committee's report.

In its report, the Committee reviewed the case of Congressmen Ames and Brooks and discussed both the views of the Special Committee and those contrary views expressed by the Committee on the Judiciary. Presumably the analysis undertaken was not subject to the "high emotions" which counsel for the Member assert "colored the decisions on legal questions" made by the Congress which censured Ames and Brooks.

Counsel for your Committee believe that the following views expressed by the Committee on the Judiciary of the 63rd Congress and cited by counsel for the Member well states

the extent of Congress' jurisdiction to punish for acts committed during a prior Congress:

In the judgment of your committee the power of the House to expel or otherwise punish a Member is full and plenary and may be enforced by summary proceedings. It is discretionary in character, and upon a resolution for expulsion or censure of a Member for misconduct each individual Member is at liberty to act on his sound discretion and vote according to the dictates of his own judgment and conscience. This extraordinary discretionary power is vested by the Constitution in the collective membership of the respective houses of Congress, restricted by no limitation except in case of expulsion the requirement of the concurrence of a two-thirds vote.

"In the judgment of your committee, the power of the House to expel or punish by censure a Member for misconduct occurring before his election or in a preceding or former Congress is sustained by the practice of the House, sanctioned by reason and sound policy and in extreme cases is absolutely essential to enable the House to exclude from its deliberations and councils notoriously corrupt men, who have unexpectedly and suddenly dishonored themselves and betrayed the public by acts and conduct rendering them unworthy of the high position of honor and trust reposed in them.

But in considering this question and in arriving at the conclusions we have reached, we would not have you unmindful of the fact that we have been dealing with the question merely as one of power, and it should not be confused with the question of policy also involved. (Emphasis supplied.)

H. Rept. No. 570, 63rd Cong., 2d Sess. (1914).

The report goes on to state that the house, as a matter of policy, should exercise its "extraordinary prerogative only in extreme cases and always with great caution and after due circumspection," particularly when the Member's conduct was known to his electorate at the time of his election. However, as the report emphasizes, power is not to be confused with

policy, and it is the power of Congress which the Member's motion challenges. As to the extent of that power, the Committee was unequivocal in its belief that it is "full and plenary" and is "restricted by no limitation except in case of expulsion the requirement of the concurrence of a two-thirds vote."

John W. Langley - 68th & 69th Congresses  
(1924-26)

Representative Langley was convicted of conspiracy during the 68th Congress. On May 15, 1924, a House Committee submitted a report <sup>10/</sup> which stated in part:

It is understood that he has initiated appellate proceedings, and therefore it would seem proper that further action by the committee in respect to him be deferred for the present, it being assumed that, until the final disposition of the case, he will take no part whatever in any of the business of the House or its committees. (Emphasis supplied.)

It is clear from this statement that neither Congressman Langley nor the Committee felt that it, or the 68th Congress lacked jurisdiction over him with respect to misconduct which evidently occurred prior to that Congress. Rather, in the exercise of its discretion and in view of Langley's agreement not to participate in House proceedings, the Committee elected to defer action. The following November, with his appeal still pending, Langley was reelected. After the election his conviction was affirmed. When he presented his credentials to the House, a motion was made to refer the matter to a committee. Thus submitted, the case would appear to be one of exclusion rather than expulsion. Nonetheless the report of the Committee <sup>11/</sup> spoke in terms of expulsion when it stated:

<sup>10/</sup> H. Rept. 759, 68th Cong., 1st Sess. (1924).

<sup>11/</sup> H. Rept. No. 30, 69th Cong., 1st Sess. (1926).

Without an expression of the individual opinion of the members of the committee, it must be said that with practical uniformity the precedents in such cases are to the effect that the House will not expel a Member for reprehensible action prior to his election as a Member, not even for conviction for an offense. On May 23, 1884, Speaker Carlisle decided that the House had no right to punish a Member for any offense alleged to have been committed previous to the time when he was elected a Member, and added, "That has been so frequently decided in the House that it is no longer a matter of dispute."

It is to be noted that while the record is not entirely clear, it may well be presumed that the conspiracy in which Langley engaged took place prior to his election to Congress and thus did not relate to any official duties. This presumption is strengthened by the Committee report's reliance on the ruling rendered by Speaker Carlisle in the case of Representative Kellogg which, as noted supra at p. 12, dealt with alleged misconduct occurring prior to Kellogg's becoming a Member.

In any event, the views expressed by the Committee subsequent to the foregoing discussion on expulsion make it clear that regardless of what it may have felt with respect to that issue, no question existed as to the power of the House to take appropriate action:

The committee, however are just as strongly of the opinion that the circumstances require action on the part of the House at the appropriate time...and the Committee reserve the right to submit a report if occasion requires. 6 Cannon's Precedents § 238 at 407.

Adam Clayton Powell 90th 91st Congresses  
(1967-1969)

During the 89th Congress, Representative Powell was accused of contumacious conduct relating to certain state court

proceedings and of misusing travel and clerk-hire allowances. Prior to his being seated in the 90th Congress, a Select Committee was designated to make recommendations concerning "the question of the right of Adam Clayton Powell to be ~~to be~~ sworn in as Representative from the State of New York in the Ninetieth Congress, as well as his final right to a seat therein..."<sup>12/</sup>

The Select Committee recommended that Representative Powell be permitted to take the oath, but that he be censured, fined, and deprived of his seniority. It further concluded that the power of the House upon majority vote to censure and impose punishments other than expulsion was "full and plenary and...extends to acts occurring during a prior Congress."<sup>13/</sup>

Somewhat ironically, counsel for the Member finds this conclusion "seriously flawed" because of the ~~the~~ Committee's limited discussion of available precedents and its quoting selectively therefrom. In so doing, counsel for Representative Diggs overlooks the Committee's determination that:

Since the Select Committee does not recommend a resolution calling either for the exclusion of Mr. Powell, or for his expulsion, it is unnecessary for it to pass upon the constitutional questions discussed in the briefs filed on behalf of Mr. Powell.  
H. Rept. 27, supra, at 22.

Unlike counsel for the Member who has sought to argue that Congress has no jurisdiction to impose any sanctions for misconduct in a prior Congress by citing various precedents dealing solely with the power to expel, the Select Committee in Powell limited its discussion to the applicable

<sup>12/</sup> H. Res. 1, 114 Cong. Rec. 26-27, January 10, 1967.

<sup>13/</sup> H. Rept. 27, 90th Cong. 1st Sess. (1967).

precedents dealing with the power to impose the sanctions which it was recommending.

A subsequent examination of the precedents dealing with the power of Congress to impose sanctions other than expulsion for misconduct during a prior Congress reveals that the Select Committee in Powell was exhaustive in its discussion of precedents relating to that issue and that its conclusions were neither "seriously flawed" nor of "dubious precedential value."

Counsel for the Member also observes that the Committee's recommendation was rejected by the House, while neglecting to mention that its recommendation to seat Representative Powell was ultimately vindicated by the Supreme Court, See Powell v. McCormack, 395 U.S. 486 (1969), and that its recommendation to impose a fine and remove Representative Powell's seniority was adopted by the 91st Congress. 115 Cong. Rec. 29, 34, 91st Cong., 1st Sess. (January 3, 1969). These latter sanctions further support the proposition that Congress has the power to punish a Member for misconduct occurring in a prior Congress.

Michael Harrington - 94th Congress (1975)

A resolution to expel Representative Harrington was introduced in the 94th Congress for alleged violations of the Code of Official Conduct and was referred to this Committee. Counsel for the Member in that case raised precisely the same jurisdictional argument asserted by the Member here.<sup>14/</sup> A contrary view was expressed by the Committee's Special Staff.<sup>15/</sup>

<sup>14/</sup> See Report to the Full Committee on Access by Members of Congress to Classified Material, Committee on Armed Services, House of Representatives, 94th Congress, 1st Sess. (1975) at 6.

<sup>15/</sup> Id. at 11.

Ultimately the Committee denied Representative Harrington's motion.

Counsel for the Member here assert that vote, which unequivocally rejected the jurisdictional argument which it now raises, is of "dubious precedential value" in that the Committee later dismissed the proceeding on a totally unrelated ground. Counsel's assertion is, itself, dubious, particularly in light of the fact that in the Committee's consideration of allegations against Representative Edward Roybal discussed infra at 23 in the 95th Congress, it again rejected the jurisdictional argument which counsel for the Member has raised here.

Robert Sikes - 94th Congress (1976)

On April 28, 1976, this Committee voted to order an inquiry into allegations that Representative Sikes had engaged in various activities which constituted a conflict of interest.

Following its investigation, the Committee recommended that Representative Sikes be reprimanded for having failed to report the ownership of certain stock for the years 1968 through 1974. However, it declined to recommend punishment for a failure to disclose an interest in property which was the subject of legislation sponsored by Representative Sikes in 1961. As to this latter matter, the Committee noted that:

If such activity had occurred within a relatively recent time frame and had just now become a matter of public knowledge, the recommendation of some form of punishment would be a matter for consideration by the Committee. However, the fact is we are confronted with events that occurred approximately 15 years ago and at least to some extent appear to have been known to Representative Sikes' constituency which has continually reelected him

to Congress. For these reasons the Committee declines to make a recommendation now of formal punishment. (emphasis supplied) H. Rept. 94-1364 94th Cong., 2d Sess., (1976) at 4-5.

On July 29, 1976, the House adopted the Committee's recommendations and voted to reprimand Representative Sikes.

Counsel for the Member first suggest that the Committee based its jurisdiction to reprimand for failure to report the stock holdings on the fact that Representative Sikes continued to own the stock during the 94th Congress. Second, it is suggested that the failure to recommend punishment for sponsoring the legislation in 1961 reflects the Committee's view that it lacked the jurisdiction to do so.

With respect to counsels' first point, there is nothing in the Committee's report to suggest that it relied on any "continuing ownership" theory. In making this assertion, counsel also appears to have forgotten the premise on which its jurisdictional motion is based viz that "this Committee, and this House are without jurisdiction to punish (the Member) for offenses committed prior to his election to the current Congress." (emphasis supplied). In the Sikes case, the offense for which the Member was reprimanded was not the ownership of the stock, but rather his failure to report it for the years 1968 through 1974.

In regard to counsel's second point, there is also nothing in the language of the Committee's report which would indicate that its unwillingness to recommend punishment for the Member's failure to disclose his interest in the 1961 legislation resulted from a lack of authority to do so. To the contrary, the Committee indicated that if such conduct had

occurred "within a relatively recent time" it would have considered sanctions. It further noted that:

The Committee finds that its investigative authority extends to conduct which occurred prior to the adoption of the Code of Official Conduct in 1968, as well as that occurring after . . . .At the same time, it is clear to the Committee from the legislative history of House Resolution 1099<sup>16/</sup> that it was never the intent of the House to preclude the Committee from investigating acts which were improper when committed.  
Id at 6-7

Hence the Committee's failure to recommend punishment for conflict of interest in connection with the 1961 legislation was done in its discretion as a matter of policy and not because of any lack of authority to do so. Further, the 1976 vote of the House reprimanding Representative Sikes for his failure to report stock holdings for the years 1968 through 1974 stands as clear precedent in support of the view that the House has the power to punish a Member for violations of the Code of Official Conduct which occurred prior to his election to the current Congress.

Edward R. Roybal - 95th Congress (1978)

Representative Roybal was accused of failing to report, and converting to his personal use, a 1974 campaign contribution and of giving false testimony in connection therewith.

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<sup>16/</sup> The adoption of House Resolution 1099, 90th Cong., 2d Sess. (April 3, 1968) established the Committee on Standards of Official Conduct as a permanent standing Committee of the House.

The Committee on Standards of Official Conduct investigated the matter and issued its report recommending censure on October 6, 1978.<sup>17/</sup>

Appendix D of that report contains a motion wherein counsel for Representative Roybal raised the identical claim of lack of jurisdiction asserted here. Following the filing of a response by the Committee's special staff, (Id at Appendix I) the Committee, on September 12, 1978, voted to deny the Motion to Dismiss. On October 13, 1978, by a vote of 219-170, the House voted to reprimand Representative Roybal, thus establishing the most recent precedent in support of its jurisdiction over misconduct committed during a prior Congress.<sup>18/</sup>

C. Recent Expressions by the Committee and the House as to the Appropriate Action to be Taken with Respect to Members Convicted of Certain Crimes

During the 92nd Congress, the Committee considered House Resolution 933, which in essence expressed the "sense of the House" that a Member who had been convicted of certain

<sup>17/</sup> H. Rept. 95-1743, 95th Cong., 2d Sess. (October 6, 1978)

<sup>18/</sup> The Committee and House action with respect to Representative Roybal was the result of a broader investigation into alleged violations of the Code by Members who received cash payments and other gratuities from Tongsun Park. In connection with this investigation the Committee also recommended that Representative John J. McFall be reprimanded for failing to report a campaign contribution made in 1974. H. Rept. 95-1742, 95th Cong., 2d Sess. (October 6, 1978). The House reprimanded Representative McFall by voice vote on October 13, 1978, thus establishing an additional precedent in which a Member was disciplined for misconduct occurring in a prior Congress. See Cong. Rec., October 13, 1978 at H 13253.

serious crimes should refrain from participating in Committee activities and from voting unless or until judicial or executive proceedings resulted in a reinstatement of the presumption of innocence or until his subsequent reelection.

While the House failed to act on Resolution 933, it did pass similar resolutions<sup>19/</sup> which were accompanied by similar reports<sup>20/</sup> in the 93rd and 94th Congress. The adoption of the resolution by the 94th Congress resulted in its incorporation into the House Rules as Rule XLIII, paragraph 10, which reads as follows:

10. A Member of the House of Representatives who has been convicted by a court of record for the commission of a crime for which a sentence of two or more years' imprisonment may be imposed should refrain from participation in the business of each committee of which he is a member and should refrain from voting on any question at a meeting of the House, or of the Committee of the Whole House, unless or until judicial or executive proceedings result in reinstatement of the presumption of his innocence or until he is reelected to the House after the date of such conviction.

Your counsel suggests that Rule XLIII, paragraph 10 was not intended always to preclude the Committee from recommending, or the House from imposing, sanctions upon a convicted Member who has been reelected or has had his presumption of innocence restored. Rather, it was intended that upon the occurrence of either of these events, it would again become

<sup>19/</sup> See H. Res 128, 93rd Cong., 1st Sess. (January 11, 1973) and H. Res 46, 94th Cong., 1st Sess. (January 14, 1975)

<sup>20/</sup> See H. Rept. 93-616, 93rd Cong., 1st Sess. (October 31, 1973) and H. Rept. 94-76, 94th Cong., 1st Sess. (March 18, 1975)

appropriate for a Member to participate fully in the activities of the House, without precluding the possibility that it might impose sanctions at some future time.

While it is true that the language of the Committee report states that "Precedents hold that the House will not act in any way against a Member for any actions of which his electorate had full knowledge at the time of his election," it is equally true other precedents prove the contrary.

The most clearcut examples are those of Representatives Ames, Brooks and Powell. Ames and Brooks were censured, notwithstanding the fact that they had twice been elected after the Credit Mobilier scandal. Powell was fined and stripped of his seniority despite his election to the 91st Congress.

