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IN RE ADAM CLAYTON POWELL

REPORT

OF

SELECT COMMITTEE PURSUANT TO H. RES. 1

NINETIETH CONGRESS

FIRST SESSION

ON

H. Res. 1

HEARINGS

FEBRUARY 8, 14, 16, 1967

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SELECT COMMITTEE PURSUANT TO HOUSE RESOLUTION 1

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90TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 27

IN RE ADAM CLAYTON POWELL

FEBRUARY 23, 1967.—Referred to the House Calendar and ordered to be printed

Mr. CELLER, from the Select Committee Pursuant to House Resolution 1, 90th Congress, 1st session, submitted the following

REPORT

[To accompany H. Res. 278]

BACKGROUND

During the 89th Congress open and widespread criticism developed with respect to the conduct of Representative Adam Clayton Powell, of New York. This criticism emanated both from within the House of Representatives and the public, and related primarily to Representative Powell's alleged contumacious conduct toward the courts of the State of New York and his alleged official misconduct in the management of his congressional office and his office as chairman of the Committee on Education and Labor. There were charges Representative Powell was misusing travel funds and was continuing to employ his wife on his clerk-hire payroll while she was living in San Juan, P.R., in violation of Public Law 89-90, and apparently performing few if any official duties.

In September 1966, as the result of protests made by a group of Representatives serving on the Committee on Education and Labor, the Committee on House Administration, acting through its chairman, issued instructions for the cancellation of all airline credit cards which had been issued to the Committee on Education and Labor and notified Chairman Powell that all future travel must be specifically approved by the Committee on House Administration prior to undertaking the travel.

The Special Subcommittee on Contracts of the Committee on House Administration, under the chairmanship of Representative Hays of Ohio,[1] conducted an investigation into certain expenditures of the Committee on Education and Labor, which focused primarily on the travel expenses of Chairman Powell and of the committee's

[1] The other members of the subcommittee were Representatives Waggonner, Louisiana; Jones, Missouri; Nedzi, Michigan; Dickinson, Alabama; and Devine, Ohio. Ex officio members were Representatives Burleson, Texas, and Lipscomb, California, the chairman and ranking minority member of the full committee. The Special Subcommittee on Contracts is referred to hereafter as the Hays subcommittee.

staff during the 89th Congress, and the clerk-hire status of Y. Marjorie Flores. Hearings were held on December 19, 20, 21, and 30, 1966, and a report (H. Res. 2349) was filed just prior to the end of the 89th Congress. The Select Committee appointed pursuant to H. Res. 1 (90th Cong.) has taken official notice of the hearings, exhibits, and report of the Hays subcommittee and made them part of the record in the inquiry it has conducted. Subsequent to the report of the Hays subcommittee and prior to the organization of the 90th Congress, the Democrat Members-elect, meeting in caucus, voted to remove Representative-elect Powell from his office as chairman of the Committee on Education and Labor.

When the 90th Congress met to organize on January 10, Representative Van Deerlin, of California, objected to the administration of the oath to Representative Powell who was thereupon requested to step aside while the oath was administered to the other Members-elect.[2]

Representative Udall of Arizona thereupon offered the following resolution (H. Res. 1, 90th Cong.):

> *Resolved*, That the Speaker is hereby authorized and directed to administer the oath of office to the gentleman from New York, Mr. Adam Clayton Powell.
>
> *Resolved*, That the question of the final right of Adam Clayton Powell to a seat in the Ninetieth Congress be referred to a select committee, composed of seven members, to be appointed by the Speaker, and said committee shall have the power to send for persons and papers and examine witnesses on oath in relation to the subject matter of this resolution; and said committee shall be required to report its conclusions and recommendations to the House within sixty days from the date the members are appointed.

House Resolution 1 in the form offered by Representative Udall was rejected on a rollcall vote [3] following which a substitute offered by Representative Ford (Michigan) was agreed to and the resolution adopted.[4]

The substitute offered by Mr. Ford reads as follows:

> *Resolved*, That the question of the right of Adam Clayton Powell to be sworn in as a Representative from the State of New York in the Ninetieth Congress, as well as his final right to a seat therein as such Representative, be referred to a special committee of nine Members of the House to be appointed by the Speaker, four of whom shall be Members of the minority party appointed after consultation with the minority leader. Until such committee shall report upon and the House shall decide such question and right, the said

[2] "Mr. VAN DEERLIN. Mr. Speaker.
"The SPEAKER. For what purpose does the gentleman from California rise?
"Mr. VAN DEERLIN. Mr. Speaker, upon my responsibility as a Member-elect of the 90th Congress, I object to the oath being administered at this time to the gentleman from New York [Mr. Powell]. I base this upon facts and statements which I consider reliable. I intend at the proper time to offer a resolution providing that the question of eligibility of Mr. Powell to a seat in this House be referred to a special committee——
"The SPEAKER. Does the gentleman demand that the gentleman from New York step aside?
"Mr. VAN DEERLIN. Yes, Mr. Speaker.
"The SPEAKER. The gentleman has performed his duties and has taken the action he desires to take under the rule. The gentleman from New York [Mr. Powell] will be requested to be seated during the further proceedings." (Congressional Record 90th Cong. H4).

[3] Ibid. H13.

[4] Ibid. H16.

Adam Clayton Powell shall not be sworn in or permitted to occupy a seat in this House.

For the purpose of carrying out this resolution the committee, or any subcommittee thereof authorized by the committee to hold hearings, is authorized to sit and act during the present Congress at such times and places within the United States, including any Commonwealth or possession thereof, or elsewhere, whether the House is in session, has recessed, or has adjourned, to hold such hearings, and to require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memorandums, papers, and documents, as it deems necessary; except that neither the committee nor any subcommittee thereof may sit while the House is meeting unless special leave to sit shall have been obtained from the House. Subpoenas may be issued under the signature of the chairman of the committee or any member of the committee designated by him, and may be served by any person designated by such chairman or member.

Until such question and right have been decided, the said Adam Clayton Powell shall be entitled to all the pay, allowances, and emoluments authorized for Members of the House.

The committee shall report to the House within five weeks after the members of the committee are appointed the results of its investigation and study, together with such recommendations as it deems advisable. Any such report which is made when the House is not in session shall be filed with the Clerk of the House (ibid. H14).

On January 19, 1967, the Speaker appointed the following members to the Select Committee Pursuant to House Resolution 1:

Honorable Emanuel Celler, Chairman (New York)

Honorable James C. Corman	Honorable Arch A. Moore, Jr.
Honorable Claude Pepper	Honorable Charles M. Teague
Honorable John Conyers, Jr.	Honorable Clark MacGregor
Honorable Andrew Jacobs, Jr.	Honorable Vernon W. Thomson

Scope of Inquiry

Counsel for Representative-elect Powell have argued that the Select Committee lacked authority to do more than determine if Mr. Powell met the qualifications for membership in the House specifically enumerated in the Constitution, that is, age, citizenship, and inhabitancy.[5] Mr. Powell's counsel have argued further that since his certificate of election as Representative from the 18th District of New York and other documentary proof established prima facie these qualifications and as there was no serious dispute concerning them, the Select Committee lacked authority to conduct any inquiry pursuant to House Resolution 1 and should report back to the House that the Member-elect was entitled to take the oath.

[5] "No person shall be a Representative who shall not have attained to the age of 25 years, and been 7 years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen" (art. I, sec. II, clause 2).

The debate on House Resolution 1 revealed differences of opinion among the Members as to whether the House in judging the qualifications of its Members could consider qualifications other than age, citizenship, and inhabitancy. However, it is quite evident a substantial majority of the House in voting to adopt the resolution desired the Select Committee to inquire into other matters, particularly Mr. Powell's alleged contumacy with respect to the New York courts and official acts of misconduct (particularly practices described in the report of the Hays subcommittee). Thus, Representative Van Deerlin, who objected to Mr. Powell's taking the oath, is known to have been concerned by the fact Mr. Powell had been adjudged in both civil and criminal contempt by the New York courts. That Representative Udall, who offered the original version of House Resolution 1, was concerned that some investigation into Mr. Powell's conduct be undertaken is indicated by the following excerpts from his remarks in support of the resolution:

> I share the concern about the accumulation of evidence which strongly suggests to me the probability that one of our colleagues has flouted the laws of the State of New York; that he is charged with criminal contempt, and that there is a warrant for his arrest in that State so that he cannot go into that congressional district. I recognize this.
>
> I recognize the strong probability that public funds have been misused, and paid, to people in violation of the laws of the United States—Rules of the House of Representatives.
>
> I recognize the strong probability that false vouchers have been filed; that airplane tickets have been used in violation of the laws, and that illegal and unauthorized travel has taken place.
>
> * * * * *
>
> I propose to seat him, but I propose to seat him conditionally until a fair judicial inquiry can be held to determine if he ought to be seated in or removed from the House of Representatives (Congressional Record H5).
>
> * * * * *
>
> This man has never had a hearing.
>
> He was invited to appear before the Hays committee and he declined. But this was an investigation limited to looking into a narrow subject—expenditure of public committee funds. They had no power to recommend dismissal or anything of that kind.
>
> The judgments of the New York courts—and I will cheerfully concede that they probably set an alltime record for appeals, motions, counterclaims, and repeated proceedings. But they are not final. I hope someday they will be. But they are not.
>
> Adam Powell has never really had a chance to sit down and state his case to a group of his peers who hold the power to recommend what happens to him as a Member of the House. Maybe he will decline. Maybe he cannot prove a case. But he has never had a chance to state a case (ibid. p. 6).