Other examples include those of Brigham Roberts and Victor Berger.<sup>21/</sup> Both were Members-elect who were excluded for conduct fully known to their electorates, and while it is true that such actions are of dubious constitutional validity after the Supreme Court's holding in Powell v. McCormack, supra, they certainly fail to support the proposition that Congress has never acted in any way against the expressed desires of a Member's electorate.

Finally, in the case of John Langley, the Member was reelected subsequent to his conviction for conspiracy. Nonetheless, he resigned after his conviction was upheld,

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<sup>21/</sup> Berger was indicted for violation of the Espionage Act in February, 1918, was elected to the 66th Congress in November, 1918 and was convicted in January, 1919. The House voted to exclude him in November, 1919; however, he was re-elected in December, 1919. He was again excluded in January, 1920.

the Committee investigating the matter having indicated that "the House could not permit in its membership a person serving a sentence for a crime."

#### D. Senate Precedents

While your counsel are of the opinion that House precedents are themselves sufficient to establish its jurisdiction over the Member's alleged misconduct, additional support for such jurisdiction can be gleaned from disciplinary sanctions imposed by the Senate for misconduct occurring in a prior Congress.<sup>22/</sup>

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<sup>22/</sup> Counsel for the Member assert that Senate precedents are irrelevant in that the Senate, unlike the House is a continuing body. The cases of McGrain v. Daugherty, 273 U.S. 135 (1927) and Eastland v. United States Servicemen's Fund, 421 U.S. 491 (1975) are cited in support of this argument. The Court in McGrain, while focusing on the issue of the continuing authority of a Senate investigating committee, cited to Jefferson's Manual for the proposition that, "Neither house can continue any portion of itself in any parliamentary function beyond the end of the session without the consent of the other two branches." McGrain, supra at 181. The Court noted that while this rule may be applicable to the House, the context out of which it arose viz the King's power to dissolve Parliament, rendered this conclusion uncertain. Id. The language in Eastland on which counsel relies, is equally tenuous in that it raises, without deciding, the continuing validity of a subpoena issued by a House Committee which subsequently was abolished. Eastland, supra, at 512. Both the House and the Senate derive their power to punish a Member from the same Constitutional provision. That provision, Article I, Section 5, Clause 2, states that "Each House may punish its Members for disorderly behavior, and with the concurrence of two-thirds, expel a Member." There is absolutely no foundation in either Constitutional history or subsequent precedent to support counsel's suggestion that this Constitutional provision was intended to provide the Senate with broader disciplinary powers than those of the House. On the contrary, many of the House precedents on which counsel chiefly rely cite to Senate cases. See e.g. The Judiciary Committee Report in the Ames & Brooks cases (citing the cases of Senators Smith and Marshall); the Judiciary Committee Report in the King and Schumaker

(footnote continued)

William Blount 5th Congress (1797)

Senator Blount was accused of seeking the assistance of a government interpreter in a plan to seize Spanish Florida and Louisiana with British and Indian help prior to the 5th Congress.

A select Committee appointed to investigate the charges reported that Mr. Blount's conduct had been inconsistent with his public duty, rendering him unworthy of a further continuance of his present public trust and recommended his expulsion.

The report was adopted 25 to 1 and Mr. Blount was expelled on July 8, 1797.<sup>23/</sup>

Joseph McCarthy - 83rd Congress (1954)

A resolution of censure was introduced against Senator McCarthy resulting from his noncooperation with and contumacious conduct toward various Senate Committees. A Select Committee was appointed which, in its report<sup>24/</sup> recommending censure, discussed at some length Senator McCarthy's contention that the Committee lacked the power to consider any acts which occurred prior to his election in 1952:

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(footnote continued)

cases (citing the case of Senator Marshall). Finally, it is clear from the Senate cases discussed infra that it has based jurisdiction to discipline its Members for misconduct occurring before their last election not on its "continuing nature," but rather on its power to protect the honor and integrity of the body.

<sup>23/</sup> S. Jour., 5th Cong. 1st Sess. (1797) at 358, 383, 385, 387-393.

<sup>24/</sup> S. Rept. 2508, 83rd Cong., 2d Sess. (1954)

"While it may be the law that one who is not a Member of the Senate may not be punished for contempt of the Senate at a preceding session, this is no basis for declaring that the Senate may not censure one of its Members for conduct antedating that session, and no controlling authority or precedent has been cited for such position.

The particular charges against Senator McCarthy which are the basis of this category, involve his conduct toward an official committee and official committee members of the Senate.

The reelection of Senator McCarthy in 1952 was considered by the select committee as a fact bearing on this proposition. This reelection is not deemed controlling because only the Senate itself can pass judgment upon conduct which is injurious to its processes, dignity, and official committees." Id. at 22.

Elaborating on the view that a Member's electorate cannot pardon misconduct which bears adversely on the integrity of the Senate, the Committee added:

"Nor do we believe that the reelection of Senator McCarthy by the people of Wisconsin in the fall of 1952 pardons his conduct toward the Subcommittee on Privileges and Elections. The charge is that Senator McCarthy was guilty of contempt of the Senate or a senatorial committee. Necessarily, this is a matter for the Senate and the Senate alone. The people of Wisconsin can only pass upon issues before them; they cannot forgive an attack by a Senator upon the integrity of the Senate's processes and its committees. That is the business of the Senate." Id. at 30-31.

Thomas Dodd - 90th Congress (1966-1967)

In 1967, the Select Committee on Standards and Conduct recommended that Senator Dodd be censured on the grounds that from 1961 through 1965 he had exercised the influence

and power of his office as a Senator to obtain and use for his personal benefit, funds from various testimonials and campaign contributions and had requested and accepted reimbursements for expenses from both the Senate and private organizations for the same travel. A number of these acts occurred prior to his election in 1964.

On June 23, 1967, the Senate, by a vote of 92 to 5, censured Senator Dodd for conduct which was "contrary to accepted morals, derogates from the public trust expected of a Senator, and tends to bring the Senate into dishonor and disrepute."<sup>25/</sup>

E. Powell v. McCormack, 395 U.S. 486 (1969)

Counsel for the Member correctly point out that the United States Supreme Court has never ruled on whether the House may punish a Member for conduct occurring prior to his election to the current House. Nevertheless, it is suggested that certain obiter dictum in the Powell case supports the position that the House may not punish such conduct.

First, it must be remembered that the Court in Powell was dealing with the issue of the power of the House to exclude a Member. The Court specifically noted that it was expressing "no view on what limitations may exist on Congress' power to expel or otherwise punish a Member once he has been seated." Id at 507, n. 27.

Second, the dicta in Powell to which counsel for Member has referred dealt almost exclusively with the power

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<sup>25/</sup> S. Res. 112, 90th Cong., 1st Sess. (June 23, 1967)

to expel which, as has so often been stated, is not relevant to the jurisdictional issue which the Member has raised here.

Third, it must be noted that the Court in Powell was strangely selective in the House precedents which it chose to cite. While totally neglecting the numerous precedents in which the House or its Committees expressed the view that the House does have the power to sanction misconduct occurring in a prior Congress, the Court quotes at length the Judiciary Committee's report in the King and Schumaker cases, which for reasons stated earlier is of dubious precedential value. Further, the Court cites to the Judiciary Committee's report in the Brooks and Ames cases, while neglecting to mention that ultimately that Committee's views were rejected and the Members were censured for misconduct occurring in a prior Congress.

Fourth, it should be noted that the Court in Powell expressed its view that the House might well have had the power to impose sanctions upon Representative Powell for his misconduct during a prior Congress when it stated:

Unquestionably, Congress has an interest in preserving its institutional integrity, but in most cases that interest can be sufficiently safeguarded by the exercise of its power to punish its members for disorderly behavior and, in extreme cases, to expel a member with the concurrence of two-thirds. Id at 548

Fifth, in his concurring opinion in Powell, Justice Douglas expressed the view that:

[I]f this were an expulsion case I would think that no justiciable controversy would be presented, the vote of the House being two-thirds or more. Id at 553

Justice Douglas also cited extensively from the Senate's deliberations concerning the attempt to exclude Senator-elect William Langer.<sup>26/</sup> According to Justice Douglas, during the debate over whether the Senate could exclude Langer for misconduct occurring prior to his election to the Senate, Langer's cause was advocated by Senator Murdock. Murdock's position was that while the Senate could not exclude Langer for such conduct "...it does have the power under Article I §5, cl. 2, to expel anyone it designates by a two-thirds vote." Powell, supra at 558. Justice Douglas concluded by stating "I believe that Senator Murdock stated the correct constitutional principle governing the present case." Id at 554.

#### IV. Summary of Argument

A. The source from which the House derives its power to discipline a Member is Article I, Section 5, Clause 2 of the United States Constitution which provides that:

Each House may punish its Members for disorderly behavior, and, with the concurrence of two-thirds, expel a Member.

B. The source from which the Committee derives its power to investigate and recommend sanctions, pursuant to Article I, Section 5, Clause 2, is Rule X of the Rules of the House of Representatives which allows this Committee to:

...investigate, subject to subparagraph (2) of this paragraph, any alleged violation, by a Member, officer, or employee of the House, of the Code of Official Conduct or of any law, rule,

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<sup>26/</sup> Apparently Justice Douglas also does not view Senate precedents irrelevant in considering the disciplinary powers of the House.

regulation, or other standard of conduct, applicable to the conduct of such Member, officer, or employee in the performance of his duties or the discharge of his responsibilities and, after notice and hearing, to recommend to the House by resolution or otherwise, such action as the committee may deem appropriate to the circumstances... Rule X4(e)(1)(B).

C. The only express limitation which the Constitution places on the power of the House to discipline a Member is that in order to expel him, a two-thirds vote is required.

D. The only express limits which House Rule X places on the Committee's power to investigate and make recommendations in connection with alleged misconduct by a Member are certain procedural requirements, not here relevant, and the limitation contained in Rule X4(e)(2)(C) that no investigation be undertaken which would result in an ex post facto application of any law, rule, regulation or standard of conduct.

E. No court of law has ever imposed any limits on the power of the House to discipline a Member, or on this Committee to investigate and make recommendations concerning such discipline other than those limits previously described.

F. Accordingly, absent an unequivocal expression by the House, through its precedents, that there exist other limitations on its power to discipline, none can be implied.

G. While a review of House precedents concerning the power to discipline a Member reveals a considerable diversity of opinion on the subject, the predominant <sup>A</sup> view appears to be that such power is limited only as previously described,

but that as a matter of sound policy it should be exercised only in extreme cases and always with great caution after due circumspection.

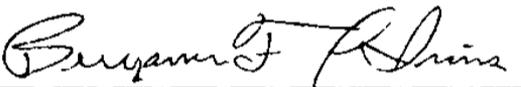
V. Conclusion

In view of the foregoing, it is the view of your special counsel that the Member's Motion to Dismiss for Lack of Jurisdiction should be denied.

Respectfully submitted,

  
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 United States House of  
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APPENDIX D

MOTION TO DEFER COMMITTEE ACTION PENDING COMPLETION OF JUDICIAL PROCEEDINGS AND MEMORANDUM IN SUPPORT OF MOTION TO DEFER COMMITTEE ACTION PENDING COMPLETION OF JUDICIAL PROCEEDINGS

BEFORE THE  
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT  
UNITED STATES HOUSE OF REPRESENTATIVES

In the Matter of )  
 )  
REPRESENTATIVE CHARLES C. DIGGS, JR., )  
 )  
Respondent. )  
 )  
 )

MOTION TO DEFER COMMITTEE ACTION  
PENDING COMPLETION OF JUDICIAL PROCEEDINGS

AND

MEMORANDUM IN SUPPORT OF  
MOTION TO DEFER COMMITTEE ACTION  
PENDING COMPLETION OF JUDICIAL PROCEEDINGS

David Povich

Robert B. Barnett

Bernard J. Carl

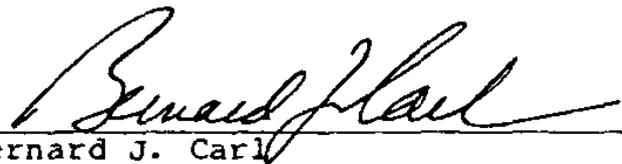
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CHARLES C. DIGGS, JR.

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CHARLES C. DIGGS, JR.



"[W]here an allegation involves a possible violation of statutory law, and the committee is assured that the charges are known to and are being expeditiously acted upon by the appropriate authorities, the policy has been to defer action until the judicial proceedings have run their course." Id. at 2.

The policy stated by this Committee is sound, fair, and consistent with precedent. We ask the Committee to follow its policy in this case.

#### STATEMENT OF FACTS

The factual background of this matter is fully summarized in the Memorandum in Support of Motion to Dismiss for Lack of Jurisdiction filed this date. Said Memorandum is hereby incorporated herein by reference. The facts relevant to the disposition of this issue may be briefly stated.

On March 23, 1978, Congressman Diggs was indicted by a federal grand jury in Washington, D.C. The indictment contained 35 counts.<sup>1/</sup> It charged violations of 18 U.S.C. §1341 (mail fraud) and 18 U.S.C. § 1001 (false statements). On October 7, 1978, Congressman Diggs was convicted by a federal court jury in Washington, D.C., on 29 counts of the indictment.

On November 22, 1978, Congressman Diggs noticed his appeal to the United States Court of Appeals for the District of Columbia Circuit. That appeal is pending before the Court at this time. Congressman Diggs' Brief was filed on April 23, 1979. The Brief of the United States is due 30 days thereafter. The United States Court of Appeals has, by letter, indicated that it will hear

<sup>1/</sup> Six counts of the indictment were dismissed by the government at the opening of trial.

argument in this case during late May or early June.<sup>2/</sup>

On March 21, 1979, the Committee on Standards of Official Conduct adopted a motion, pursuant to Committee Rule 11(a)(1), to conduct an inquiry to investigate possible violations of House Rules by Congressman Diggs. Congressman Diggs and undersigned counsel were notified of this action and informed of Congressman Diggs' rights pursuant to Committee Rules.

By letter dated March 23, 1979, Congressman Diggs, by undersigned counsel, requested that the Committee on Standards of Official Conduct defer further action on the matter until the judicial proceedings concerning Congressman Diggs are completed. Counsel was heard by the Committee on this subject in executive session on March 28, 1979. The Committee, by vote of 9 to 3, refused to defer the matter pending completion of judicial proceedings.

On April 4, 1979, the Committee adopted a Statement of Alleged Violations. Pursuant to Committee Rule 12(a), Congressman Diggs was given 21 days to file motions. Congressman Diggs has this date filed a Motion to Defer Committee Action Pending Completion of Judicial Proceedings, pursuant to Committee Rules 12(a) and 12(e)(1)(B). This Memorandum is submitted in support of said Motion.<sup>3/</sup>

2/ While one cannot accurately predict when the United States Court of Appeals will decide this case, it is anticipated that a decision could be forthcoming within one or two months from the date of argument of the case. Congressman Diggs may, of course, petition the Supreme Court of the United States to issue a writ of certiorari in the case.

3/ This Motion formally restates the request made informally by letter on March 23, 1979, and by oral request on March 28, 1979. Formal renewal of this Motion is consistent with Committee Rules. See Committee Rule 12(a) and 12(e)(1)(B).

FAIRNESS AND DUE PROCESS

Congressman Diggs asks that this Committee defer action on this matter until the completion of judicial proceedings. While this request is supported by many reasons, none is more important than this: The Committee's proceedings, if not deferred, pose a serious threat to Congressman Diggs' right to due process of law.

Congressman Diggs is currently pursuing an appeal from his criminal conviction in federal court. His appeal seeks a reversal of that conviction. If the conviction is reversed, the Department of Justice may have the option of a re-trial of Congressman Diggs.<sup>4/</sup>

The proceedings before this Committee will provide a well-publicized airing of the same charges which are currently being considered by the United States Court of Appeals. The proceedings before this Committee will be in open session, will presumably attract wide media attention, and will be the subject of great discussion. Should the United States Court of Appeals reverse Congressman Diggs' conviction, the publicity surrounding these proceedings could severely prejudice Congressman Diggs' right to due process in any subsequent trial.

As the United States Supreme Court has repeatedly recognized, "Due process requires that the accused receive a trial by an impartial jury from outside influences, [and the] pervasiveness of modern communications and the difficulty of effacing prejudicial publicity from the minds of the jurors," can pose a serious threat to this right. Sheppard v. Maxwell, 384 U.S. 333, 363 (1966).

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<sup>4/</sup> If the conviction were reversed on certain grounds, a re-trial would not be appropriate. One cannot anticipate whether there will be a reversal and, if so, on what grounds.

The likelihood of prejudice to a subsequent trial is great. The likelihood is enhanced by the fact that this Committee has chosen to go beyond the parameters of the trial in bringing a Statement of Alleged Violations against Congressman Diggs. The Statement of Alleged Violations issued by this Committee on April 4, 1979, contains counts which go beyond the scope of the indictment in federal court. Thus, not only will the subject of the trial be publicly and pervasively aired, additional charges and matters will be explored.

Moreover, this Committee will follow rules which are fundamentally different from those followed in a criminal trial in federal court. Under Committee Rule 20(a), any evidence "that is relevant and probative" is admissible. This standard of admissibility is far different from, and looser than, the standard of admissibility applied in federal court. Under Committee Rule 16(e), facts must be established "clearly and convincingly." Again, this standard of proof is far different from the "beyond a reasonable doubt" standard of proof required to impose a criminal sanction. This Committee could recommend punishment on the basis of its own standard of proof. The recommendation could be harmful to the Congressman's rights. This Committee could, for example, recommend punishment for Congressman Diggs for "poor judgment" which is far short of the "intent to defraud" necessary for a criminal conviction for mail fraud or false statement. Nonetheless, the Committee's recommendation could appear to vindicate the trial judge's and jury's interpretation of the House Rules in the Diggs trial.

The charges, the evidence, and the recommendations that emanate from this Committee will be indelibly imprinted on the minds of potential jurors by the press attention which the Committee's proceedings are certain to attract. The Committee should prevent potential prejudice to Congressman Diggs' constitutional rights by deferring its inquiry. See, Sheppard v. Maxwell, 384

U. S. 333 (1966); Estes v. Texas, 381 U.S. 532 (1965); Irvin v. Dowd, 366 U.S. 717 (1961); Marshall v. United States, 360 U.S. 310 (1959).<sup>5/</sup>

This Committee has, on a prior occasion, noted another reason why a deferral is appropriate. Assume, arguendo, that this Committee were to go forward and the House were to vote to expel Congressman Diggs. Assume further, that Congressman Diggs' conviction were then to be reversed. As noted by this Committee, "the House could find itself in an extremely untenable position of having punished a member, at least to some degree, for an act that legally did not occur." H. Rep. 94-76, 94th Cong., 1st Sess., 4 (Mar. 18, 1975). As this Committee has previously recommended, the House should not "risk placing itself in a constitutional dilemma for which there is no apparent solution." H. Rep. 94-1477, 94th Cong., 2d Sess., 4 (Sept. 7, 1976).

The case for deferral is particularly strong because the House will not be greatly prejudiced by a decision to defer. As noted above, this matter is being expeditiously handled in the United States Court of Appeals for the District of Columbia Circuit. The Brief of Congressman Diggs was filed on April 23, 1979. The Brief of the United States will be due 30 days thereafter. The United States Court of Appeals has indicated its desire to hear this matter during late May or early June. Thus, this Committee will not be greatly inconvenienced by deferring pending the

<sup>5/</sup> It may, of course, be contended that a trial judge at a subsequent trial could take steps to minimize the effects of pretrial publicity. For instance, the trial judge could carefully question potential jurors, could postpone the trial for some period of time, or could move the location of the trial.

However, each of these actions is of questionable benefit and carries a risk. We believe that the right of Congressman Diggs to a fair re-trial outweighs the need of this Committee to go forward at this time. We do not believe that Congressman Diggs should be forced to attempt to minimize the effects of the prejudice when the prejudice itself can be prevented.

resolution of the judicial proceedings. Certainly, this Committee and this House will not waive their right to discipline Congressman Diggs, pursuant to Article 1, Section 5 of the Constitution, at a later date.

It is, moreover, in the interest of the United States House of Representatives to have the issues in Congressman Diggs' appeal resolved. In the Diggs case, the Department of Justice, has, in effect, made an alleged violation of a Rule of the House into a criminal violation. The Department of Justice has incorporated the standard of conduct defined by the House Rules into criminal statutes.

Congressman Diggs will challenge this procedure and the government's theory of prosecution. The precedent set by the courts in the case of Congressman Diggs will have a profound impact on the procedures of the House and the future conduct of Members of the House. As a result, it is in the interest of the entire House to have the appeal resolved. Proceedings by this Committee during the appellate process could undercut Congressman Diggs' efforts to indicate the right of the House to promulgate and enforce Rules of Proceedings, without making those Rules subject to criminal enforcement.

When one considers the possible danger to due process rights, the untenable dilemma which this House could find itself in, and the minimal prejudice from deferral, we believe that the case for deferral is very strong.<sup>6/</sup>

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6/ In his major study of this subject entitled Congressional Ethics, Robert S. Getz observed that "[o]n the infrequent occasions when a member of Congress has been indicted for a felony, the House and Senate have usually taken no action, at least until after the conclusion of the judicial proceedings." Mr. Getz cites the following examples:

(Footnote continued)

PRECEDENTS OF THE HOUSE AND OF THIS COMMITTEE

The United States House of Representatives -- as a body, in its committees, and through this Committee -- has frequently considered the argument at issue here. The House has never gone forward with a disciplinary proceeding while a trial or an appeal

(Footnote continued)

6/ "During the Fifty-ninth Congress, Representative Binger Herman of Oregon was under indictment and his fellow Oregonian, John W. Williamson, had been convicted of a felony. In the latter case, the man did not appear during the Congress. In 1956, Representative Thomas J. Lane of Massachusetts, while serving in the House was indicted for income-tax evasion. He was convicted and sent to prison for four months. Following his release in September, 1956, he was re-elected. At no time did the House contemplate disciplinary action against Representative Lane.

Representative James Michael Curley of Boston was indicated in 1943 on charges of using the United States mails to defraud. His lawyers fought a long delaying action which prevented a trial from commencing until November, 1945. In the interim, Curley was re-elected to Congress by a comfortable margin. Representative Curley was convicted in January, 1946, and subsequently sentenced to a prison term of six to eighteen months and a \$1,000 fine. His term of office expired six months before he finally began to serve his sentence. During the entire period from 1943 through 1946, the House made no attempt to discipline Curley. On the contrary, House Majority Leader John W. McCormack, also from Massachusetts, made it known that he would fight any attempt to expel Representative Curley." Id. at 90.

Getz concludes: "Congress had not usually taken action in instances where legislators have been indicted for a felony. The tendency is to wait until the court procedure has run its course." Id. at 95.

Similarly, the Special Committee on Congressional Ethics of the Association of the Bar of the City of New York, in its lengthy study of congressional ethics entitled "Congress in the Public Trust," concluded:

"It is best for Congress generally to let its Members be answerable initially to judicial proceedings and to withhold exercising any overlapping disciplinary jurisdiction until court actions have run their course. While this may frustrate some purists, it is consistent with the general concept that codes of ethics primarily for enforcement of extra-legal norms." Id. at 229.

serve

was pending in court. In fact, this Committee, has, on several occasions, forcefully counseled against such an approach.

This section of the Memorandum in Support of Motion to Defer Committee Action Pending Completion of Judicial Proceedings will discuss the precedents of the House of Representatives. While these precedents may not, as a technical matter, bind this Committee, they provide useful guidance as this Committee considers this issue. The precedents represent the thinking and judgment of Members of previous Congresses.

With respect to the precedents of this Committee, the current Members of this Committee should be particularly mindful of past decisions. To the extent that the rulings and policies of this Committee provide guidance to Members in their conduct, inconsistency could be extremely harmful.<sup>7/</sup>

John W. Langley -- 69th Congress (1925-26)

During the 68th Congress, John W. Langley, a Member from Kentucky, was convicted of conspiracy. While his appeal was pending, Congressman Langley was reelected to the House. When he presented his credentials, the matter was referred to a Select Committee.

<sup>7/</sup> In a Memorandum submitted to this Committee, Committee Counsel suggests that deferral may depend upon whether the allegations against the Member relate to (1) abuses of his direct representational or legislative position or (2) violations of unrelated statutory law. Committee Counsel seems to suggest that deferral may not be warranted in the former category of offenses because of a perceived danger to the legislative process.

The allegations against Congressman Diggs relate to alleged misuse of his clerk-hire allowance. While the charges relate to activities as a Congressman, they do not involve his representational or legislative activities. Thus, these charges pose no threat of corruption of legislative deliberations. In fact, the Diggs trial produced striking evidence of Congressman Diggs' careful protection of his legislative integrity and independence.

The Select Committee issued a Report, H. Rep. 30, 69th Cong., 1st Sess. (Dec. 22, 1925). The Committee strongly recommended that the matter be deferred until Congressman Langley completed his appeals from his conviction. The Committee said:

"It is, however, again in accordance with precedent that final action shall not be taken until a criminal charge has been disposed of in the court of last resort.

The Committee are [sic] informed that a petition for certiorari on behalf of Mr. Langley has already been filed in the Supreme Court, seeking a reversal of the conviction. There is every prospect of an early disposition of this petition, and the Committee recommend [sic] that no action be taken at present." Id. at 2.

The Committee did not ask that it be discharged from the matter. Rather, the Committee asked that it retain jurisdiction. "If there should be unusual delay in action on the petition for certiorari, or other circumstances arise which would seem to require action the Committee desire [sic] leave to make a further report to the House." Id.<sup>8/</sup>

<sup>8/</sup> Congressman Langley did not participate in the proceedings of the House while his appeal was pending. Congressman Diggs, of course, continues to participate in the proceedings of the House. The matter involving Congressman Langley arose before the amendment of the House Rules to include Rule XLIII, Clause 10. That Rule advises that a Member convicted of a serious crime "should refrain from participation in the business of each committee of which he is a Member and should refrain from voting on any question at a meeting of the House, or the Committee of the Whole House, unless or until judicial or executive proceedings result in the reinstatement of the presumption of innocence or until he is reelected to the House after the date of such conviction."

Congressman Diggs has complied with Rule XLIII, Clause 10. He refrained from participating in committee business and from voting on the House floor until his reelection. To require any more of Congressman Diggs would be inconsistent with the House Rules. To require Congressman Diggs to refrain from voting would be to deprive his constituents of representation in the United States House of Representatives. If this action is required, Rule XLIII, Clause ~~a~~ should be amended. Deferral of this matter should not be denied on this basis.

John Dowdy -- 92d Congress (1972)

On March 31, 1970, John Dowdy, a Member from Texas, was indicted by a federal grand jury in Baltimore, Maryland. He was accused of bribery, conspiracy, and perjury involving his conduct while Chairman of the Subcommittee on Investigations of the House Committee on the District of Columbia.

On December 31, 1971, Congressman Dowdy was found guilty on all counts. He was sentenced to serve 18 months in prison and assessed a fine of \$25,000. Congressman Dowdy appealed.

The matter was referred to the House Committee on Standards of Official Conduct. The Committee on Standards issued a Report H. Rep. 92-1039, 92d Cong., 2d Sess. (May 3, 1972).

The Committee discussed the question of whether to act while an appeal from a criminal conviction was pending. The Committee stated:

"To the question of when to act, the committee adopted a policy which essentially is: where an allegation is that one has abused his direct representational or legislative position --or his 'official conduct'--the committee concerns itself forthwith, because there is no other immediate avenue of remedy. But where an allegation involves a possible violation of statutory law, and the committee is assured that the charges are known to and are being expeditiously acted upon by the appropriate authorities, the policy has been to defer action until the judicial proceedings have run their course. This is not to say the committee abandons concern in statutory matters--rather, it feels it normally should not undertake duplicative investigations pending judicial resolution of such cases." (emphasis added)

The Committee reported a Resolution, H. Res. 933, which advised that a Member convicted of a serious crime should refrain from participation in committee business and from voting on the House floor. The House of Representatives never acted on the Resolution during the 92nd Congress. Eventually, the substance

of the Resolution became Rule XLIII, Clause 10.<sup>9/</sup>

House Report 93-616, 93rd Congress, 1st Session (October 31, 1973)

During the 93rd Congress, this Committee submitted a Report to the House accompanied by a Resolution, H. Res. 128, expressing the "sense of the House" with respect to actions which should be taken by Members of the House upon being convicted of certain crimes. H. Rep. 93-616, 93d Cong., 1st Sess. (Oct. 31, 1973). The Report paralleled House Report 92-1039 from the previous Congress. Again, this Committee unequivocally expressed its policy on deferring House action pending completion of judicial proceedings. This Committee stated:

" . . . [W]here an allegation is that one has abused his direct representational or legislative position -- or his 'official conduct' -- the committee concerns itself forthwith, because there is no other immediate avenue of remedy. But where an allegation involves a possible violation of statutory law, and the committee is assured that the charges are known to and are being expeditiously acted upon by the appropriate authorities, the policy has been to defer action until the judicial proceedings have run their course. This is not to say the committee abandons concern in statutory matters -- rather, it feels it normally should not undertake duplicative investigations pending judicial resolution of such cases." (emphasis added)

It should be noted that this Committee not only recommended deferral of action. It also expressed the view that expulsion "would be totally inappropriate until final judicial resolution of [a] case." Id. at 2.

<sup>9/</sup> Congressman Dowdy filed a letter with House Speaker Carl Albert on June 21, 1972 promising to refrain from voting on the floor or in committee and from participating in committee business. As with the case of Congressman Langley, the matter involving Congressman Dowdy occurred before the amendment to Rule XLIII. As discussed above, Congressman Diggs should not be held to a standard greater than that contained in the House Rules.

On November 14, 1973, the full House of Representatives passed House Resolution 128 by a vote of 388 to 18. During the debate on the House floor, Members spoke approvingly of the deferral of committee action pending completion of judicial proceedings. See Cong. Rec., Nov. 14, 1973, p. 36945. In passing House Resolution 128, the Full House of Representatives, in 1973, adopted the view of this Committee.