Obviously Representative Udall's desire to afford Mr. Powell an opportunity "to sit down and state his case to a group of his peers" resulted from his concern about matters other than Mr. Powell's age, citizenship, and inhabitance. Similarly, Representative Ford in describing the purpose of the substitute he was to offer said:

> We would establish the forum and give him the opportunity to come in and answer those allegations that have been made—allegations in the press, allegations by various committees, statements of one sort or another by some Members here in the Chamber (Congressional Record H8).
>
> * * * * *
>
> Mr. Speaker, what we must do today in the determination of the qualifications of Mr. Powell is to establish a committee, a blue-ribbon committee, that will investigate all of the allegations that have been made heretofore and report within the period of 5 weeks to all of us, with its recommendations.
>
> Mr. Speaker, this procedure would represent "even justice." This is equity of the highest order. In my humble judgment we probably ought to establish as quickly as possible—and tomorrow is not too soon—an overall select committee such as was approved in the dying days of the 89th Congress in order that all charges or allegations that have been made in the past or which might be made in the future can be considered concerning any one of us who now serves in the House of Representatives (ibid, p. 9).

In deciding on its authority and the scope of the inquiry it would pursue, the Select Committee, in addition to considering the House debate, gave special attention to the language of House Resolution 1 enjoining the Select Committee to determine "the question of the right of Adam Clayton Powell to be sworn in as a Representative from the State of New York in the 90th Congress *as well as his final right to a seat therein as such Representative*, * * * (and) * * * "report to the House * * * the results of its investigation and study, *together with such recommendations as it deems advisable.*"

The Select Committee concluded it had a broad mandate under House Resolution 1 to conduct whatever inquiry it deemed necessary to enable it to recommend the appropriate action the House should take with respect to Representative-elect Powell.[6]

The determination was therefore made to inquire into the following matters:

1. Mr. Powell's age, citizenship, and inhabitancy;[7]
2. The status of legal proceedings to which Mr. Powell was a party in the State of New York and in the Commonwealth of Puerto Rico, with particular reference to the instances in which he has been held in contempt of court; and

[6] "Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members * * *" (art. I, sec. 5, clause 1).
"Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behavior, and, with the Concurrence of two-thirds, expel a Member" (art. I, sec. 5, clause 2).

[7] No question was raised concerning Mr. Powell's age and citizenship although some questions were raised both by Members of the House and the public relating to Mr. Powell's inhabitancy in the State of New York. Accordingly, the select committee desired to hear evidence on this point.

3. Matters of Mr. Powell's alleged official misconduct since January 3, 1961.[8]

PROCEDURE FOLLOWED

Mr. Powell was advised of the scope of the inquiry the Select Committee intended to pursue and that the hearings would be conducted in accordance with rule XI, paragraph 26, of the Rules of the House of Representatives.[9]

On February 8, 1967, the first day of the hearing, Mr. Powell's counsel contended the Select Committee was conducting an adversary proceeding and made several procedural requests including the right of Mr. Powell to attend in person and by counsel all sessions of the Select Committee when testimony or evidence was taken and to participate with full rights of cross-examination, the right to have open and public hearings, to summon witnesses and have a transcript of every hearing. Chairman Celler replied to these requests as follows:

> This is not an adversary proceeding. The Committee is going to make every effort that a fair hearing will be afforded, and prior to this date has decided to give the Member-elect rights beyond those afforded an ordinary witness under the House rules.
>
> The Committee has put the Member-elect on notice of the matters into which it will inquire by its notice of the scope of inquiry and its invitation to appear, as well as by conferences with, and a letter from its chief counsel to the counsel for the Member-elect.
>
> Prior to this hearing the Committee decided that it would allow the Member-elect the right to an open and public hearing, and the right to a transcript of every hearing at which testimony is adduced.
>
> The Committee has decided to summon any witnesses having substantial relevant testimony to the inquiry upon the written request of the Member-elect or his counsel.
>
> * * * * *
>
> Again, the Committee states that this is an inquiry and not an adversary proceeding.

Neither Mr. Powell nor his counsel requested the Select Committee to summon any witnesses. Mr. Powell's counsel were present during the entire first day of the hearing, for a limited part of the second day's hearing and declined to attend at all the third day of the hearings. Mr. Powell was present only on the first day of the hearing.

Mr. Powell appeared on the first day of the hearing and declined to testify beyond matters relating to his age, citizenship, and residence in New York. By letter dated February 10, 1967, from Chairman Celler, Mr. Powell was again invited to testify at a hearing for February 14 and was notified that "at the conclusion of your testimony * * * or, if you decline to testify, at the conclusion of the hearing, you will be given the opportunity to make a statement relevant to

[8] Although the debate in the House and the resolution itself are silent in the matter, the Select Committee decided it would inquire into alleged official misconduct of Mr. Powell commencing after this date, which coincides with the beginning of the 87th Congress when Mr. Powell became chairman of the Committee on Education and Labor.

[9] Hearings, p. 5 (letter from Chairman Celler to Mr. Powell dated Feb. 1, 1967). Also counsel for Mr. Powell met with counsel for this Select Committee on Feb. 3, 1967, and were advised that "alleged acts of official misconduct" would involve the matters reported on by the Hays subcommittee.

the subject matter of the Select Committee's inquiry." [10] Mr. Powell, as noted, failed to appear on February 14.

The Committee notes that counsel for Mr. Powell, notwithstanding their various procedural claims, did not at any time seek to defend against the merits of any of the misconduct charges by offering testimony or other evidence. Also, although on the first day of hearing they demanded a more precise statement of charges, they did not claim surprise when evidence was presented, nor did they request additional time to defend against such evidence. Essentially their position throughout has been that the Committee had no authority to consider the misconduct charges.

Investigation Conducted

The brief period provided the Select Committee to conduct an inquiry and report back to the House necessarily limited the amount of investigation the staff could undertake. Fortunately, the results of the investigation by the Hays subcommittee which made a review of the travel records of the Committee on Education and Labor during the 89th Congress were available to the staff of the Select Committee.

Mr. Robert D. Gray, of the General Accounting Office, who supervised the team of GAO auditors employed by the Hays subcommittee, performed the same function for the Select Committee. For the Hays subcommittee, Mr. Gray's auditors checked all airline tickets purchased on committee credit cards and separated out those used for travel for which no subsistence was claimed on the theory that in almost all instances when travel relates to official business subsistence will be claimed. Mr. Gray and his assistants [11] undertook a similar review of travel charged by Chairman Powell and members of the staff of the Committee on Education and Labor during the 87th and 88th Congresses. They also conducted an audit which determined that the funds expended by the Committee on Education and Labor and Mr. Powell's congressional office did not exceed the amounts authorized by the 87th, 88th, and 89th Congresses, and a special audit relating to travel from Miami to Bimini and return, during the 89th Congress.

Mr. Ronald Goldfarb, counsel to the Select Committee, investigated the New York court records and other sources to ascertain the history and the present status of the litigation pending in that State and the Commonwealth of Puerto Rico involving Mr. Powell and which has resulted in his being held in contempt of court.

Summary of Evidence

A. INHABITANCY

The record in this proceeding reflects that Member-elect Powell retains a New York address in a three-room, one-bedroom apartment leased and maintained by Mr. and Mrs. Odell Clark, Mr. Clark being then a member of the Education and Labor Committee staff in Washington. Mr. Powell furnished the Select Committee with

[10] For the full text of this letter, see Hearings, p. 110.

[11] Supervisory Accountant: Francis X. Fee. Accountants: Bernard S. Ballor, David F. Marshall, John A. Cutler, Robert W. Gramling, William A. Hightower, T. Richard McMillan, Jr. Fiscal auditors: William F. Murphy, Jr., Julian M. Shiplette. And also in New York: Supervisory accountants: Ernst F. Stockel, Salvatore J. Petralia. Accountants: John T. Balla, Tobie W. Davis, William J. Rigazio, Grace M. Fennel, Carole Ann Jablonski.

copies of his New York State income tax returns for the years 1962 through 1965; a New York City income tax return for 1966; and a bank account at the Chase Manhattan Bank of the City of New York which was inactive and listed his address at the Abyssinian Baptist Church, where he has remained as one of the pastors. He also submitted evidence showing that he remains a registered voter in New York, that he has an automobile operator's license which will expire June 30, 1967, and that in the vestibule of the apartment house at 120 West 138th Street, New York City, the Congressman's name is posted for apartment 5–D with Mr. and Mrs. Odell Clark. Mr. Powell testified that he paid $50 a month toward the rent of the apartment, that he preached at his church on the average of three times a month, and that he was present on occasion in New York on Sundays and possibly Mondays. Furthermore, court records show that the New York courts have found him to reside at 120 West 138th Street, New York City, for purposes of allowing court process to be served on him by substituted service.[12]

On the basis of these facts and under the applicable precedents (see Legal Support for Recommendations, *infra*), Mr. Powell meets the inhabitancy qualification of the Constitution.

B. BEHAVIOR OF ADAM CLAYTON POWELL

1. With respect to the courts of New York

Since October 28, 1960, Mr. Powell has been involved in complex and protracted litigation in New York State involving two court proceedings, one a libel case and the other a fraudulent transfer of assets case, out of which an extensive series of civil and criminal contempt proceedings have developed because of Mr. Powell's disobedience to court processes and to court orders emanating from those two cases.[13]

Early in 1960 Mr. Powell made an accusation on the floor of Congress that one of his constituents, Mrs. Esther James, was a "bag woman for the New York City Police Department." He repeated it a month later on a television program. Mrs. James sued Mr. Powell for libel and in April 1963 a jury awarded her a verdict of $211,739.35. Attorneys for Mrs. James then commenced proceedings to secure satisfaction of this judgment which was affirmed on appeal although reduced to $46,500—$11,500 compensatory damages and $35,000 punitive damages. A further appeal to the New York Court of Appeals, the highest court in New York State, resulted in an affirmance and the U.S. Supreme Court denied certiorari on January 18, 1965. Accordingly, all appeals have been exhausted in this proceeding and judgment has been final for about 2 years.

Mrs. James brought a second case in April 1964, also in New York City, charging that in April 1963 (after the libel judgment was recorded) Mr. Powell and his wife fraudulently transferred a piece of property valued at $85,000 in Puerto Rico to her uncle and aunt, who were also named as defendants, in order to frustrate satisfaction of the libel judgment. The Powells failed to file an answer and in January 1965 judgment was entered and an inquest on damages was ordered. In February 1965, a jury awarded Mrs. James damages of $350,000

[12] Mr. Powell refused to testify concerning his residences in Washington, Puerto Rico and the Bahamas.
[13] It should be parenthetically noted that there were some other tangential proceedings surrounding these two proceedings of litigation which are detailed in Goldfarb Exhibit 1.

in this second case. The trial judge reduced the verdict to $210,000. This judgment was vacated because the Powells submitted evidence they were not living at 120 West 138th Street, New York City, at the time service by mail was effected at that address. The Powells then filed an answer to the complaint and made a motion to dismiss the complaint which was denied. Mr. Powell failed to respond to notices of examination before trial and was formally ordered by the court to appear on November 24, 1965, a date agreed to by him in writing, and a date when Congress was not in session. He failed to appear on that date and the court entered judgment for the plaintiff and ordered an inquest on the amount of damages. At the inquest the court found Mr. Powell liable to Mrs. James for $75,000 in compensatory damages and $500,000 punitive damages. The Appellate Division upheld the judgment but reduced the compensatory damages to $55,785.76 (because Mrs. James had been able to collect some funds on the unpaid libel judgment) and reduced the punitive damages to $100,000. This case is currently being appealed by Mr. Powell to the Court of Appeals, the highest court in New York State, so judgment therein is not final.

In an attempt to satisfy the judgment on the libel action, Mrs. James secured an order in August 1965 from the New York Supreme Court which attached over the objection of Mr. Powell the banked funds of two committees known as Harlem Justice for Powell Committee and Powell Fund Committee. She received two checks totaling $19,115.54 pursuant to this order. After the appointment of this Select Committee, Jubilee Industries, Inc., a record company which distributed a record recently made by Mr. Powell, voluntarily paid Mrs. James $32,460 on January 31, 1967, to reduce the outstanding libel judgment and, according to the New York Times, on February 17, 1967, Mr. Powell's attorney paid Mrs. James an additional $3,447 plus another $1,000 for court costs. Apparently by the payment of these sums the judgment in the libel action has now been satisfied.

During all this litigation the courts have found Mr. Powell in contempt of court a number of times. As of the date of the hearing there were pending against Mr. Powell four outstanding arrest orders, one arising out of an order holding him in criminal contempt and three arising out of orders holding him in civil contempt. Generally, a person can purge himself of a civil contempt of court by satisfaction of the judgment or submission to examination on assets, but cannot purge himself of criminal contempt of court.

The first decision holding that Mr. Powell should be arrested for civil contempt of court occurred on May 8, 1964, after he failed to appear for examination on a date ordered by a court in accordance with the terms of a stipulation he had signed.

The second decision holding that Mr. Powell should be arrested for civil contempt of court occurred on October 14, 1966, after Mr. Powell failed to honor an order of the court either to pay the libel judgment or purge himself by appearing for examination as to his assets on October 7, 1966.

The third decision holding that Mr. Powell should be arrested for civil contempt of court occurred on December 14, 1966, after Mr. Powell failed to appear for examination on December 9, 1966, as ordered by the Court of Appeals in accordance with a stipulation signed by his attorney on November 1, 1966.

The decision holding Mr. Powell in criminal contempt was issued on November 4, 1966, because a jury had found (1) that on November 24, 1965, he willfully failed to appear, as ordered by a court,[14] for examination before trial; (2) that on May 1, 1964, he willfully failed to appear, as ordered by a court,[15] for examination in proceedings supplementary to judgment and execution. The court noted that Mr. Powell had not offered to purge himself and that there had been "no indication of regret, contrition, or repentance." The sentence for criminal contempt was 30 days in jail and a $250 fine on both counts. An arrest order was issued pursuant to this decision. It appears that the orders are on appeal and thus not final.

The records in both cases show that the courts of New York have been very indulgent in granting Mr. Powell adjournments and opportunities to avoid the consequences of his acts. It also shows there were numerous instances when Mr. Powell did not honor subpenas and court orders to appear and to submit to the jurisdiction of the courts. On at least two occasions, Mr. Powell's failures to appear violated written stipulations which he had signed agreeing to appear on set dates. On some of these occasions, Mr. Powell based his refusals to appear on the ground that he had congressional immunity as he was attending sessions of Congress. In many instances various judges granted adjournment after adjournment to accommodate him only to have Mr. Powell subsequently fail to appear on the reset dates. In two instances, the records of Congress show that the House of Representatives was not in session on the dates he dishonored a court order, *i.e.*, November 24, 1965, and December 9, 1966.[16]

On November 4, 1966, New York Supreme Court Justice Matthew Levy expressed the difficult task Mr. Powell's behavior posed for the courts of New York:

> It is however, not an easy task to arrive at a conclusion as to the punishment for criminal contempt of court to be meted out to a minister, a Congressman, a leader of men, a man, indeed, of many natural gifts, and he should be a man in relationship to the law that one would look up to, to respect. All of you may rest assured that what I have determined upon is a conclusion that has not been lightly reached.
>
> I am regretful that the defendant, either himself or through his counsel, is unwilling to express any views in that regard, because that expression might be helpful to me, but silence at this time, self-imposed by the defendant once again, his nonparticipation, may be, and must be, ignored, since I shall make my decision presently * * *

Mr. Justice Levy went on to summarize what other members of his court and the appellate court had been forced to conclude with respect to Mr. Powell's actions:

> Now, as to punishment, I have culled, from the record of the massive files in this matter, the official comments made

[14] Mr. Powell had signed a stipulation on Oct. 9, 1965, agreeing to appear on Nov. 24, 1965, a date subsequent to the adjournment of the 1 st session of the 89th Cong. Airline and immigration records indicate he went to Bimini on Nov. 15, 1965. There is no indication he returned prior to Nov. 24, 1965.