House Report 94-76, 94th Congress, 1st Session (March 18, 1975)

During the 94th Congress, this Committee considered House Resolution 46. The Resolution, which eventually became Clause 10 of Rule XLIII, provided:

"A Member of the House of Representatives who has been convicted by a court of record for the commission of a crime for which a sentence of two or more years' imprisonment may be imposed should refrain from participation in the business of each committee of which he is a member and should refrain from voting on any question at a meeting of the House, or of the Committee of the Whole House, unless or until judicial or executive proceedings result in reinstatement of the presumption of his innocence or until he is re-elected to the House after the date of such conviction."

As explained in this Committee's Report, H. Rep. 94-76, 94th Cong., 1st Sess. (Mar. 18, 1975), rather than expressing the "sense of the House," House Resolution 46 was designed to become a part of the Rules of the House. While not mandating that a Member convicted of a serious crime refrain from participation in committee business and refrain from voting on the House floor, the amendment to the House Rules would constitute a strong advisory in that direction.

Again, the Committee expressed its views on deferral of Committee action pending the completion of judicial proceedings:

"To the question of when to act, the committee adopted a policy which essentially is: where an allegation is that one has abused his direct representational or legislative position

--or his 'official conduct' has been questioned --the committee concerns itself forthwith, because there is no other immediate avenue of remedy. But where an allegation involves a possible violation of statutory law, and the committee is assured that the charges are known to and are being expeditiously acted upon by the appropriate authorities, the policy has been to defer action until the judicial proceedings have run their course. This is not to say the committee abandons concern in statutory matters--rather, it feels it normally should not undertake duplicative investigations pending judicial resolution of such cases." (emphasis added)

Again, the Committee noted that expulsion "would be totally inappropriate until final judicial resolution of [a] case." Id. at 2.

On April 16, 1975, the House passed House Resolution 46 by a vote of 360 to 37. During the debate on the House floor, Congressman Floyd Spence, the Ranking Minority Member of the Committee on Standards of Official Conduct, noted that "to resort to such severe measures as censure or expulsion, while there remained a possibility of eventual exoneration, would not be justified." Cong. Rec., Apr. 16, 1975, p. 10343.

Andrew J. Hinshaw, 94th Congress (1976)

On May 6, 1975, a California grand jury returned an 11-count indictment against Andrew J. Hinshaw, a Member from California. The indictment charged him with various felonies related to his conduct while Assessor for Orange County, California.

Eight of the eleven counts were dismissed on motion prior to trial. Congressman Hinshaw went to trial on the remaining three counts. On January 26, 1976, a jury found Congressman Hinshaw guilty of two of the three counts.

Congressman Hinshaw appealed his conviction. The appeal was pending before the Fourth Appellate District, Court of Appeal of California.

On June 30, 1976, a Member introduced a Resolution calling for the expulsion of Congressman Hinshaw. The Resolution, H.

Res. 1392, was referred to the Committee on Standards of Official Conduct.

The Committee issued a Report. H. Rep. 94-1477, 94th Cong., 2d Sess. (Sept. 7, 1976). The Committee recommended that Congressman Hinshaw not be expelled.

In its Report, The Committee discussed the pendency of judicial proceedings involving Congressman Hinshaw. Citing the cases of Congressman Langley and Congressman Dowdy, the Committee recommended that no action be taken pending completion of the judicial proceedings. The Committee said:

"Historically, when a criminal proceeding is begun against a Member, it has been the custom of the House to defer action until the judicial proceeding is final. The committee recognized the soundness of this course of action when it reported House Resolution 46 (94th Cong. 1st sess., H. Rep. No. 94-76) adopting Rule XLIII, Paragraph 10.

In its report, the committee stated it would act 'where an allegation is that one has abused his direct representational or legislative position--or his 'official conduct' has been questioned'--but where the allegation involves a violation of statutory law, and the charges are being expeditiously acted upon by the appropriate authorities, the policy has been to defer action until the judicial proceedings have run their course.

. . . Due process demands that an accused be afforded recognized safeguards which influence the judicial proceedings from its inception through final appeal. Although the presumption of innocence is lost upon conviction, the House could find itself in an extremely untenable position of having punished a Member for an act which legally did not occur if the conviction is reversed or remanded upon appeal.

. . . The committee, while not taking a position on the merits of this case, concludes that no action should be taken at this time. We cannot recommend that the House risk placing itself in a constitutional dilemma for which there is no apparent solution. Id. at 4 (emphasis added).

Although reserving the right to reach a different conclusion on different facts,<sup>10/</sup> the Committee summarized its conclusions as follows:

"The committee believes that the House of Representatives, when considering action against a Member who is currently involved in an active, nondilatory, criminal proceeding against him, such as the Hinshaw case, ordinarily should follow a policy of taking no legislative branch action until the conviction is finally resolved."  
Id. at 2.

Korean Investigation, 95th Congress (1978)

It has been argued that the Korean Investigation, conducted by this Committee pursuant to House Resolution 252 during the 95th Congress, indicates a reluctance to defer action pending judicial proceedings. The action of the House, and this Committee, in conjunction with the Korean Investigation is inapposite.

First, in no instance, that we are aware of, did this Committee investigate a Member who was the subject of an indictment, who had been convicted, or was appealing a conviction. In some instances, this Committee may have investigated Members who were the subject of a concurrent investigation by the Department of Justice, the Internal Revenue Service, the Securities Exchange Commission, or the Department of Agriculture. However, in no instance had any concurrent investigation proceeded to the point of indictment or, as in the case of Congressman Diggs, to the point of appeal.

Moreover, it was reasonable to conduct a concurrent investigation in that situation. The House had no idea as to the

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"The committee wishes to express clearly, however, that in this case its conclusion is based entirely on the instant set of facts and in no way implies that different circumstances may not call for a different conclusion."

scope or nature of the concurrent investigations by various federal agencies. The House could not be assured that conduct of interest to the House was being investigated by other federal agencies.

Also, and most importantly, the Korean Investigation involved a fundamental assault on the very integrity of the House of Representatives as an institution. That factor clearly weighed heavily in the mind of those who debated and voted for House Resolution 252. In the situation of the Korean Investigation, disciplinary action pursuant to Article 1, Section 5 of the United States Constitution may have been appropriate.

Because of the clear distinctions between the Korean Investigation and the matter involving Congressman Diggs, we believe that there is no precedential value in the actions of the House during the 95th Congress in the context of the Korean Investigation. <sup>11/</sup>

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<sup>11/</sup> The cases of Congressman Joshua Eilberg, a Member from Pennsylvania, and Congressman Daniel J. Flood, a Member from Pennsylvania, have also been cited. In both instances, this Committee began its investigation many months before any indictments were returned, and, in the case of Congressman Eilberg, issued a Statement of Alleged Violations before an indictment was returned. Congressman Eilberg entered a plea of guilty, thereby removing any possibility of appeal or retrial. No Statement of Alleged Violations has ever been issued against Congressman Flood.

In neither of these instances has this Committee conducted formal proceedings after an indictment or during an appeal.

A strong concern for trespassing on a Member's due process rights probably motivated the decision of the Democratic Caucus, on March 21, 1979, to recommend to the Rules Committee an amendment to House Rule X 4(e). The proposed rule would require that, within 30 days after the felony conviction of a Member became final, the House Committee on Standards of Official Conduct report its recommendations concerning a resolution to expel the Member, unless the Member had been reelected after his conviction. The sponsor explained that, while the rule would not prevent Committee action, it surely would not require Committee action until the conviction became final -- "in other words, at that point when all appeals have been exhausted finally . . . ." The Caucus recognized the possible harm which could flow from a House disciplinary proceeding during judicial review.

CONCLUSION

Congressman Charles C. Diggs, Jr., by undersigned counsel, respectfully requests this Committee to defer further action on this matter until the completion of judicial proceedings involving him. It is submitted that such a procedure would be fundamentally fair, would protect Congressman Diggs' due process rights, is recognized as appropriate by the Rules of this Committee, is consistent with the precedents of the House and this Committee, and would not prejudice this Committee.

Respectfully submitted,



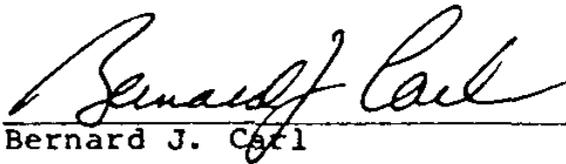

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David Povich




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Robert B. Barnett




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COUNSEL FOR CONGRESSMAN  
CHARLES C. DIGGS, JR.

APPENDIX E

RESPONSE OF SPECIAL COUNSEL TO THE COMMITTEE TO REPRESENTATIVE  
DIGGS' MOTION TO DEFER COMMITTEE ACTION PENDING COMPLETION  
OF JUDICIAL PROCEEDINGS

BEFORE THE  
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT  
UNITED STATES HOUSE OF REPRESENTATIVES

In the Matter of )  
 )  
REPRESENTATIVE CHARLES C. DIGGS, JR., )  
 )  
Respondent. )

RESPONSE OF SPECIAL COUNSEL  
TO THE COMMITTEE TO  
REPRESENTATIVE DIGGS'S MOTION TO  
DEFER COMMITTEE ACTION PENDING  
COMPLETION OF JUDICIAL PROCEEDINGS

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SPECIAL COUNSEL TO THE  
COMMITTEE ON STANDARDS  
OF OFFICIAL CONDUCT  
UNITED STATES HOUSE OF  
REPRESENTATIVES

BEFORE THE  
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT  
UNITED STATES HOUSE OF REPRESENTATIVES

\_\_\_\_\_  
In the Matter of )

REPRESENTATIVE CHARLES C. DIGGS, JR., )

Respondent. )  
\_\_\_\_\_

RESPONSE OF SPECIAL COUNSEL  
TO THE COMMITTEE TO  
REPRESENTATIVE DIGGS'S MOTION TO  
DEFER COMMITTEE ACTION PENDING  
COMPLETION OF JUDICIAL PROCEEDINGS

INTRODUCTION

On April 4, 1979, the Committee on Standards of Official Conduct of the House of Representatives adopted a Statement of Alleged Violations charging Rep. Charles C. Diggs, Jr.) with misuse of his clerk-hire allowance in violation of various provisions of the Code of Official Conduct of the House of Representatives, Rule XLIII of the Rules of the House of Representatives.

Rep. Diggs, by counsel, has filed, inter alia, a Motion to Defer Committee Action Pending Completion of Judicial Proceedings, and a Memorandum in Support of the Motion.

In the opinion of Special Counsel to the Committee, continuation of the inquiry into the conduct of Rep. Diggs would not prejudice any possible new trial of Rep. Diggs should his conviction be overturned on appeal. Moreover, the precedents of this House are inconsistent with respect to deferral, and the precedents cited in Rep. Diggs's memorandum are distinguishable on their facts from the instant case. Although in some cases the House has decided as a matter of policy not to take disciplinary action until judicial proceedings were exhausted, it

has never taken such action on the basis that it did not have the power to do so. Thus, precedents in which disciplinary proceedings have been deferred in no way bind this Committee.

#### STATEMENT OF FACTS

In the Memorandum in Support of Motion to Defer Committee Action Pending Completion of Judicial Proceedings, and the Memorandum in Support of Motion to Dismiss for Lack of Jurisdiction, counsel for Rep. Diggs have stated the facts regarding his indictment, his conviction by a federal court jury, his notice of appeal, and the adoption by this Committee of a Statement of Alleged Violations.

Special Counsel agrees with the facts recited in the memoranda submitted by counsel for Rep. Diggs.

#### ARGUMENTS AGAINST THE MOTION TO DEFER

##### I.

The Publicity Surrounding this Committee's Inquiry Would Not Prejudice Any Future Trial of Rep. Diggs and in Any Event a Trial Court Can Protect Against Prejudice Based on Publicity to Jurors.

Rep. Diggs argues that unless further action by the Committee is deferred, a "serious threat" to his right to due process of law will ensue because of the "wide media attention" to this Committee's action, thus providing "great" likelihood of prejudice to a subsequent trial. Rep. Diggs's trial was well publicized in the Washington, D. C., newspapers and other media, and such additional publicity as these proceedings might generate should not prevent a retrial -- if one is ordered -- free from the problem of pre-trial publicity. Moreover, should

there be a second trial, the trial court has ample powers to cope with any pre-trial publicity problems then found to exist. These include a careful voir dire of the jury to determine that the members have not been unduly influenced by the publicity of the first trial or this inquiry, a delay of the retrial until the effects of prejudicial publicity have dissipated, or a change of venue.

## II.

### Reversal of Rep. Diggs's Conviction Following Disciplinary Action by the House Would Not Precipitate a Consti- tutional Dilemma

Rep. Diggs's memorandum in support of his motion to defer argues that if the Committee pursues its inquiry and disciplines Rep. Diggs, a reversal of his conviction would result in his being "punished for an act that did not occur," thus risking "a constitutional dilemma for which there is no apparent solution." To the contrary, this Committee is conducting its own independent inquiry and is not contemplating sanctions against Rep. Diggs solely because of his conviction. In fact, as noted in Rep. Diggs's letter of March 23, 1979, to the Chairman, the Committee's inquiry may go well beyond the allegations at issue during trial.<sup>1/</sup>

Although the counts in the indictment and in the Statement of Alleged Violations are substantially similar, the disposition thereof by the Judiciary and this House need not necessarily be the same. A reversal of the conviction of

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<sup>1/</sup> Letter from David Povich, Esq. to the Hon. Charles E. Bennett, March 23, 1979, p. 2.

Rep. Diggs by the U.S. Court of Appeals for the District of Columbia, preceded or followed by disciplinary sanctions imposed by the House, would not necessarily constitute punishment "for an act that did not occur." There are varying legal grounds that could lead to a reversal by the Court of Appeals having no effect on how this Committee or the House should judge the alleged misconduct of Rep. Diggs. In fact, counsel for Rep. Diggs argue in their brief in the Court of Appeals that Rep. Diggs's "criminal conviction must be reversed, because it represents an unwarranted intrusion into the House's constitutional prerogative to 'determine the rules of its proceedings (and) punish its members . . .'" U. S. Const., Art. I, Sec. 5." <sup>2/</sup>

### III.

#### Further Delay In the Instant Proceeding Could Greatly Prejudice the Disciplinary Authority of the House

Equally unconvincing is the argument that delay would not prejudice the responsibility of this Committee or the House to inquire into the allegations against Rep. Diggs. The Respondent's memorandum argues that the Court of Appeals will "hear" this matter in late May or early June. When the appeal will be decided is, of course, subject to speculation, but the earliest reasonable prediction is late summer or early fall of this year. Failing appeal, Rep. Diggs could seek certiorari to the United States Supreme Court, further delaying the conclusion of the judicial process.

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<sup>2/</sup> Brief for Appellant at 7, U.S. v. Diggs, No. 78-2327 (D.C. Cir. 1979).

In fact, were this Committee to grant Rep. Diggs's motion to defer and his motion to dismiss (which argues that Members may not be disciplined for acts known to their constituents prior to the Member's election), it could effectively render impossible disciplinary action based in whole or part upon misconduct based on criminal charges. A Member would have to be elected, indicted, tried, defeated on appeal, and thereafter subjected to the disciplinary action of this Committee and the House, all within the same session of Congress. Ironically, then, the House would be limited to punishing a Member for misconduct for which the Member was not indicted.

#### IV.

Precedents for Delay Cited in the  
Memorandum Involved Wholly Different  
Circumstances than Exist with Respect  
to Rep. Diggs

Rep. Diggs's memorandum cites several instances in which the House has deferred disciplinary action pending judicial review of a Member's conviction. These precedents, while interesting, each involved circumstances quite different from the instant case.

Hon. John W. Langley

In Rep. Langley's case, the delay was based on the fact that a petition for certiorari had already been filed in the United States Supreme Court. In addition, as noted by the Committee in its report:

"There is every prospect of an early disposition of this petition . . . .  
It is well known that Mr. Langley is not participating in the proceedings of the House, and it is understood

that his resignation will be immediately presented in the case of the refusal of the petition for certiorari."<sup>3/</sup>

The facts of the decision with respect to Rep. Langley clearly distinguish it from Rep. Diggs's situation. There is no prospect of an early disposition of Rep. Diggs's appeal. Rep. Diggs is actively participating in the proceedings of the House, and there is no understanding that he will resign if his appeal is unsuccessful.

Hon. John Dowdy

In Rep. Dowdy's case, as noted in Rep. Diggs's memorandum, he filed a letter with the Speaker of the House on June 21, 1972, promising to refrain from voting and participating in Committee business.<sup>4/</sup> Rep. Dowdy did not run for reelection.

Hon. Andrew Hinshaw

The action of this Committee with respect to Rep. Hinshaw is particularly inapplicable to the matter of Rep. Diggs. The conviction of Rep. Hinshaw was under state law for acts occurring while he was a county assessor, not a Member of Congress. As noted by the Committee report, which recommended that no disciplinary action be taken against Rep. Hinshaw at the time of the report, the Committee gave great weight to the fact that Rep. Hinshaw's violation of state law as assessor did not involve an abuse of his direct representational or legislative position in Congress.<sup>5/</sup>

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<sup>3/</sup> H.R. Rep. No. 30, 69th Cong., 1st Sess.

<sup>4/</sup> See Congressional Quarterly Weekly Report, July 8, 1972, p. 1167.

<sup>5/</sup> H.R. Rep. No. 94-1477, 94th Cong., 2d Sess.

Moreover, as the Committee noted:

" . . . no further action may be required since Representative Hinshaw's electorate chose not to renominate him and he has stated, in writing, that he will resign if the appeal goes against him." 6/

In contrast, Rep. Diggs stands accused of violations of the Code of Official Conduct through misuse of funds appropriated by this House for Congressional staff payrolls, a matter that directly relates to his official conduct as a Member of this body and which clearly reflects on his representational and legislative credibility.

V.

House Action with Respect to Rep. Victor Berger Nullifies Any Assertion that the House Always Has Delayed Disciplinary Action Pending Final Action with Respect to Judicial Proceedings

The case of Rep. Victor Berger casts considerable doubt on the accuracy of assertions -- contained in Committee reports and elsewhere -- that House policy always has been to defer disciplinary action until judicial proceedings have been exhausted.

The facts surrounding Rep. Berger are strikingly similar to those of Rep. Diggs. Berger was elected to the 62nd Congress (1911-13) and also elected to the 66th Congress in 1918. Prior to his election to the 66th Congress, Rep. Berger was indicted for violation of the Espionage Act. Subsequent to his election (January 8, 1919), he was convicted and sentenced to 20 years imprisonment. Despite the fact that the conviction was appealed, Berger was excluded by the House. A Special Committee on the Victor L. Berger Investigation was appointed, and it "declined to be governed by judgment of judge and jury of Federal court and

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6/ Id. at 4.

proceeded to determine for itself the question of guilt or innocence of [the] Member elect."<sup>7/</sup>

In a special election to fill the vacancy caused by the the exclusion of Rep. Berger, he was again elected. Nevertheless, he was again denied a seat in the same Congress on the grounds that the same facts existed under which the House had made its initial determination to exclude. Although the holding in Powell v. McCormack suggests the exclusion of Rep. Berger was probably unconstitutional, it does not diminish the value of the Berger case as precedent for the power and willingness of the House to proceed without deferral.

#### VI.

In No Instance Has the House or One  
of its Committees Denied that the Power  
Exists to Proceed with Disciplinary  
Action before Judicial Proceedings  
Have Run Their Course.

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Admittedly, House Committees have at times articulated the policy of this body to defer disciplinary action pending final disposition of judicial action. Never, however, has the House determined that it did not have the power to proceed.

The fact that the House has never denied that it has the power to proceed is made clear in the precedents cited in Rep. Diggs's memorandum. In Rep. Langley's case, the Committee merely based its decision on the fact that "it is . . . in accordance with precedent"<sup>8/</sup> that disciplinary action not be

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<sup>7/</sup> 6 Cannons Precedents ¶ 56, p. 52.

<sup>8/</sup> Supra note 3.

taken until the termination of judicial proceedings. In Rep. Dowdy's proceedings, the Committee noted that "the policy has been"<sup>9/</sup> to defer action until judicial proceedings have run their course. The same language is included in House Report 94-76.<sup>10/</sup> Finally, the Committee report with respect to Rep. Hinshaw advised that "it has been the custom"<sup>11/</sup> of the House to defer action.

Thus, in each instance cited in Rep. Diggs's memorandum involving recommendations to defer action, the action was taken in the discretion of the Committee as a matter of policy and not because of any lack of authority to do so. The language in House Reports 93-616 and 94-76 merely reaffirms past policy and in no way suggests lack of power to proceed.

#### CONCLUSION

It is the opinion of Special Counsel to the Committee that the precedents of the Congress do not prevent the exercise of discretionary authority by the House and the Committee to proceed with an inquiry into the conduct of Representative Diggs and to pursue the inquiry to the ultimate conclusion of imposing a disciplinary sanction, notwithstanding ongoing judicial proceedings concerning Rep. Diggs's conviction. We are also of the opinion that there are no limitations to the exercise of that authority arising under the Constitution or laws of the United States.

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<sup>9/</sup> H.R. Rep. No. 92-1039, 92d Cong.

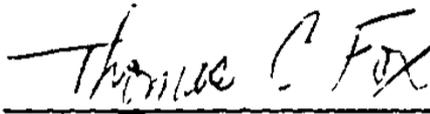
<sup>10/</sup> H.R. Rep. No. 94-76, 94th Cong.

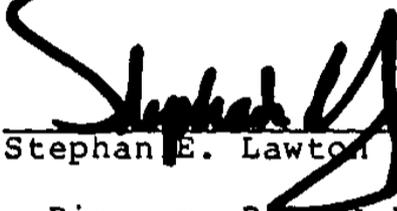
<sup>11/</sup> H.R. Rep. No. 94-1477, 94th Cong.

Finally, we are of the opinion that these proceedings may be continued and pursued to a conclusion without prejudice to the rights of Rep. Diggs should his conviction be reversed and a retrial ordered.

Respectfully submitted,

  
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OF OFFICIAL CONDUCT  
UNITED STATES HOUSE OF  
REPRESENTATIVES

# APPENDIX F

## EXHIBITS

JEAN G. STULTZ

Payroll Analysis  
October 1972 through August 1976



| <u>DATE</u>     | <u>GROSS ANNUAL<br/>STAFF SALARY</u> | <u>GROSS ANNUAL<br/>COMMITTEE SALARY</u> | <u>TOTAL GROSS<br/>ANNUAL SALARY</u> | <u>TOTAL GROSS<br/>MONTHLY SALARY</u> | <u>TOTAL NET<br/>MONTHLY SALARY</u> |
|-----------------|--------------------------------------|--|--------------------------------------|---------------------------------------|-------------------------------------|
| October, 1972   | \$ 11,000.00                         |  | \$ 11,000.00                         | \$ 916.67                             | \$ 495.31                           |
| November, 1972  | 11,000.00                            |  | 11,000.00                            | 916.67                                | 656.94                              |
| December, 1972  | 11,000.00                            |  | 11,000.00                            | 916.67                                | 656.94                              |
| January, 1973   | 11,565.40                            |  | 11,545.40                            | 963.78                                | 695.97                              |
| February, 1973  | 14,000.00                            |  | 14,000.00                            | 1,166.67                              | 833.75                              |
| March, 1973     | 14,000.00                            |  | 14,000.00                            | 1,166.67                              | 833.75                              |
| April, 1973     |                                      | \$ 14,000.00                             | 14,000.00                            | 1,166.67                              | 833.75                              |
| May, 1973       |                                      | 14,000.00                                | 14,000.00                            | 1,166.67                              | 833.75                              |
| June, 1973      |                                      | 14,000.00                                | 14,000.00                            | 1,166.67                              | 833.75                              |
| July, 1973      |                                      | 14,000.00                                | 14,000.00                            | 1,166.67                              | 833.75                              |
| August, 1973    |                                      | 14,000.00                                | 14,000.00                            | 1,166.67                              | 833.75                              |
| September, 1973 |                                      | 14,000.00                                | 14,000.00                            | 1,166.67                              | 833.75                              |
| October, 1973   | 19,000.00                            | 14,667.80                                | 33,667.80                            | 2,805.65                              | 2,142.14                            |
| November, 1973  | 19,000.00                            | 14,667.80                                | 33,667.80                            | 2,805.65                              | 2,130.86                            |
| December, 1973  | 19,000.00                            | 14,667.80                                | 33,667.80                            | 2,805.65                              | 2,130.86                            |

| <u>DATE</u>     | <u>GROSS ANNUAL<br/>STAFF SALARY</u> | <u>GROSS ANNUAL<br/>COMMITTEE SALARY</u> | <u>TOTAL GROSS<br/>ANNUAL SALARY</u> | <u>TOTAL GROSS<br/>MONTHLY SALARY</u> | <u>TOTAL NET<br/>MONTHLY SALARY</u> |
|-----------------|--------------------------------------|--|--------------------------------------|---------------------------------------|-------------------------------------|
| January, 1974   | \$ 19,000.00                         | \$ 14,667.80                             | \$ 33,667.80                         | \$ 2,805.65                           | \$ 2,122.31                         |
| February, 1974  | 19,000.00                            | 14,667.80                                | 33,667.80                            | 2,805.65                              | 2,134.15                            |
| March, 1974     | 19,000.00                            | 14,667.80                                | 33,667.80                            | 2,805.65                              | 2,128.23                            |
| April, 1974     | 19,000.00                            | 14,667.80                                | 33,667.80                            | 2,805.67                              | 2,078.23                            |
| May, 1974       | 16,210.00                            | 17,500.00                                | 33,710.00                            | 2,809.16                              | 2,068.20                            |
| June, 1974      | 16,210.00                            | 17,500.00                                | 33,710.00                            | 2,809.16                              | 2,068.20                            |
| July, 1974      | 16,210.00                            | 17,500.00                                | 33,710.00                            | 2,809.16                              | 2,068.20                            |
| August, 1974    |                                      | 36,000.00                                | 36,000.00                            | 3,000.00                              | 1,846.75                            |
| September, 1974 | 36,000.00                            |  | 36,000.00                            | 3,000.00                              | 1,846.75                            |
| October, 1974   | 35,574.36                            |  | 35,574.36                            | 2,964.53                              | 1,909.51                            |
| November, 1974  | 35,574.36                            |  | 35,574.36                            | 2,964.53                              | 1,843.19                            |
| December, 1974  | 35,574.36                            |  | 35,574.36                            | 2,964.53                              | 1,876.35                            |
| January, 1975   | 35,574.36                            |  | 35,574.36                            | 2,964.53                              | 1,881.61                            |
| February, 1975  | 35,574.36                            |  | 35,574.36                            | 2,964.53                              | 1,881.61                            |
| March, 1975     | 35,574.36                            |  | 35,574.36                            | 2,964.53                              | 1,875.04                            |
| April, 1975     | 35,574.36                            |  | 35,574.36                            | 2,964.53                              | 1,875.04                            |
| May, 1975       | 35,574.36                            |  | 35,574.36                            | 2,964.53                              | 1,881.38                            |
| June, 1975      | 35,574.36                            |  | 35,574.36                            | 2,964.55                              | 1,881.38                            |

| <u>DATE</u>     | <u>GROSS ANNUAL<br/>STAFF SALARY</u> | <u>GROSS ANNUAL<br/>COMMITTEE SALARY</u> | <u>TOTAL GROSS<br/>ANNUAL SALARY</u> | <u>TOTAL GROSS<br/>MONTHLY SALARY</u> | <u>TOTAL NET<br/>MONTHLY SALARY</u> |
|-----------------|--------------------------------------|--|--------------------------------------|---------------------------------------|-------------------------------------|
| July, 1975      | \$ 35,574.36                         | \$                                       | \$ 35,574.36                         | \$ 2,964.53                           | \$ 1,843.88                         |
| August, 1975    | 35,574.36                            |  | 35,574.36                            | 2,964.53                              | 1,843.88                            |
| September, 1975 | 35,574.36                            |  | 35,574.36                            | 2,964.53                              | 1,843.88                            |
| October, 1975   | 37,355.00                            |  | 37,355.00                            | 3,112.92                              | 1,926.18                            |
| November, 1975  | 37,355.00                            |  | 37,355.00                            | 3,112.92                              | 1,926.18                            |
| December, 1975  | 37,355.00                            |  | 37,355.00                            | 3,112.92                              | 1,926.18                            |
| January, 1975   | 37,355.00                            |  | 37,355.00                            | 3,112.92                              | 1,815.72                            |
| February, 1976  | 37,355.00                            |  | 37,355.00                            | 3,112.92                              | 1,815.72                            |
| March, 1976     | 37,355.00                            |  | 37,355.00                            | 3,112.92                              | 1,815.72                            |
| April, 1976     | 22,700.00                            |  | 22,700.00                            | 1,891.67                              | 1,027.04                            |
| May, 1976       | 22,700.00                            |  | 22,700.00                            | 1,891.67                              | 1,027.04                            |
| June, 1976      | 22,700.00                            |  | 22,700.00                            | 1,891.67                              | 1,027.04                            |
| July, 1976      | 37,355.00                            |  | 37,355.00                            | 3,112.92                              | 1,585.30                            |
| August, 1976    | 37,355.00                            |  | 37,355.00                            | 3,112.92                              | 1,680.30                            |