[15] On Dec. 31, 1963, Mr. Powell had signed a stipulation adjourning a court order of contempt requiring him to appear on Jan. 3, 1964, and agreeing to appear on a date fixed by the court.

[16] "They [Senators and Representatives] shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their *attendance* at the session of their respective Houses and in going to and returning from the same." U.S. Const., art. I, sec. 6 (emphasis added).

by several of my colleagues here and in the Appellate Division on the conduct of this defendant. I think it is of moment to note them on the record one by one.

In May of 1964, the court said:

"The conduct of defendant in this matter, in my judgment, has been so flagrantly contemptuous of the authority and dignity of this court as to promote the tragic disrespect for the judicial process as a whole. No man should be allowed to continue in this fashion and it is time for defendant to answer for it."

In December of 1965, the court said:

"* * * I am a little bit shocked about this situation. I know there were many editorials published in the newspapers about Mr. Powell's monstrous behavior, and this is another example. Frankly, as I said before, if I had occasion to pass upon this, I think a sentence in jail would do more good than the fine, and under the circumstances I have in mind something which may possibly deter him from such behavior in the future.

"It seems to me that the blatant cynicism on the part of Mr. Powell, his disregard for the law, for the ministry and for justice and decency, as far as I can see, is monstrous defiance of everything that is decent in this community, sets a very bad example for the youth of this city and this country. * * * The blatant, cynical disregard for the law on the part of a U.S. Congressman is detrimental to the law, to the ministry, and to democracy.

"This man is supposed to be a Member of the Congress, which makes laws, yet he seems to show rank and monstrous defiance to the law. I don't understand it at all." * * *

The Appellate Division, in June of 1966, in sustaining a judgment, though in a lesser amount, for the fraudulent transfer of a defendant's real estate in Puerto Rico, said: "* * * that transfer, deliberately made by defendant Adam Powell, a Member of Congress, to defeat enforcement of a judgment obtained 2 weeks earlier, fully justifies substantial punitive damages against him."

Another colleague, at Special Term, said in August 1966:

"Considering the disdainful and demeaning and despising attitude of this judgment debtor toward the authority and dignity of the court, as reflected by the voluminous files of this court which include several civil adjudications of contempt, on a proper and satisfactory jurisdictional basis there is no doubt nor would there be any hesitancy to adjudge the alleged misconduct criminal."

Also at Special Term, in September of 1966, the court said:

"I conclude that this misconduct as demonstrated, in charity to the defendant, may best be characterized as the antics of a mischievous delinquent.

"Because stigmatization and anathematization does not suffice, in my judgment, it is essential to satisfy the rights and the interests of the public in an appreciation of a fair and equal administration of justice."

In October 1966, the court said:

"The hearing was unique in that it evoked the corporeal presence of the judgment debtor for the first time in the course of the protracted proceedings in both this action and the companion libel litigation. This marked departure from his hitherto elusiveness, was not, unfortunately, accompanied by a similar departure from his policy of ignoring, evading or abusing legal procedures in a campaign of relentless defiance designed to frustrate and impede the judgment creditor in the lawful collection of her judgment. * * * It was merely another ploy in the seemingly endless series of maneuvers and dilatory tactics by which the judgment debtor manifests his distaste and disrespect for our judicial processes."

In October 1966, another justice of this court said:

"The judgment debtor has again demonstrated his disdain for the processes of the court by his failure to comply with the provisions of the order of October 3, 1966. * * * American justice is dependent on the equal application of the law and its observance by persons in every echelon of our society. The redress of a wrong involves a deliberate pursuit of one's rights. Justice proceeds slowly but surely and will not be denied."

In its most recent decision, the Appellate Division rendered an opinion on October 25, 1966, in which the court said:

"* * * As the long and ugly record in this matter shows, this failure to obey is consistent with the debtor's cynical refusal to honor his own promises together with a total disregard of any and all process that has been served upon him. * * *"

And the court referred to the defendant's conduct as a "sorry spectacle to be terminated by definite action."

Now, gentlemen, I have iterated what seemed to many to be the sad result, and, certainly seems so to me, of a broken phonograph record of plea to and condemnation of the defendant.

The proof is overwhelming that the defendant has flamboyantly flaunted his willful flouting of the lawful mandates of the court to such an extent, indeed, that I was compelled to add to that record, in my recent opinion in this matter, the comment of the "attendant deleterious and corroding impact upon the judicial system as a whole and its serious consequential effect upon the general maintenance of law and order in our community." What the defendant presumes to do with impunity cannot go unpunished. Else the average person may rightly assume that he may do the same, and feel that when not permitted by the courts thus to act, there is discrimination against the less powerful persons, who rely, and justly rely, upon the courts for the due and impartial administration of justice.

For a Member of this House to behave in such fashion as to cause the courts to describe his course of conduct as "flagrantly contemptuous," as promoting "the tragic disrespect for the judicial process as a whole," as displaying "blatant cynical disregard for the law on the

part of a United States Congressman [which] is detrimental to the law, the ministry and to democracy," and as "a very bad example for the youth of this city and this country," clearly brings great disrespect on the House of Representatives.

2. As chairman of the Committee on Education and Labor

A major subject of this Committee's investigation was alleged misuse of Government funds by Mr. Powell in his capacity as chairman of the House Education and Labor Committee, during the 87th through 89th Congresses. Particular attention was given to evidence of widespread use of committee funds to pay for personal travel by Mr. Powell and others.

The following is a discussion of the record before the Hays subcommittee and this committee relating to improper expenditures by the Committee on Education and Labor under the chairmanship of Mr. Powell.

(a) Proceedings before the Hays subcommittee

During the 89th Congress, the Hays subcommittee conducted an investigation, limited to the 89th Congress, into certain expenditures by the House Committee on Education and Labor.

The pertinent conclusions of the subcommittee were as follows (Report, pp. 6 and 7):

> 1. Testimony indicates that Representative Powell used an assumed name on many airline flights purchased with committee credit cards thus deceiving the approving authority as to the number of trips made by him as an individual.
>
> 2. Testimony indicates that Corrine A. Huff, a staff employee of the Committee on Education and Labor, prior to June 30, 1966 (on July 1, 1966, Miss Huff was transferred to Representative Powell's clerk-hire payroll), made many trips under an assumed name on many airline flights purchased with committee credit cards thus deceiving the approving authority as to the number of trips made by her as an individual.
>
> 3. Representative Powell placed on the staff of the Committee on Education and Labor one Sylvia J. Givens, who had been hired for the express purpose of doing domestic work for Representative Powell when he traveled, as well as for performing the clerical work in his committee offices.
>
> 4. After the initiation of this investigation, Representative Powell paid to Eastern Air Lines the cost of travel of himself, Miss Huff, Miss Givens, and Mr. and Mrs. Stone, which had been purchased with committee airline credit cards for transportation to Miami en route to Bimini, British West Indies, except that Representative Powell did not pay the cost of a return trip for Sylvia J. Givens from Miami to Washington, which travel has been charged to and paid for from the contingent funds allocated to the Committee on Education and Labor.
>
> 5. The deceptive practice of using the names of staff employees on airline tickets which were not used by the named employees appears to be a scheme devised to conceal the actual travel of Representative Powell, Miss Huff, and

others, in some instances at least, so as to prevent questions being raised by the Committee on House Administration as to the official character of the travel performed.

6. Representative Powell favored at least one member of his staff with personal vacation trips, the transportation of which was procured through the use of airline credit cards of the committee and the cost of said transportation for vacation purposes was charged to and paid for from the contingent funds allocated to the Committee on Education and Labor.

7. Persons having no official connection with the Congress have been provided with transportation by Representative Powell and the travel purchased by air travel credit cards of the Committee on Education and Labor. Said transportation costs have been charged to and paid from the contingent funds allocated to the Committee on Education and Labor.

8. The failure of a number of staff employees of the Committee on Education and Labor to submit vouchers for transportation expenses or subsistence on many trips performed by them, allegedly upon official business, raised a serious question before this special subcommittee as to whether such travel was actually on official business or was for purely personal reasons. The absence of expense vouchers is highly unusual in view of the general practice of Government employees, including employees of the Congress, to claim travel expenses, including transportation and subsistence, when traveling in an official capacity.

9. All vouchers for payment of travel costs of the Committee on Education and Labor bore the signature "Adam C. Powell," certifying said vouchers to the Committee on House Administration for payment from the contingent fund.

While it is beyond the scope of this report to review in detail the evidence developed by the Hays subcommittee, this Committee deems it pertinent to summarize portions of that evidence which relate specifically to conduct by Member-elect Powell.

1. The record before the subcommittee disclosed several instances in which Mr. Powell, as chairman of the House Education and Labor Committee, authorized or directed the expenditure of committee funds for private and nonofficial purposes. On or about August 1, 1966, Mr. Powell and Miss Corrine Huff each interviewed Sylvia J. Givens with regard to employment by the committee. They specifically advised Miss Givens that part of her duties would be work as a domestic for Mr. Powell. Mr. Powell authorized the hiring of Miss Givens by the committee as an assistant clerk, and a few days thereafter requested that she prepare to travel to the Bahamas with him on Sunday, August 7. Miss Givens accompanied Mr. Powell and Miss Huff to Mr. Powell's house in Bimini where for almost 2 weeks she served as a domestic performing cooking and cleaning chores after which she returned to Washington. Miss Givens remained on the committee payroll until September 6, when she was discharged. She received from the committee her full monthly gross salary of $350.74 for August and was paid nothing by Mr. Powell for her services in Bimini.[17]

[17] Miss Givens was given $100 by Mr. Powell "to buy," as she testified, "uniforms for the domestic work I was to do" (Hays subcommittee, hearings, p. 10).

On Sunday, March 28, 1965, Mr. Powell directed Louise M. Dargans, then chief clerk of the committee, to purchase on her committee air travel card four airline tickets, from Washington to New York City, in the names of committee staff members but for the use of other persons having no apparent connection with the committee or its official business. The persons who were to use the tickets were Adam C. Powell III, Mr. Powell's 20-year-old son, Pearl Swangin, and Jack Duncan, both personal friends of Mr. Powell, and Lillian Upshur, an employee in Mr. Powell's congressional office. These individuals were present with Mr. Powell on the day in question at a social gathering in Washington. Miss Dargans, acting on Mr. Powell's express instructions, accompanied Mr. Powell III, Miss Swangin, Mr. Duncan, and Miss Upshur to the airport where she discovered that tickets for the Eastern Air Lines shuttle flight could only be purchased in flight. She thereupon gave her committee air travel card to Miss Upshur and later so reported to Mr. Powell. The committee subsequently received and paid for four shuttle tickets to New York purchased on March 28, 1965, and signed for in the names of committee staff members. Each of these committee staff members has denied making the flight (Hays subcommittee hearings, pp. 71–75, 97–99, 138, 166, 218, 223).

During 1965 and 1966, Mrs. Emma Swann, a receptionist on the staff of the committee, whose duties did not require official travel, was given by Mr. Powell, or at his direction, on at least three separate occasions, round trip tickets to Miami paid for by the committee. These trips were in the nature of vacation trips during which, according to Mrs. Swann's testimony, she shopped and went sightseeing in Miami. Mr. Powell not only arranged for Mrs. Swann's airline tickets but also authorized her to be absent from her official duties for several days in connection with each trip (Hays subcommittee hearings, pp. 278–283, 287).

2. On two occasions during 1966, Mr. Powell made refunds to the committee for airline tickets previously purchased on committee air travel cards under circumstances indicating that his purpose may have been to conceal his use of committee funds for personal travel.

One such refund was made on or about October 28, 1966, several weeks after the Hays subcommittee investigation had begun and covered travel performed the preceding August, for which the committee had received a bill as early as September 21, 1966. The travel in question was performed by Mr. Powell, Miss Huff, C. Sumner Stone, special assistant to the chairman, Mrs. Stone, and Sylvia J. Givens between Washington, New York City, and Miami. The flights were part of a vacation trip to Bimini for Mr. Powell, Miss Huff, and Mr. and Mrs. Stone. With regard to Miss Givens, the refund covered only part of her travel. No refund was made with respect to her return flight from Miami to Washington which was purchased on Mr. Powell's committee air travel card. (Hays subcommittee hearings, pp. 6–9, 13, 22–23, 85–89, 101, 107–109, 123–131, 139; Report, p. 6.)

A second refund covered airline tickets for Mr. Powell and Miss Huff between Washington and Oklahoma City purchased in July 1966, on a committee air travel card. Subsequently, Mr. Powell gave Miss Dargans, the committee's chief clerk, his check and that of Miss Huff, each in the amount of $197.15 as reimbursement for the cost of these tickets. Although Mr. Powell's and Miss Huff's checks

were both dated July 29, 1966, bank markings on at least one of the checks indicate it was not negotiated until about November 9, 1966—over a month after the Hays subcommittee investigation had begun. (Hays subcommittee hearings, pp. 23–24, 87, 90, 109.)

3. The record before the Hays subcommittee disclosed repeated instances of airline travel by Mr. Powell and Miss Huff paid for by the Committee on Education and Labor but as to which (*a*) no subsistence was claimed and (*b*) the travel was under the assumed names of committee staff personnel. The clear inference to be drawn from these facts—later confirmed by evidence adduced before this Committee—is that much, if not all, of the travel in question, although paid for by the committee, was personal in nature.

C. Sumner Stone, special assistant to Mr. Powell as chairman of the Education and Labor Committee during most of the 89th Congress, testified that from time to time Mr. Powell directed him to purchase airline tickets with his committee air travel card in his own name and in the names of Cleomine Lewis, Odell Clark, Emma Swann, and John Warren—all committee staff members. Stone stated that in most instances the tickets were not utilized by the persons named but rather by Mr. Powell and Miss Huff. He testified (Hays subcommittee hearings, p. 120):

> Q. What names would the chairman order you to put in from time to time?
> A. My name, Lewis, Clark, Swann, Warren. Those are the only ones.
> Q. Would he order you specifically to put those names in when he asked to pick up tickets for him?
> A. Yes, sir.
> Q. Did the persons or the parties whose names appeared on the ticket perform the travel?
> A. Not very frequently; no, they didn't.
> Q. Who would be actually performing the travel on those tickets?
> A. The chairman.
> Q. Who else with the chairman?
> A. Miss Huff.
> Q. Who else?
> A. That is all.

Stone also testified that Miss Huff customarily traveled under the names of Swann and Lewis (p. 122):

> Q. Didn't Miss Huff travel under the name of Swann?
> A. Yes, sir.
> Q. How often would she travel under the name of Swann?
> A. I don't know. I don't know how many times.
> Q. It was customary for her to travel under an assumed name; is that correct?
> A. That is right.
> Q. Who would decide what name she was going to travel under on a particular trip?
> A. The chairman.
> Q. Did she also travel under the name of Lewis?
> A. Yes, sir.

In early 1966, Mr. Powell directed Stone to purchase 20 or more airline tickets at one time in the names of Swann, Clark, Lewis, and Stone. A variety of points of origination and destination were involved including Washington-Miami and New York City-Miami. Stone delivered the tickets to Mr. Powell, but he did not know whether or how Mr. Powell used them. (Hays subcommittee hearings, pp. 121–122, 144.)

(b) Additional evidence adduced before this Committee

This Committee's investigation of air travel expenditures by the House Education and Labor Committee has expanded upon the record made before the Hays subcommittee in two principal respects. First, the examination includes not only the 89th Congress, but also the 87th and 88th Congresses—i.e., the entire period during which Mr. Powell was chairman of the committee. Second, by analysis of immigration records and records of certain air taxi operators, this Committee has been able to establish that many airline flights to and from Miami by Mr. Powell, Miss Huff, and staff members, which flights were charged to the Education and Labor Committee, were in fact destined for, or originated at, Bimini in the Bahamas and, therefore, did not, in all likelihood, involve official committee business. It may be noted that this Committee's efforts to ascertain the complete facts regarding the travel in question were hampered by the refusal of Mr. Powell to answer questions on the subject, by Miss Huff's refusal to respond to a subpena served upon her, and by the Committee's inability to find and serve a subpena upon Mrs. Swann.

With regard to the 87th and 88th Congresses, the Committee's investigation was hampered by the fact that the airlines do not retain flight tickets for more than 2 years after their use. Nonetheless, the Committee found that, during those Congresses, the Education and Labor Committee was charged $8,055.57 for 105 airline tickets for which no related claim for subsistence or other expenses was made. The significance of a failure to claim subsistence in connection with official travel was explained by Robert D. Gray, the Committee's chief auditor (on loan from GAO):

> Mr. GRAY. The travel regulations of the House provide for any member or employee of the committee who is traveling on official business to make claim for reimbursement for subsistence and other expenses related to that travel and it has been my experience that it would be highly unusual for an employee traveling on official business not to claim reimbursement of his subsistence and taxi and other expenses that were related to that travel.
>
> Mr. PATTERSON. You mean that if travel is chargeable, per diem is also chargeable?
>
> Mr. GRAY. That is right, sir.