## JEAN G. STULTZ

SUMMARY OF CHECKS FROM  
PERSONAL CHECKING ACCOUNT

| <u>DATE</u>        | <u>PAYEE</u>                       | <u>AMOUNT</u> |
|--------------------|------------------------------------|---------------|
| November 2, 1973   | Cash                               | \$ 1,250.00   |
| December 5, 1973   | Cash                               | 692.76        |
| January 4, 1974    | Cash                               | 1,691.00      |
| February 7, 1974   | Cash                               | 735.00        |
| March 6, 1974      | Cash                               | 1,431.99      |
| April 11, 1974     | Cash                               | 420.00        |
| May 2, 1974        | Cash                               | 438.00        |
| May 7, 1974        | Cash                               | 200.00        |
| May 7, 1974        | Delmar & Company                   | 18.20         |
| June 10, 1974      | Wayne County Democratic Committee  | 31.25         |
| June 18, 1974      | Cash                               | 320.00        |
| June 20, 1974      | George Bennett                     | 150.00        |
| June 20, 1974      | Friends of Urban Alliance          | 100.00        |
| June 20, 1974      | Brazelton Florist                  | 141.45        |
| July 1, 1974       | Charles C. Diggs, Jr.              | 900.00        |
| July 30, 1974      | D.C. Chapter Storer College Alumni | 17.00         |
| August 16, 1974    | Cash                               | 898.58        |
| September 13, 1974 | Riggs National Bank                | 1,008.86      |
| September 30, 1974 | Cash                               | 916.00        |
| October 11, 1974   | Industrial Credit Corp.            | 267.00        |
| October 11, 1974   | Anchor Finance                     | 157.21        |
| October 15, 1974   | Metropolitan Life Ins. Co.         | 260.56        |
| October 31, 1974   | Liberty Loan                       | 300.00        |
| November 5, 1974   | National Bank of Washington        | 483.98        |
| November 18, 1974  | Citizens Bank of Maryland          | 102.00        |
| November 26, 1974  | Metropolitan Life                  | 322.50        |
| November 30, 1974  | City National Bank                 | 121.40        |
| November 30, 1974  | First National Bank of Washington  | 185.00        |

| <u>DATE</u>       | <u>PAYEE</u>                      | <u>AMOUNT</u>            |
|-------------------|-----------------------------------|--------------------------|
| January 2, 1975   | Cash                              | \$ 763.91                |
| February 3, 1975  | Perpetual Bldg. & Loan Assn.      | 456.00                   |
| February 3, 1975  | Detroit Edison Company            | 47.55                    |
| February 3, 1975  | First National Bank of Washington | 119.00                   |
| March 10, 1975    | National Bank of Washington       | 467.96                   |
| March 28, 1975    | GEICO                             | 121.72                   |
| March 28, 1975    | Detroit Edison Co.                | 59.67                    |
| April 7, 1975     | D.C. Treasurer                    | 5.00                     |
| May 16, 1975      | Cash                              | 500.00                   |
| June 9, 1975      | National Bank of Washington       | 484.00                   |
| June 20, 1975     | Moneysworth                       | 5.00                     |
| July 1, 1975      | Cash                              | 350.00                   |
| July 8, 1975      | Cash                              | 150.00                   |
| August 6, 1975    | Perpetual Federal Savings & Loan  | 521.00                   |
| September 1, 1975 | First National Bank of Washington | 294.00                   |
| September 1, 1975 | Riggs National Bank               | 204.21                   |
| September 5, 1975 | American Express                  | 25.00                    |
| October 1, 1975   | Cash                              | 600.00                   |
| November 24, 1975 | First National Bank of Washington | 57.00                    |
| November 28, 1975 | Cash                              | 650.00                   |
| January 5, 1976   | Central Charge                    | 20.00                    |
| February 27, 1976 | Riggs Bank                        | 147.68                   |
| February 27, 1976 | City National Bank                | 492.72                   |
| March 16, 1976    | Cash                              | 312.00                   |
|                   |                                   | <u>\$20,413.16</u> TOTAL |

Comparison of Jean Stultz Checks to Cash  
and Riggs Bank Money Orders and Cashier Checks

| <u>Date of Check</u> | <u>Payee on Personal Check</u> | <u>Amount of Personal Check</u> | <u>Date</u> | <u>Payee on Money Order or Cashier's Check</u><br><u>(M)=Money Order (C)=Cashier's Check</u> | <u>Amount of Money Order or Cashier's Check</u> |
|----------------------|--------------------------------|---------------------------------|-------------|--|---|
| 11/02/73             | CASH (16)                      | \$ 1,250.00                     | 11/02/73    | Daniel Clipper (C) (16)  | \$ 1,000.00                                     |
|                      |                                |                                 | 11/02/73    | Michigan Bell Telephone (C) (16)   | 250.00  |
|                      |                                |                                 |             |  | <u>\$ 1,250.00</u> TOTAL                        |
| 12/05/73             | CASH (16)                      | 692.76                          | 12/05/73    | Barnett's Caterers (C) (16)  | \$ 525.00                                       |
|                      |                                |                                 | 12/05/73    | Gandels Liquors (M) (16)   | 115.65  |
|                      |                                |                                 | 12/05/73    | Call Carls (M) (16)  | 51.06   |
|                      |                                |                                 |             |  | <u>\$ 692.71</u> TOTAL                          |
| 1/04/74              | CASH (16)                      | 1,691.00                        | 1/04/74     | J. Daniel Clipper (C) (16)   | \$ 1,270.00                                     |
| 2/07/74              | CASH (16)                      | 735.00                          | 2/07/74     | House Sergeant at Arms Account (16)<br>of Charles C. Diggs, Jr. (C)                          | \$ 734.00                                       |
| 3/06/74              | CASH (16)                      | 1,431.99                        | 3/06/74     | Detroit Edison Company (M) (16)  | \$ 13.59  |
|                      |                                |                                 | 3/06/74     | House Majority (C) (16)  | 900.00  |
|                      |                                |                                 | 3/06/74     | House Restaurant (C) (16)  | 500.00  |
|                      |                                |                                 | 3/06/74     | One Stop Lock Company (M) (16)   | 17.00   |
|                      |                                |                                 |             |  | <u>\$ 1,430.59</u> TOTAL                        |
| 4/11/74              | CASH (16)                      | 420.00                          |             |  |   |
| 5/02/74              | CASH (18)                      | 438.00                          |             |  |   |
| 5/07/74              | CASH (16)                      | 200.00                          |             |  |   |
| 6/18/74              | CASH (16)                      | 320.00                          |             |  |   |
| 8/16/74              | CASH (18)                      | 898.58                          | 8/16/74     | Public Printer (M) (18)  | \$ 72.00  |
|                      |                                |                                 | 8/16/74     | David Rampage (M) (18)   | 300.00  |
|                      |                                |                                 | 8/16/74     | David Rampage (M) (18)   | 140.00  |
|                      |                                |                                 | 8/16/74     | Combustioneer Corporation (M) (18)   | 122.58  |
|                      |                                |                                 | 8/16/74     | House Stationary -- Acct 108 (M) (18)  | 100.00  |
|                      |                                |                                 | 8/16/74     | Rod Miller Inc. (M) (18)   | 164.00  |
|                      |                                |                                 |             |  | <u>\$ 898.58</u> TOTAL                          |

| <u>Date of Check</u> | <u>Payee on Personal Check</u> | <u>Amount of Personal Check</u> | <u>Date</u> | <u>Payee on Money Order or Cashier's Check</u><br><u>(M)=Money Order (C)=Cashier's Check</u> | <u>Amount of Money Order or Cashier's Check</u> |
|----------------------|--------------------------------|---------------------------------|-------------|--|---|
| 9/13/74              | Riggs National Bank (18)       | \$ 1,008.86                     | 9/12/74     | National Cap. Bank of Washington (M) (18)  | \$ 228.00                                       |
|                      |                                |                                 | 9/12/74     | National Cap. Bank of Washington (M) (18)  | 228.00  |
|                      |                                |                                 | 9/12/74     | Industrial Credit Corporation (M) (18)   | 267.00  |
|                      |                                |                                 | 9/12/74     | National Capitol Bank of Washington (M) (18)   | 211.86  |
|                      |                                |                                 | 9/12/74     | Anchor Finance Company (M) (18)  | 50.00   |
|                      |                                |                                 | 9/12/74     | Continental Society (M) (18)   | 24.00   |
|                      |                                |                                 |             |  | <u>\$ 1,008.86</u> TOTAL                        |
| 9/30/74              | CASH (18)                      | 916.00                          | 9/30/74     | Perpetual Building Assoc. (C) (18)   | \$ 916.00                                       |
| 1/02/75              | CASH (16)                      | 763.91                          | 1/02/75     | Central United Methodist Church (M) (16)   | \$ 119.00                                       |
|                      |                                |                                 | 1/02/75     | Multi-Tech Company (M) (16)  | 48.00   |
|                      |                                |                                 | 1/02/75     | Detroit Edison Company (M) (16)  | 87.31   |
|                      |                                |                                 | 1/02/75     | Barnett Caterers (M) (16)  | 300.00  |
|                      |                                |                                 | 1/02/75     | Barnett Caterers (M) (16)  | 177.60  |
|                      |                                |                                 | 1/02/75     | Lees Flower Shop (M) (16)  | 32.00   |
|                      |                                |                                 |             |  | <u>\$ 763.91</u> TOTAL                          |
| 5/16/75              | CASH (18)                      | 500.00                          |             |  |   |
| 7/01/75              | CASH (16)                      | 350.00                          |             |  |   |
| 7/08/75              | CASH (16)                      | 150.00                          |             |  |   |
| 10/01/75             | CASH (18)                      | 600.00                          | 10/01/75    | American Express Company (M) (18)  | \$ 25.00  |
|                      |                                |                                 | 10/01/75    | GEFCO Finance Corp. (M) (18)   | 131.00  |
|                      |                                |                                 | 10/01/75    | National Bank of Washington (C) (18)   | 444.00  |
|                      |                                |                                 |             |  | <u>\$ 600.00</u> TOTAL                          |
| 11/28/75             | CASH (18)                      | 650.00                          |             |  |   |
| 3/16/76              | CASH (18)                      | 312.00                          | 3/16/76     | House Recording Studio (M) (18)  | \$ 300.00                                       |
|                      |                                |                                 | 3/16/76     | House Recording Studio (M) (18)  | 12.00   |
|                      |                                |                                 |             |  | <u>\$ 312.00</u> TOTAL                          |

## FELIX R. MATLOCK

Payroll Analysis  
January 1975 through January 1977

| <u>DATE</u>     | <u>ANNUAL<br/>GROSS</u> | <u>MONTHLY<br/>GROSS</u> | <u>MONTHLY<br/>NET</u> | <u>GROSS<br/>EXCESS</u> |
|-----------------|-------------------------|--------------------------|------------------------|-------------------------|
| January, 1975   | \$ 14,300.00            | \$ 1,191.67              | \$ 867.97              | \$                      |
| February, 1975  | 15,678.63               | 1,306.55                 | 946.06                 |                         |
| March, 1975     | 14,500.00               | 1,208.33                 | 876.44                 |                         |
| April, 1975     | 14,500.00               | 1,208.33                 | 876.44                 |                         |
| May, 1975       | 14,500.00               | 1,208.33                 | 907.32                 |                         |
| June, 1975      | 14,500.00               | 1,208.33                 | 907.32                 |                         |
| July, 1975      | 14,500.00               | 1,208.33                 | 907.32                 |                         |
| August, 1975    | 25,300.00               | 2,108.33                 | 1,483.16               | 900.00                  |
| September, 1975 | 35,500.00               | 2,958.33                 | 1,960.57               | 1,750.00                |
| October, 1975   | 21,479.16               | 1,789.93                 | 1,287.70               | 581.60                  |
| November, 1975  | 30,000.00               | 2,500.00                 | 1,706.22               | 1,291.67                |
| December, 1975  | 30,000.00               | 2,500.00                 | 1,706.22               | 1,291.67                |
| January, 1976   | 25,000.00               | 2,083.00                 | 1,453.34               | 874.67                  |
| February, 1976  | 25,000.00               | 2,083.00                 | 1,453.34               | 874.67                  |
| March, 1976     | 37,000.00               | 3,083.33                 | 2,014.96               | 1,875.00                |
| April, 1976     | 37,000.00               | 3,083.33                 | 1,963.65               | 1,875.00                |
| May, 1976       | 37,000.00               | 3,083.33                 | 1,963.65               | 1,875.00                |
| June, 1976      | 37,000.00               | 3,083.33                 | 1,963.65               | 1,875.00                |
| July, 1976      | 37,000.00               | 3,083.33                 | 1,963.65               | 1,875.00                |
| August, 1976    | 37,000.00               | 3,083.33                 | 1,963.65               | 1,875.00                |
| September, 1976 | 37,000.00               | 3,083.33                 | 1,963.65               | 1,875.00                |
| October, 1976   | 39,600.00               | 3,300.00                 | 2,073.80               | 2,091.67                |
| November, 1976  | 39,600.00               | 3,300.00                 | 2,073.80               | 2,091.67                |
| December, 1976  | 39,600.00               | 3,300.00                 | 2,073.80               | 2,091.67                |
| January, 1977   | 20,000.00               | 1,666.67                 | 1,187.37               |                         |

## SUMMARY OF MONEY ORDERS AND CASHIER'S CHECKS PURCHASED FROM THE NATIONAL BANK OF DETROIT (NBD) AND BANK OF THE COMMONWEALTH (BC)

| <u>DATE</u>       | <u>BANK</u> | <u>TYPE<br/>INSTRUMENT*</u> | <u>PAYEE</u>                          | <u>AMOUNT</u>      |
|-------------------|-------------|-----------------------------|---------------------------------------|--------------------|
| September 2, 1975 | NBD         | MO                          | Jim Riehl Leasing                     | \$ 405.84          |
| December 5, 1975  | NBD         | MO                          | La Staff Signs                        | 85.00              |
| December 5, 1975  | NBD         | MO                          | WJLB Radio                            | 277.00             |
| December 6, 1975  | NBD         | MO                          | One Stop                              | 76.50              |
| December 8, 1975  | NBD         | MO                          | Mich. Bell                            | 200.00             |
| December 30, 1975 | NBD         | MO                          | WJLB                                  | 500.00             |
| December 30, 1975 | NBD         | MO                          | WJLB                                  | 50.00              |
| December 30, 1975 | NBD         | MO                          | Detroit Edison                        | 77.20              |
|                   |             |                             | <u>TOTAL (1975)</u>                   | <u>\$ 1,671.54</u> |
| January 8, 1976   | BC          | MO                          | Michigan Cons. Gas                    | 20.00              |
| February 2, 1976  | NBD         | MO                          | Jim Riehl Leasing, Inc.               | 405.84             |
| February 23, 1976 | BC          | CC                          | '76 Democratic<br>Campaign Committee  | 30.00              |
| March 4, 1976     | BC          | MO                          | Michigan Consolidated Gas Co.         | 101.45             |
| March 12, 1976    | BC          | CC                          | Jean Stultz                           | 288.59             |
| April 2, 1976     | BC          | MO                          | Edison                                | 60.73              |
| April 15, 1976    | BC          | CC                          | Congressman Charles<br>C. Diggs, Jr.  | 564.00             |
| April 30, 1976    | BC          | MO                          | WJLB Radio Station                    | 220.00             |
| May 19, 1976      | BC          | MO                          | Edison                                | 45.30              |
| May 19, 1976      | BC          | MO                          | James McCroy                          | 44.10              |
| May 21, 1976      | BC          | MO                          | Jim Riehl Leasing, Inc.               | 101.46             |
| May 24, 1976      | BC          | MO                          | House Recording Studio                | 167.25             |
| May 24, 1976      | BC          | MO                          | House Recording Studio                | 100.00             |
| May 24, 1976      | BC          | MO                          | Roseville Chrysler-<br>Plymouth, Inc. | 220.52             |
| May 24, 1976      | BC          | MO                          | Roseville Chrysler-<br>Plymouth, Inc. | 100.00             |
| June 1, 1976      | BC          | MO                          | WJLB                                  | 155.00             |
| June 1, 1976      | BC          | MO                          | WJLB                                  | 155.00             |
| June 7, 1976      | BC          | MO                          | WJLB                                  | 250.00             |