With regard to the 89th Congress the Committee discovered a total of 346 airline trips for which the Committee on Education and Labor paid $12,576.82 and concerning which no claims for subsistence were made. Of these, 82 trips amounting to $6,490.63 were made to or from Miami. In view of the unusual volume of Miami travel the Committee made a detailed analysis of flights to and from Miami. Although this analysis was necessarily incomplete, it showed (*a*) that

a substantial number of these flights were destined for or originated at Bimini; (*b*) that on a substantial number of the flights Mr. Powell or other committee staff members traveled under assumed names; and (*c*) that in several instances tickets paid for by the Education and Labor Committee clearly were used by a person not on the committee's staff and having no apparent connection with its official business.

By way of illustration, the analysis of Miami travel shows that on March 11, 1966, persons traveling on tickets in the names of Emma Swann, Cleomine Lewis, and Odell Clark, all committee staff members, arrived in Miami at 12:45 p.m. At 2:45 p.m. on the same day Mr. Powell, Miss Huff, Francis C. Swann (not on the committee's staff), and Robert J. Reed (not on the committee's staff) departed for Bimini. On March 19 these four persons returned to Miami and on the same day two persons departed from Miami using tickets in the names of Clark and Lewis. Similarly, on January 23, 1966, persons traveling in the names of Odell Clark, Carol T. Aldrich, Adam C. Powell, Cleomine Lewis, and Emma Swann arrived in Miami at 7:40 p.m. and at 9:00 a.m. the next morning, Mr. Powell, Miss Huff, Miss Aldrich, Adam C. Powell III (not on the committee's staff), and Francis Swann (not on the committee's staff) departed for Bimini.

The Hays subcommittee found that Mr. Powell, as chairman of the Committee on Education and Labor, certified for payment from the contingent fund of the House, vouchers covering payment of travel for members of the staff of the Committee on Education and Labor. Clearly, portions of such travel were not official.

In addition, the Select Committee ascertained from the Department of State that, as chairman of the Committee on Education and Labor, Mr. Powell received from the State Department in 1961, 1962, 1963, and 1964 reports as to the amount of expenditures of foreign exchange currency in U.S. funds he made while abroad during these years, as well as similar expenditures made by Miss Corrine Huff and Miss Tamara Wall in 1962. Subsequently, as chairman of the Committee of Education and Labor, Mr. Powell filed with the Committee on House Administration reports listing substantially lower sums for these expenditures which were then published in the Congressional Record. The amounts received and the amounts reported are as follows:

Year	Amounts received by Adam Clayton Powell	Amounts reported by Adam Clayton Powell
1961	$5,777.21	$3,283.37
1962	4,300.04	1,544.00
1963	1,060.60	721.21
1964	2,457.59	1,353.71
	Amounts received by Tamara Wall	
1962	3,536.30	1,653.00
	Amounts received by Corrine Huff	
1962	2,998.38	1,741.50

Such acts by Mr. Powell as chairman of a committee are in violation of rule IX of the Rules of the House in that they affect the rights of the House collectively, its safety, dignity, and the integrity of its proceedings.

3. As a Member of the House of Representatives

(*a*) *Y. Marjorie Flores (Mrs. Adam C. Powell).*—Both this committee and the Subcommittee on Contracts made inquiry into the payment of salary checks to Y. Marjorie Flores (Mrs. Adam C. Powell) as a member of Mr. Powell's congressional staff to determine (1) whether she was performing her official duties (if any) in Washington, D.C., or New York, as required by law,[18] and (2) the extent to which she was performing any official duties at all. This Committee found that although she remained on Mr. Powell's clerk-hire payroll until December 1966 Mrs. Powell had performed no official duties whatever since the summer of 1965 and had not performed any official services in Washington or New York since 1961. The evidence also showed that Mr. Powell had for several years deposited in his own bank account salary checks issued to Mrs. Powell.

In response to subpena, Mrs. Powell appeared to testify before this Committee on February 16, 1967, accompanied by counsel. Mrs. Powell testified that she first began to work for Representative Powell on his congressional staff in Washington in 1958. She remained on his clerk-hire payroll continuously through December 1966, at which time her annual salary was $20,578.44. In December 1960 she and Mr. Powell were married in San Juan, and for a while thereafter they made their home in Washington, D.C. Since 1961, however, she has resided in San Juan. Mrs. Powell testified that prior to her appearance before this Committee she had been in Washington only twice since 1961—once for about a week, the other time for about 3 days. On one of these visits, around the summer of 1964, she spent approximately a month with friends on Long Island, N.Y., but did not do any work in connection with Mr. Powell's congressional office.

Mrs. Powell testified that after she returned to San Juan in 1961 she received mail forwarded from Mr. Powell's congressional office requiring translation from Spanish to English. During the 87th Congress the volume of such mail was sufficient to keep her busy about 5 to 6 hours a day. However, during the 88th Congress the volume of mail received by Mrs. Powell became less and less, as indicated by the following testimony:

> Mr. GEOGHEGAN. Could you give us some idea as to how much work in terms of time required to perform this service you were doing during the 88th Congress? That is the period generally speaking of 1963 and 1964.
>
> Mrs. POWELL. 1963–64—about 1963 is the time I started getting less work from his office in Washington and I would say it probably wouldn't amount to more than 2 hours a day.
>
> Mr. GEOGHEGAN. Did the amount of work actually trickle off to almost nothing?
>
> Mrs. POWELL. Yes.
>
> Mr. GEOGHEGAN. When did that occur?
>
> Mrs. POWELL. About the summer of 1965, June, July, something like that.

[18] Public Law 89-90, sec. 103; see H. Res. 294, 88th Cong.; H. Res. 7, 89th Cong.

Mrs. Powell testified that subsequent to her marriage in 1960 and until November 1966, with possibly a few exceptions, she did not receive the salary checks made payable to her as a member of Mr. Powell's congressional office staff. Upon being shown photocopies of payroll checks issued in her name from January 1965 to about August 1966, she stated that none of the endorsements were in her handwriting.[19] And she testified:

> Mr. GEOGHEGAN. Mrs. Powell, did you at any time in writing or verbally authorize Mr. Powell to receive your checks, endorse them and keep them?
> Mrs. POWELL. No.

In November 1966, Mrs. Powell sent written instructions addressed to the House disbursing office to mail her salary checks to her in San Juan and thereafter she received two checks prior to her removal from Mr. Powell's clerk-hire payroll. Her testimony in this regard was:

> Mrs. POWELL. Well, I had been trying to get Adam to either bring me back to Washington to work, or get me off the payroll, which to me was a very embarrassing situation back home with the papers and everything, and I just could never—most of the time I wouldn't even get an answer. I figured that by my doing this, he would get me out of the payroll right away, which I think he probably would have done if the Committee hadn't decided it, or bring me back to Washington. I wanted either thing done, and that is why I got those checks, aside from that, I had a lot of bills that were his bills, but the pressure was on me because I am the one who is back there, and I thought I could pay some of them.

The Committee concludes from the foregoing evidence that Mrs. Powell has not performed any official duties whatever since at least the summer of 1965 and has not performed any official duties in Washington or New York since 1961. Accordingly, Mr. Powell has improperly maintained Mrs. Powell on his clerk-hire payroll from August 14, 1964, when House Resolution 294 was adopted[20] until December 1966, resulting in improper payments in the amount of $44,188.61.

(*b*) *Noncooperation with House committees.*—A factor considered by this Committee in making its recommendations was Mr. Powell's behavior both before the Hays subcommittee and before this Committee. Although charges of serious misconduct on his part were being considered by both committees, Mr. Powell refused in each case to respond to the charges or otherwise assist the Committee in its inquiry, and, in the case of the Hays subcommittee he failed even to appear.

On December 9, 1966, the Hays subcommittee "respectfully requested" Mr. Powell to appear at a hearing scheduled for December

[19] Louise M. Dargans (then chief clerk of the Committee on Education and Labor) testified before the Hays subcommittee that at Mr. Powell's direction she has signed Miss Flores' and Mr. Powell's names to each of those paychecks except three and deposited them to Mr. Powell's account. Miss Dargans had a power of attorney authorizing her to sign Mr. Powell's name but had no authorization from Mrs. Powell. The endorsements on the three checks which Miss Dargans didn't sign appeared to her to be in Mr. Powell's handwriting (Hays subcommittee hearings, pp. 25-34, 92-94, 297, 302-304; Report, "Individual Pay Cards," after p. 86).

[20] Sec. 2 of H. Res. 294, 88th Cong., provides: "No person shall be paid from any clerk-hire allowance if such person does not perform the services for which he receives such compensation in the offices of such Member * * * in Washington, District of Columbia, or in the State or the district which such Member * * * represents."
This provision was readopted in the 89th Cong. by resolution, H. Res. 7, and then by statute, Public Law 89-90, sec. 103, 79 Stat. 281 (1965).

21, 1966. Mr. Powell, in a letter dated December 17 to Representative Hays replied that he would appear only if the subcommittee agreed to certain "conditions," as follows:

> I, therefore, am unhappily constrained to request that, in the interest of fairplay, the following conditions be established for my appearance before your subcommittee:
>
> (1) The investigation include a comparative analysis of the travel vouchers of staff members of other full committees and subcommittees, including your own. I am prepared to provide immediate additional investigators and secretarial staff to assist your staff.
>
> (2) The investigation include a comparable analysis of the travel undertaken by all other committee and subcommittee chairmen.
>
> (3) That I be permitted to read into the record the following articles and series of articles:
>
> (*a*) The Life magazine article of June 6, 1960, by Walter Pincus and Don Oberdorfer, "How Congressmen Live High Off the Public."
>
> (*b*) The Congressional Quarterly article of March 4, 1966, on congressional foreign travel "Nearly Half of Congress Takes U.S. Paid Trips."
>
> (*c*) The series of articles by Vance Trimble on congressional payrolls beginning January 5, 1959, through December 1, 1959.
>
> (4) That my accompanying counsel be permitted the privilege of cross-examination of certain Congressmen whose travel and activities relate directly to the Education and Labor Committee. I shall submit the list of names to you privately for your prior approval.
>
> (5) That no staff members of the Education and Labor Committee be required to testify before your subcommittee until conditions Nos. 1 and 2 have been fulfilled.

Mr. Powell also stated: "I feel deeply that the conspiratorial tarnishment of my name must be militantly fought and whatever possible measures to protect my name be undertaken." When the subcommittee did not accept Mr. Powell's "conditions," he failed to appear.

Although Mr. Powell appeared before this Committee, he refused to testify concerning the various allegations of misconduct on his part. Mr. Powell thus refused to answer any questions concerning his contempts of the New York courts, his alleged misuse of Government funds as chairman of the Committee on Education and Labor, and the clerk-hire status of Y. Marjorie Flores. Acting on the advice of counsel Mr. Powell stated he only would answer questions relating to the constitutionally enumerated qualifications of age, citizenship, and inhabitancy.[21] This Select Committee respects Mr. Powell's rights to rely on the advice of counsel. Nonetheless, it is clear that Mr. Powell, had he so desired, could have answered fully the Committee's questions and thereby assisted the Committee in its assigned duties while at the

[21] Even his answers to questions relating to inhabitancy were, in the Committee's view, less than candid. Mr. Powell also refused to answer any questions relating to residences maintained by him outside of New York.

same time reserving and maintaining the legal objections raised by his counsel.

We conclude that Mr. Powell has not only failed to assist this Committee and the Hays subcommittee in their inquiries but also that he has, in his own words to the Hays subcommittee, "militantly fought" the efforts of both committees to ascertain the true facts concerning the charges against him.[22]

Legal Support for Recommendations

Counsel for Mr. Powell have raised a number of legal issues, including whether the Select Committee can consider any qualifications other than the three set forth in article I, section 2 of the Constitution, and whether the House may properly expel a Member for acts committed in a prior Congress. Since the Select Committee does not recommend a resolution calling either for the exclusion[23] of Mr. Powell, or for his expulsion,[24] it is unnecessary for it to pass upon the constitutional questions discussed in the briefs filed on behalf of Mr. Powell.

A. AGE, CITIZENSHIP, AND INHABITANCY

There is no question that Mr. Powell satisfies the constitutional requirements of age and citizenship, and the Committee so finds. An issue has been raised, however, as to whether Mr. Powell is an "inhabitant" of New York.

An exhaustive study of the inhabitancy requirement is to be found in the report from the Committee on Elections No. 2 submitted in the James M. Beck election case, where the sole question involved was the "naked constitutional question as to whether, under the facts, Mr. James M. Beck at the time of his election to the House of Representatives was an inhabitant of Pennsylvania." [25] The provision as originally drafted required that a representative be a "resident" of the State from which he should be chosen. As reported in the "Madison Papers," during the Constitutional Convention, a motion was made to strike out the word "resident" and insert "inhabitant" as less liable to misconstruction.

> Mr. Madison seconded the motion. Both were vague, but the latter least so in common acceptation, and would not exclude persons absent occasionally for a considerable time on

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[22] The Committee notes that Corrine Huff, a member of Mr. Powell's staff, failed to respond to a Committee subpena served on her in Bimini, where Mr. Powell has a home, and where she evidently remained throughout the period of the Committee's investigation.

[23] See *William McCreery*, 10 Cong. (1807), 1 Hinds, sec. 414; *Turney* v. *Marshall* and *Fouke* v. *Trumball*, 34th Cong. (1856), 1 Hinds, sec. 415; case of *Benjamin Stark*, 37 Cong. (1862), 1 Hinds, sec. 443; case of *Humphrey Marshall*, 8. Journ. 4th Cong., 1st sess., pp. 194 *et seq.*; *Francis N. Shoemaker*, 73d Cong. (1933), 77 Cong. Rec. 73-74; *William Langer*, 77th Cong. (1942), S. Journ. 77th Cong., 1st sess., pp. 8 *et seq.*, 2d sess., pp. 3 *et seq.*; *Brigham Roberts*, 56th Cong. (1899), 1 Hinds, sec. 474; *Cases of Kentucky Members*, 40th Cong. (1867); *B. F. Whittemore*, 41st Cong. (1870), 1 Hinds, sec. 464; *Victor Berger*, 66th Cong., 58 Cong. Rec. (1919); see also 33 Virginia Law Review 332 (1947). Cf. *Bond* v. *Floyd*, 87 Sup. Ct. 339, Dec. 5, 1966. The Supreme Court in *Bond* barred the exclusion of a Representative-elect by the Georgia Legislature. While the Court's decision turned on the point that the disqualification of the Representative-elect because of certain statements he had made violated Bond's right of free expression under the first amendment, the Court's interpretation of the constitutional history of the power of Congress on qualifications for seating is an indication of its views on this question (see footnote 13 to the Court's opinion).

[24] There have been only three cases of expulsion by the House of Representatives and all took place during the Civil War. John W. Reid of Missouri, Henry C. Burnett of Kentucky, and John B. Clark, a Member-elect from Missouri, were all expelled pursuant to a House resolution in 1861 on grounds they had taken up arms against the United States or were in open rebellion against the Government of the United States. 2 Hinds, sec. 1261.

[25] H.R. Rept. 975, 70th Cong., 1st sess., Mar. 17, 1928. This report, among other things, quotes the entire debate from the "Madison Papers" attending the adoption of the clause requiring inhabitancy in the State as a qualification for membership in Congress.

public or private business. Great disputes had been raised in Virginia, concerning the meaning of residence as a qualification of Representatives which were determined more according to the affection or dislike to the man in question, than to any fixt interpretation of the word.

After considering the entire debate from the "Madison Papers," the report on James M. Beck construed the term "inhabitant" in the following manner:

It is evident that in this debate the framers of the Constitution were seeking for a nontechnical word, the main purpose of which would be to insure that the Representative, when chosen, from a particular State should have adequate knowledge of its local affairs and conditions. Mr. Madison, Mr. Wilson, and Mr. Mercer all emphasized that it was not desired to exclude men who had once been inhabitants of a State and who were returning to resettle in their original state, or men who were absent for considerable periods on public or private business. The convention by vote deliberately declined to fix any time limit during which inhabitancy must persist.

To these men an "inhabitant" was one who had an abode within a Colony and was recognized and identified as one who was a member of the body politic thereof. The fact that he might absent himself physically from the Colony for a very considerable period of time did not militate against the recognition of him as an inhabitant of such a Colony, and this remained true after the Colonies had achieved their independence and had become independent States. Thus, though George Washington was for the greater part of 16 years absent from Mount Vernon and Benjamin Franklin was absent for years from Pennsylvania, no one would have considered there was any cloud on their title as inhabitants, respectively, of the States of Virginia and Pennsylvania. In those early times it was the uncommon rather than the common thing that a man should have more than one place of abode. In these modern times it is quite common that men have two or more places of abode to which they may repair according to the season of the year, according to their business convenience, or according to the public duties which they may be called upon to discharge. This is true of many Members of each House of the Congress today, but the principle has not changed. Admittedly a man can have but one inhabitancy within the meaning of the Constitution at a given time. Where this may be is a mixed question of intent and of fact.