\*MO money order  
CC cashier's check

| <u>DATE</u>        | <u>BANK</u> | <u>TYPE<br/>INSTRUMENT</u> | <u>PAYEE</u>  | <u>AMOUNT</u> |
|--------------------|-------------|----------------------------|---|---------------|
| June 7, 1976       | BC          | MO                         | Charles C. Diggs, Jr.                                       | \$ 250.00     |
| June 7, 1976       | BC          | MO                         | WJLB  | 70.00         |
| June 7, 1976       | BC          | MO                         | Traffic Court   | 17.00         |
| June 9, 1976       | BC          | MO                         | House Recording Studio                                      | 213.00        |
| June 9, 1976       | BC          | MO                         | Jean G. Stultz  | 177.00        |
| July 2, 1976       | BC          | MO                         | Edison  | 87.17         |
| July 6, 1976       | BC          | MO                         | North Carolina Mutual                                       | 17.68         |
| July 15, 1976      | BC          | MO                         | Jim Riehl Leasing, Inc.                                     | 101.46        |
| July 20, 1976      | BC          | MO                         | Mr. Phil Sims   | 50.00         |
| July 20, 1976      | BC          | MO                         | Press Picture Service                                       | 20.80         |
| July 20, 1976      | BC          | MO                         | Ruth Rox  | 6.75          |
| July 20, 1976      | BC          | MO                         | City Election Commission<br>City Treasurer                  | 12.00         |
| July 20, 1976      | BC          | MO                         | House Recording Studio,<br>U.S. House of<br>Representatives | 250.00        |
| July 20, 1976      | BC          | MO                         | House Recording Studio<br>U.S. House of<br>Representatives  | 250.00        |
| July 20, 1976      | BC          | MO                         | House Recording Studio<br>U.S. House of<br>Representatives  | 24.25         |
| August 2, 1976     | BC          | MO                         | Mayor Coleman A. Young<br>Boat Ride Committee               | 70.00         |
| August 10, 1976    | BC          | MO                         | WJLB  | 220.00        |
| August 10, 1976    | BC          | MO                         | WJLB  | 220.00        |
| August 16, 1976    | BC          | MO                         | Jim Riehl Leasing, Inc.                                     | 101.46        |
| August 16, 1976    | NBD         | MO                         | Edison  | 38.85         |
| August 20, 1976    | BC          | MO                         | House Recording Studio                                      | 146.75        |
| September 8, 1976  | BC          | MO                         | Mi. Gas Co.   | 56.43         |
| September 8, 1976  | BC          | MO                         | Edison  | 93.07         |
| September 10, 1976 | NBD         | MO                         | Macine Young  | 100.00        |
| September 11, 1976 | NBD         | MO                         | Ruth Rox  | 250.00        |
| September 11, 1976 | NBD         | MO                         | Ruth Rox  | 250.00        |
| September 11, 1976 | NBD         | MO                         | Ruth Rox  | 250.00        |
| September 11, 1976 | NBD         | MO                         | Ruth Rox  | 22.10         |
| September 14, 1976 | NBD         | MO                         | Jim Riehl Leasing, Inc.                                     | 101.46        |

| <u>DATE</u>      | <u>BANK</u> | <u>TYPE<br/>INSTRUMENT</u> | <u>PAYEE</u>                   | <u>AMOUNT</u>      |
|------------------|-------------|----------------------------|--------------------------------|--------------------|
| October 8, 1976  | NBD         | MO                         | Jim Richl Leasing, Inc.        | \$ 101.46          |
| October 8, 1976  | NBD         | MO                         | Mich. Con. Gas Co.             | 4.91               |
| November 1, 1976 | NBD         | MO                         | One Stop Locksmith             | 42.60              |
| November 1, 1976 | NBD         | MO                         | Modern Mirror and<br>Glass Co. | 94.82              |
| November 3, 1976 | NBD         | MO                         | Edison Co.                     | 59.69              |
| November 3, 1976 | NBD         | MO                         | WJLB                           | 500.00             |
| November 3, 1976 | NBD         | MO                         | Lorraine McDaniels             | 286.33             |
| December 7, 1976 | NBD         | MO                         | House Recording Studio         | 400.00             |
| December 8, 1976 | BC          | MO                         | Mich. Consolidated Gas Co.     | 36.09              |
| December 8, 1976 | BC          | CC                         | WJLB                           | 500.00             |
| December 9, 1976 | BC          | MO                         | One Stop Locksmith             | 23.90              |
| December 9, 1976 | BC          | MO                         | Edison                         | 28.71              |
|                  |             |                            | <u>TOTAL (1976)</u>            | <u>\$ 8,574.98</u> |
| January 3, 1977  | NBD         | MO                         | Detroit Edison                 | \$ 55.79           |
| January 3, 1977  | NBD         | MO                         | Modern Mirror and<br>Glass Co. | 50.00              |
| January 6, 1977  | NBD         | MO                         | WJLB                           | 300.00             |
| January 6, 1977  | NBD         | CC                         | House Recording Studio         | 300.00             |
|                  |             |                            | <u>TOTAL (1977)</u>            | <u>\$ 705.79</u>   |

## OFIELD DUKES

Payroll Analysis  
April 1973 through February 1976

| <u>DATE</u>     | <u>ANNUAL<br/>GROSS</u> | <u>MONTHLY<br/>GROSS</u> | <u>MONTHLY<br/>NET</u> | <u>GROSS<br/>EXCESS</u> |
|-----------------|-------------------------|--------------------------|------------------------|-------------------------|
| April, 1973     | \$ 12,000.00            | \$ 1,000.00              | \$ 720.91              | \$                      |
| May, 1973       | 12,000.00               | 1,000.00                 | 720.91                 |                         |
| June, 1973      | 13,900.00               | 1,158.33                 | 823.42                 | 158.33                  |
| July, 1973      | 13,900.00               | 1,158.33                 | 824.50                 | 158.33                  |
| August, 1973    | 12,000.00               | 1,000.00                 | 721.99                 |                         |
| September, 1973 | 16,800.00               | 1,400.00                 | 971.69                 | 400.00                  |
| October, 1973   | 12,000.00               | 1,000.00                 | 721.99                 |                         |
| November, 1973  | 12,000.00               | 1,000.00                 | 721.99                 |                         |
| December, 1973  | 30,500.00               | 2,541.67                 | 1,621.48               | 1,541.67                |
| January, 1974   | 30,500.00               | 2,541.67                 | 1,621.48               | 1,541.67                |
| February, 1974  | 12,000.00               | 1,000.00                 | 721.99                 |                         |
| March, 1974     | 12,000.00               | 1,000.00                 | 721.99                 |                         |
| April, 1974     | 12,000.00               | 1,000.00                 | 621.99                 |                         |
| May, 1974       | 12,000.00               | 1,000.00                 | 621.99                 |                         |
| June, 1974      | 12,000.00               | 1,000.00                 | 621.99                 |                         |
| July, 1974      | 12,000.00               | 1,000.00                 | 621.99                 |                         |
| August, 1974    | 12,000.00               | 1,000.00                 | 621.99                 |                         |
| September, 1974 | 12,000.00               | 1,000.00                 | 621.99                 |                         |
| October, 1974   | 22,000.00               | 1,833.33                 | 1,119.55               | 833.33                  |
| November, 1974  | 12,000.00               | 1,000.00                 | 621.99                 |                         |
| December, 1974  | 12,000.00               | 1,000.00                 | 621.99                 |                         |
| January, 1975   | 25,300.00               | 2,108.33                 | 1,275.29               | 1,108.33                |
| February, 1975  | 12,000.00               | 1,000.00                 | 621.99                 |                         |
| March, 1975     | 12,000.00               | 1,000.00                 | 619.56                 |                         |
| April, 1975     | 12,000.00               | 1,000.00                 | 619.56                 |                         |
| May, 1975       | 12,000.00               | 1,000.00                 | 628.23                 |                         |
| June, 1975      | 35,575.00               | 2,964.58                 | 1,760.19               | 1,964.58                |
| July, 1975      | 35,575.00               | 2,964.58                 | 1,760.19               | 1,964.58                |
| August, 1975    | 12,000.00               | 1,000.00                 | 628.23                 |                         |
| September, 1975 | 12,000.00               | 1,000.00                 | 628.23                 |                         |

| <u>DATE</u>    | <u>ANNUAL<br/>GROSS</u> | <u>MONTHLY<br/>GROSS</u> | <u>MONTHLY<br/>NET</u> | <u>GROSS<br/>EXCESS</u> |
|----------------|-------------------------|--------------------------|------------------------|-------------------------|
| October, 1975  | \$ 12,000.00            | \$ 1,000.00              | \$ 628.23              | \$                      |
| November, 1975 | 37,300.00               | 3,108.33                 | 1,839.87               | 2,108.33                |
| December, 1975 | 37,000.00               | 3,083.33                 | 1,826.51               | 2,083.33                |
| January, 1976  | 37,000.00               | 3,083.33                 | 1,826.51               | 2,083.33                |
| February, 1976 | 12,000.00               | 1,000.00                 | 628.23                 |                         |

## JERALEE G. RICHMOND

Payroll Analysis  
July 1974 through July 1976

| <u>DATE</u>    | <u>GROSS<br/>ANNUAL</u> | <u>GROSS<br/>MONTHLY</u> | <u>NET<br/>MONTHLY</u> |
|----------------|-------------------------|--------------------------|------------------------|
| July 1974      | \$ 8,500.00             | \$ 708.33                | \$ 525.18              |
| August 1974    | 25,499.88               | 2,124.99                 | 1,449.79               |
| September 1974 | 8,500.00                | 708.33                   | 525.18                 |
| October 1974   | 8,500.00                | 708.33                   | 525.18                 |
| November 1974  | 8,500.00                | 708.33                   | 525.18                 |
| December 1974  | 8,500.00                | 708.33                   | 525.18                 |
| January 1975   | 9,000.00                | 750.00                   | 556.05                 |
| February 1975  | 9,000.00                | 750.00                   | 556.05                 |
| March 1975     | 9,000.00                | 750.00                   | 554.15                 |
| April 1975     | 9,000.00                | 750.00                   | 554.15                 |
| May 1975       | 9,000.00                | 750.00                   | 563.16                 |
| June 1975      | 9,000.00                | 750.00                   | 563.16                 |
| July 1975      | 9,000.00                | 750.00                   | 563.16                 |
| August 1975    | 9,000.00                | 750.00                   | 563.16                 |
| September 1975 | 9,000.00                | 750.00                   | 563.16                 |
| October 1975   | 9,450.00                | 787.50                   | 590.70                 |
| November 1975  | 9,450.00                | 787.50                   | 590.70                 |
| December 1975  | 9,450.00                | 787.50                   | 590.70                 |
| January 1976   | 9,450.00                | 787.50                   | 590.70                 |
| February 1976  | 9,450.00                | 787.50                   | 590.70                 |
| March 1976     | 9,450.00                | 787.50                   | 590.70                 |
| April 1976     | 9,450.00                | 787.50                   | 590.76                 |
| May 1976       | 9,450.00                | 787.50                   | 590.76                 |
| June 1976      | 9,450.00                | 787.50                   | 590.76                 |
| July 1976      | 9,450.00                | 787.50                   | 590.76                 |
| <b>TOTALS</b>  |                         | <u>\$ 20,291.64</u>      | <u>\$ 15,019.13</u>    |

## GEORGE G. JOHNSON

Payroll Analysis  
July 1973 through December 1974

| <u>DATE</u>    | <u>GROSS<br/>ANNUAL</u> | <u>GROSS<br/>MONTHLY</u> | <u>NET<br/>MONTHLY</u> |
|----------------|-------------------------|--------------------------|------------------------|
| July 1973      | \$ 32,175.00            | \$ 2,681.25              | \$ 2,024.36            |
| August 1973    | 17,405.04               | 1,450.42                 | 1,192.02               |
| September 1973 | 7,000.00                | 583.33                   | 509.86                 |
| October 1973   | 5,224.00                | 435.33                   | 385.54                 |
| November 1973  | 18,500.00               | 1,541.67                 | 1,258.36               |
| December 1973  | 5,381.28                | 448.44                   | 396.55                 |
| January 1974   | 30,000.00               | 2,500.00                 | 1,908.36               |
| February 1974  | 30,000.00               | 2,500.00                 | 1,908.36               |
| March 1974     | 6,000.00                | 500.00                   | 439.86                 |
| April 1974     | 9,700.00                | 808.33                   | 698.02                 |
| May 1974       | 3,400.00                | 283.33                   | 257.86                 |
| June 1974      | 1,642.24                | 136.85                   | 132.88                 |
| July 1974      | 4,560.00                | 380.00                   | 339.06                 |
| August 1974    | 11,003.52               | 916.96                   | 784.93                 |
| September 1974 | 17,406.12               | 1,450.51                 | 1,192.09               |
| October 1974   | 7,936.20                | 661.35                   | 575.39                 |
| November 1974  | 12,036.00               | 1,003.00                 | 851.98                 |
| December 1974  | 10,623.00               | 885.25                   | 759.56                 |
|                |                         | <hr/>                    | <hr/>                  |
| TOTALS         |                         | \$ 19,166.02             | \$ 15,615.04           |

JEAN G. STULTZ

## PAYROLL ANALYSIS

October 1972 through August 1976

| <u>Year/Month</u>  | <u>Total Gross<br/>Monthly Salary</u> | <u>Total Net<br/>Monthly Salary</u> |
|--------------------|---------------------------------------|-------------------------------------|
| <u>1972</u>        |                                       |                                     |
| October            | \$ 916.67                             | \$ 495.31                           |
| November           | 916.67                                | 656.94                              |
| December           | 916.67                                | 656.94                              |
| <b>TOTAL 1972:</b> | <b>\$ 2,750.01</b>                    | <b>\$ 1,809.19</b>                  |
| <u>1973</u>        |                                       |                                     |
| January            | \$ 963.78                             | \$ 695.97                           |
| February           | 1,166.67                              | 833.75                              |
| March              | 1,166.67                              | 833.75                              |
| April              | 1,166.67                              | 833.75                              |
| May                | 1,166.67                              | 833.75                              |
| June               | 1,166.67                              | 833.75                              |
| July               | 1,166.67                              | 833.75                              |
| August             | 1,166.67                              | 833.75                              |
| September          | 1,166.67                              | 833.75                              |
| October            | 2,805.65                              | 2,142.14                            |
| November           | 2,805.65                              | 2,130.86                            |
| December           | 2,805.65                              | 2,130.86                            |
| <b>TOTAL 1973:</b> | <b>\$ 18,714.09</b>                   | <b>\$ 13,769.83</b>                 |

APPENDIX G

| <u>Year/Month</u>  | <u>Total Gross<br/>Monthly Salary</u> | <u>Total Net<br/>Monthly Salary</u> |
|--------------------|---------------------------------------|-------------------------------------|
| <u>1974</u>        |                                       |                                     |
| January            | \$ 2,805.65                           | \$ 2,122.31                         |
| February           | 2,805.65                              | 2,134.15                            |
| March              | 2,805.65                              | 2,138.23                            |
| April              | 2,805.67                              | 2,078.23                            |
| May                | 2,809.16                              | 2,068.20                            |
| June               | 2,809.16                              | 2,068.20                            |
| July               | 2,809.16                              | 2,068.20                            |
| August             | 3,000.00                              | 1,846.75                            |
| September          | 3,000.00                              | 1,846.75                            |
| October            | 2,964.53                              | 1,909.51                            |
| November           | 2,964.53                              | 1,843.19                            |
| December           | 2,964.53                              | 1,876.35                            |
| <b>TOTAL 1974:</b> | <b>\$35,543.69</b>                    | <b>\$23,990.87</b>                  |
| <u>1975</u>        |                                       |                                     |
| January            | \$ 2,964.53                           | \$ 1,881.61                         |
| February           | 2,964.53                              | 1,881.61                            |
| March              | 2,964.53                              | 1,875.04                            |
| April              | 2,964.53                              | 1,875.04                            |
| May                | 2,964.53                              | 1,881.38                            |
| June               | 2,964.55                              | 1,881.38                            |
| July               | 2,964.53                              | 1,843.88                            |
| August             | 2,964.53                              | 1,843.88                            |
| September          | 2,964.53                              | 1,843.88                            |
| October            | 3,122.92                              | 1,926.18                            |
| November           | 3,112.92                              | 1,926.18                            |
| December           | 3,112.92                              | 1,926.18                            |
| <b>TOTAL 1975:</b> | <b>\$36,019.55</b>                    | <b>\$22,586.24</b>                  |

| <u>Year/Month</u>                      | <u>Total Gross<br/>Monthly Salary</u> | <u>Total Net<br/>Monthly Salary</u> |
|--|---------------------------------------|-------------------------------------|
| <u>1976</u>                            |                                       |                                     |
| January                                | 3,112.92                              | 1,815.72                            |
| February                               | 3,112.92                              | 1,815.72                            |
| March                                  | 3,112.92                              | 1,815.72                            |
| April                                  | 1,891.67                              | 1,027.04                            |
| May                                    | 1,891.67                              | 1,027.04                            |
| June                                   | 1,891.67                              | 1,027.04                            |
| July                                   | 3,112.92                              | 1,585.30                            |
| August                                 | 3,112.92                              | 1,680.30                            |
| TOTAL 1976<br>(January through August) | \$21,239.61                           | \$11,793.88                         |

JEAN G. STULTZ  
PERSONAL EXPENSES

1973

October

November

-

December

Call Carl's \$ 51.06

1973 YEAR TOTAL: \$ 51.061974

January

February

March

April

May

Delmar 18.20

June

July

Charles C. Diggs, Jr. 900.00

August

Combustioneer Corp. 122.58  
Rod Miller, Inc. 164.00

September

Nat'l. Capitol Bank 228.00  
Nat'l. Capitol Bank 228.00  
Industrial Credit 267.00  
Nat'l. Capitol Bank 211.86  
Anchor Finance 50.00  
Perpetual Building Assoc 916.00

October

Industrial Credit 267.00  
Anchor Finance 157.21  
Metropolitan Life Ins. 260.56  
Liberty Loan 300.00

November

Nat'l. Bank of Washington 483.98  
Citizens Bank of Md. 102.00  
Metropolitan Life 322.50  
City Nat'l. Bank 121.40  
First Nat'l. Bank of Wash 185.00

December

1974 YEAR TOTAL: \$5,305.29

1975

|           |  |                           |
|-----------|--|---------------------------|
| January   |  |                           |
| February  | First Nat'l. Bank of Wash<br>Perpetual                         | 119.00<br>456.00          |
| March     | Nat'l. Bank of Washington<br>GEICO                             | 467.96<br>121.72          |
| April     | D. C. Treasurer  | 5.00                      |
| May       |  |                           |
| June      | Nat'l. Bank of Washington<br>Moneysworth                       | 484.00<br>5.00            |
| July      |  |                           |
| August    | Perpetual Federal S&L  | 521.00                    |
| September | First Nat'l. Bank<br>Riggs Banks<br>American Express           | 294.00<br>204.21<br>25.00 |
| October   | American Express<br>GEFCO Finance<br>Nat'l. Bank of Washington | 25.00<br>131.00<br>444.00 |
| November  | First Nat'l. Bank of Wash.                                     | 57.00                     |
| December  |  |                           |
|           | <u>1975 YEAR TOTAL:</u>  | <u>\$3,359.89</u>         |

1976

|          |                                  |                  |
|----------|----------------------------------|------------------|
| January  | Central Charge                   | 20.00            |
| February | Riggs Bank<br>City National Bank | 147.68<br>492.72 |
| March    |                                  |                  |
| April    |                                  |                  |
|          | <u>1976 TOTAL:</u>               | <u>\$ 660.40</u> |

JEAN G. STULTZ  
CONGRESSIONAL EXPENSES

1973

|                  |                  |                   |
|------------------|------------------|-------------------|
| November         | Clipper          | 1,000.00          |
|                  | Michigan Bell    | 250.00            |
| December         | Barnett Caterers | 525.00            |
|                  | Gandels Liquors  | <u>115.65</u>     |
| 1973 YEAR TOTAL: |                  | <u>\$1,890.65</u> |

1974

|                   |                       |                   |
|-------------------|-----------------------|-------------------|
| January           | Clipper               | 1,270.00 *        |
| February          | Sgt.-at-Arms          | 734.00 **         |
| March             | Detroit Edison        | 13.59             |
|                   | House Majority        | 900.00            |
|                   | House Restaurant      | 500.00            |
|                   | One Stop Lock         | 17.00             |
| April             | -                     |                   |
| May               | -                     |                   |
| June              | Wayne City Democratic |                   |
|                   | Comm.                 | 31.25             |
|                   | Bennet                | 150.00            |
|                   | Urban Alliance        | 100.00            |
| Brazelton Floxist |                       | 141.45            |
|                   |                       |                   |
| July              | Storer College        | 17.00             |
| August            | Public Printer        | 72.00             |
|                   | Ramage                | -300.00           |
|                   | Ramage                | 140.00            |
|                   | House Stationery      | 100.00            |
| September         | Continental Soc.      | 24.00             |
| October           | -                     |                   |
| November          | -                     |                   |
| December          | -                     |                   |
| 1974 YEAR TOTAL:  |                       | <u>\$4,510.29</u> |

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\* Amounts Jean Stultz claimed were personal expenses

\*\* Jean Stultz was unable to recollect its purpose



FELIX R. MATLOCKPayroll Analysis

January 1975 through January 1977

| <u>Year/Month</u> | <u>Montnly Gross</u> | <u>Montnly Net</u> |
|-------------------|----------------------|--------------------|
| <u>1975</u>       |                      |                    |
| January           | 1,191.67             | 867.97             |
| February          | 1,306.55             | 946.06             |
| March             | 1,208.33             | 876.44             |
| April             | 1,208.33             | 876.44             |
| May               | 1,208.33             | 907.32             |
| June              | 1,208.33             | 907.32             |
| July              | 1,208.33             | 907.32             |
| August            | 2,108.33             | 1,483.16           |
| September         | 2,958.33             | 1,960.57           |
| October           | 1,789.93             | 1,287.70           |
| November          | 2,500.00             | 1,706.22           |
| December          | 2,500.00             | 1,706.22           |
| 1975 TOTAL:       | 20,396.46            | 14,432.74          |

1976

|          |          |          |
|----------|----------|----------|
| January  | 2,083.00 | 1,453.34 |
| February | 2,083.00 | 1,453.34 |
| March    | 3,083.33 | 2,014.96 |
| April    | 3,083.33 | 1,963.65 |
| May      | 3,083.33 | 1,963.65 |
| June     | 3,083.33 | 1,963.65 |

| <u>Year/Month</u> | <u>Monthly Gross</u> | <u>Monthly Net</u> |
|-------------------|----------------------|--------------------|
| 1976, Continued   |                      |                    |
| July              | 3,083.33             | 1,963.65           |
| August            | 3,083.33             | 1,963.65           |
| September         | 3,083.33             | 1,963.65           |
| October           | 3,300.00             | 2,073.80           |
| November          | 3,300.00             | 2,073.80           |
| December          | 3,300.00             | 2,073.80           |
| 1976 TOTAL:       | \$35,649.31          | \$ 22,924.94       |
| <u>1977</u>       |                      |                    |
| January           | 1,666.67             | 1,187.37           |

FELIX MATLOCKPERSONAL EXPENSES1976

|      |                       |                        |
|------|-----------------------|------------------------|
| June | Jean G. Stultz        | \$177.00               |
| July | North Carolina Mutual | <u>\$ 17.68</u>        |
|      | TOTAL:                | <u><u>\$194.68</u></u> |

FELIX MATLOCKCONGRESSIONAL EXPENSES1975

|           |                   |                    |
|-----------|-------------------|--------------------|
| September | Jim Riehl Leasing | \$ 405.84          |
| December  | La Staff Signs    | 85.00              |
|           | WJLB Radio        | 277.00             |
|           | One Stop          | 76.50              |
|           | Michigan Bell     | 200.00             |
|           | WJLB              | 500.00             |
|           | WJLB              | 50.00              |
|           | Detroit Edison    | 77.20              |
|           | 1973 YEAR TOTAL:  | <u>\$ 1,671.54</u> |

1976

|          |                                  |        |
|----------|----------------------------------|--------|
| January  | Michigan Cons. Gas               | 20.00  |
| February | Jim Riehl Leasing, Inc.          | 405.84 |
|          | '76 Democratic Campaign Comm.    | 30.00  |
| March    | Michigan Consolidated Gas Co.    | 101.45 |
|          | Jean Stultz                      | 288.59 |
| April    | Edison                           | 60.73  |
|          | Congressman Charles C. Diggs Jr. | 564.00 |
|          | WJLB Radio Station               | 220.00 |
| May      | Edison                           | 45.30  |
|          | James McCroy                     | 44.10  |
|          | Jim Riehl Leasing, Inc.          | 101.46 |
|          | House Recording Studio           | 167.25 |
|          | House Recording Studio           | 100.00 |
|          | Roseville Chrysler-Plymouth      | 220.52 |
|          | Roseville Chrysler-Plymouth      | 100.00 |
| June     | WJLB                             | 155.00 |
|          | WJLB                             | 155.00 |
|          | WJLB                             | 250.00 |
|          | CCD. Jr., Recording Studio       | 250.00 |
|          | WJLB                             | 70.00  |
|          | Traffic Court                    | 17.00  |
|          | House Recording Studio           | 213.00 |
| July     | Edison                           | 87.17  |
|          | Jim Riehl Leasing, Inc.          | 101.46 |
|          | Mr. Phil Sims                    | 50.00  |
|          | Press Picture Service            | 20.80  |
|          | Ruth Rox                         | 6.75   |
|          | City Election Commission         |        |
|          | City Treasurer                   | 12.00  |
|          | House Recording Studio, U.S.     |        |
|          | House of Representatives         | 250.00 |
|          | House Recording Studio, U.S.     |        |
|          | House of Representatives         | 250.00 |

1976 Continued

|               |  |                    |
|---------------|--|--------------------|
| July, cont'd. | House Recording Studio, U.S.<br>House of Representatives | 24.25              |
| August        | Mayor Coleman A. Young,<br>Boat Ride Committee           | 70.00              |
|               | WJLB   | 220.00             |
|               | WJLB   | 220.00             |
|               | Jim Riehl Leasing, Inc.                                  | 101.46             |
|               | Edison   | 38.85              |
|               | House Recording Studio                                   | 146.75             |
| September     | Michigan Gas Co.   | 56.43              |
|               | Edison   | 93.07              |
|               | Macine Young   | 100.00             |
|               | Ruth Rox   | 250.00             |
|               | Ruth Rox   | 250.00             |
|               | Ruth Rox   | 250.00             |
|               | Ruth Rox   | 22.10              |
|               | Jim Riehl Leasing, Inc.                                  | 101.46             |
| >             |  |                    |
| October       | Jim Riehl Leasing, Inc.                                  | 101.46             |
|               | Mich. Con. Gas Co.                                       | 4.91               |
| November      | One Stop Locksmith                                       | 42.60              |
|               | Modern Mirror and Glass Co.                              | 94.82              |
|               | Edison Co.   | 59.69              |
|               | WJLB   | 500.00             |
|               | Lorraine McDaniels                                       | 286.33             |
|               | House Recording Studio                                   | 400.00             |
|               | Mich. Consolidated Gas Co.                               | 36.09              |
|               | WJLB   | 500.00             |
|               | One Stop Locksmith                                       | 23.90              |
|               | Edison   | 28.71              |
|               | TOTAL FOR 1976:  | <u>\$ 8,574.98</u> |

1977

|         |                             |                  |
|---------|-----------------------------|------------------|
| January | Detroit Edison              | 55.79            |
|         | Modern Mirror and Glass Co. | 50.00            |
|         | WJLB                        | 300.00           |
|         | House Recording Studio      | 300.00           |
|         | TOTAL FOR 1977:             | <u>\$ 705.79</u> |

OFIELD DUKES

PERSONAL EXPENSES

1975

December

Michigan Chronicle

\$560.00

OFIELD DUKESCONGRESSIONAL EXPENSES1974

|       |                        |                  |
|-------|------------------------|------------------|
| April | Michigan Chronicle     | \$ 588.00        |
|       | <u>TOTAL FOR 1974:</u> | <u>\$ 588.00</u> |

1975

|          |                        |               |
|----------|------------------------|---------------|
| January  | Michigan Chronicle     | \$ 661.50     |
| December | Michigan Chronicle     | 364.00        |
|          | WJLB                   | <u>224.40</u> |
|          | <u>TOTAL FOR 1975:</u> | \$1,249.90    |

1976

|         |                        |                   |
|---------|------------------------|-------------------|
| January | House Recording Studio | \$1,183.75        |
|         | <u>TOTAL FOR 1976:</u> | <u>\$1,183.75</u> |

| YEAR | <u>STULTZ</u> |         | <u>MATLOCK</u> |         | <u>DUKES</u> |         | TOTAL    |           | COMBINED<br>TOTAL |
|------|---------------|---------|----------------|---------|--------------|---------|----------|-----------|-------------------|
|      | Personal      | Office  | Personal       | Office  | Personal     | Office  | Personal | Office    |                   |
| 1973 | 51.06         | 1890.65 | -              | -       | -            | -       | 51.06    | 1890.65   | \$1,941.71        |
| 1974 | 5305.29       | 4510.29 | -              | -       | -            | 588.00  | 5305.29  | 5098.29   | 10,403.58         |
| 1975 | 3359.89       | 870.13  | -              | 1671.54 | 560.00       | 1249.90 | 3919.89  | 3792.57   | 7,712.46          |
| 1976 | 660.40        | 312.00  | 194.68         | 8574.98 | -            | 1183.75 | 855.08   | 10,080.73 | 10,925.81         |
| 1977 | -             | -       | -              | 705.79  | -            | -       | -        | 705.79    | 705.79            |

10/04/78