* * * * * * *

* * * We think that a fair reading of the debate on this paragraph of the Constitution discloses that it was not intended that the word "inhabitant" should be regarded in a captious, technical sense. * * * We think that a fair interpretation of the letter and the spirit of this paragraph with respect to the word "inhabitant" is that the framers intended that for a person to bring himself within the scope of its

> meaning he must have and occupy a place of abode within the particular State in which he claims inhabitancy, and that he must have openly and avowedly by act and by word subjected himself to the duties and responsibilities of a member of the body politic of that particular State.
>
> * * * * *
>
> We do not think that the framers of the Constitution intended by the use of the word "inhabitant" that the anomalous situation might ever arise that a man should be a citizen, a legal resident, and a voter within a given State and yet be constitutionally an inhabitant elsewhere. * * * [26]

In the election case of *Updike* v. *Ludlow* (71st Cong. (1930) 6 Cannon's Precedents, sec. 55) it was held that a Member-elect who had paid his poll and income taxes and voted regularly in Indiana during a 27-year period in which he was a Washington correspondent of an Indianapolis newspaper, and who expected eventually to return to that State, was an inhabitant in the constitutional sense. As summarized by the report, "The inhabitancy of the individual is to be determined by his intention as evidenced by his acts in support thereof" and not upon the basis of his actual residence.

Applying these established criteria to the facts in this case, it is clear that Mr. Powell was an inhabitant of the State of New York on the date of his election.

B. THE POWER OF THE HOUSE TO CENSURE OR OTHERWISE PUNISH A MEMBER

The power of each House of Congress to punish its Members "for disorderly behavior" is found in article I, section 5, clause 2 of the Constitution.

The nature of the power of the House to punish for disorderly behavior has been described as follows (H. Rept. 570, 63d Cong., 2d sess., 6 Cannon, sec. 398):

> * * * 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.

Nor is the conduct for which punishment may be imposed limited to acts relating to the Member's official duties. See case of *William Blount* (2 Hinds, sec. 1263); also discussed in *In re Chapman* (166 U.S. 661 (1897)). The Senate committee considering censure of Senator McCarthy stated (S. Rept. 2508, 83d Cong., p. 22):

> It seems clear that if a Senator should be guilty of reprehensible conduct unconnected with his official duties and

[26] H. Rept. 975, pp. 6-9. The minority report did not challenge the majority report's construction of the term "inhabitant," but rather differed with the majority on the application of the facts concerning Member-elect Beck's inhabitancy under the principles enunciated by the majority.

position, but which conduct brings the Senate into disrepute, the Senate has the power to censure.

1. Censure

Censure of a Member has been deemed appropriate in cases of a breach of the privileges of the House. There are two classes of privilege, the one, affecting the rights of the House collectively, its safety, dignity, and the integrity of its proceedings; and the other, affecting the rights, reputation, and conduct of Members, individually, in their representative capacity (House Rule IX, Cannon's Procedure in the House of Representatives, House Doc. 610, 87th Cong., p. 284). During its history, the House of Representatives has censured 17 Members and one Delegate. All but one of the instances of censure occurred during the 19th century, 13 Members being censured between 1864 and 1875. The last censure in the House was imposed in 1921. In the Senate, there are four instances of censure, the latest being the censure of Senator McCarthy in 1954.

Most cases of censure have involved the use of unparliamentary language, assaults upon a Member or insults to the House by introduction of offensive resolutions,[27] but in five cases in the House and one in the Senate censure was based on corrupt acts by a Member, and in another Senate case censure was based upon noncooperation with and abuse of Senate committees.[28] The latter cases, since they have particular pertinence here, are deserving of closer scrutiny.

In 1870, during the 41st Congress, the House censured John T. DeWeese, B. F. Whittemore, and Roderick R. Butler for the sale of appointments to the U.S. Military and Naval Academies. In Butler's case, the Member had appointed to the Military Academy a person not a resident of his district and subsequently received a political contribution from the cadet's father. Censure of DeWeese and Whittemore was voted notwithstanding that each had previously resigned. A resolution to expel Butler was defeated upon failure to obtain a two-thirds vote, whereupon a resolution of censure was voted in which the House "declare[d] its condemnation" of his conduct, which it characterized as "an unauthorized and dangerous practice" (2 Hinds, secs. 1239, 1273, 1274).

In 1873, during the 42d Congress, a special investigating committee was appointed to inquire into charges that Members of the House had been bribed in connection with the Credit Mobilier Co. and the Union Pacific Railroad. The committee reported that Representative Oakes Ames

> * * * has been guilty of selling to Members of Congress shares of stock in the Credit Mobilier of America for prices much below the true value of such stock, with intent thereby to influence the votes and decisions of such Members in matters to be brought before Congress for action * * *

With regard to Representative James Brooks, the committee found that he

> * * * did procure the Credit Mobilier Co. to issue and deliver to Charles H. Neilson, for the use and benefit of said Brooks, 50 shares of the stock of said company at a price

[27] See 2 Hinds, secs. 1246–1249, 1251, 1256, 1305, 1621, 1656; 6 Cannon, sec. 236.
[28] See 2 Hinds, secs. 1239, 1273, 1274, 1286; 6 Cannon, sec. 239; "Senate Election, Expulsion and Censure Cases," S. Doc. 71, 87th Cong., pp. 125–127, 152–154.

> much below its real value, well knowing that the same was so issued and delivered with intent to influence the votes and decisions of said Brooks as a Member of the House in matters to be brought before Congress for action, and also to influence the action of said Brooks as a Government director in the Union Pacific Co. * * *.

Although the committee recommended that both Members be expelled, divergence of views developed regarding the power of the House to expel a Member for acts committed in a preceding Congress. After debate the House adopted substitute censure resolutions in which it "absolutely condemn[ed]" the conduct of Ames and Brooks (2 Hinds, sec. 1286).

Turning to Senate precedents, in 1929 Senator Bingham of Connecticut was censured for having placed on the Senate payroll, and used as a consultant on a pending tariff bill, one Charles L. Eyanson, who was simultaneously in the employ of the Manufacturers Association of Connecticut. The investigating committee reported:

> Eyanson came to Washington [while the tariff bill was under consideration] to take position, in effect, as a clerk in the office of Senator Bingham * * *. He assembled material in connection with the hearing before the Senate Committee on Finance and attended the hearings, occupying a seat from which he could communicate with Senator Bingham and aided him with suggestions while the hearings were in progress.

Eyanson also attended with Senator Bingham secret meetings of the majority members of the Finance Committee concerning the tariff bill, until his presence was objected to by other Senators. Senator Bingham admitted that the facts Eyanson provided influenced him in his duties. The Senate adopted a resolution of censure providing that Senator Bingham's conduct regarding Eyanson "while not the result of corrupt motives on the part of the Senator from Connecticut, is contrary to good morals and senatorial ethics and tends to bring the Senate into dishonor and disrepute, and such conduct is hereby condemned." (6 Cannon, sec. 239; "Senate Election, Expulsion and Censure Cases," pp. 125–127.)

The censure of Senator McCarthy in 1954 was based on his conduct toward two Senate investigating committees. In 1951, during the 82d Congress, a resolution had been introduced by Senator Benton calling for an investigation to determine whether expulsion proceedings should be instituted against Senator McCarthy by reason, *inter alia*, of his activities in the 1950 Maryland senatorial election, which resolution was referred to the Subcommittee on Privileges and Elections, whose chairman was Senator Gillette. McCarthy rejected invitations to attend the hearings of the Gillette subcommittee, termed the charges against him a Communist smear, and stated that the hearings were designed to expel him "for having exposed Communists in Government" ("Senate Election, Expulsion and Censure Cases," pp. 149–150). In 1954, during the succeeding 83d Congress, a censure resolution against Senator McCarthy was introduced and referred to a select committee headed by Senator Watkins. The Watkins committee recommended censure in part on the ground that McCarthy's conduct toward the Gillette subcommittee, its members and the Senate "was contemptuous, contumacious, and denunciatory, without reason,

or justification, and was obstructive to legislative processes" (S. Rept. 2508, 83d Cong., p. 31). After debate, the Senate adopted a resolution censuring McCarthy on two counts:

> (1) For his noncooperation with and abuse of the [Gillette] subcommittee * * * in 1952 during an investigation of his conduct as a Senator; and
>
> (2) For abuse of the Select Committee to Study Censure [Watkins committee] ("Senate Election, Expulsion and Censure Cases," pp. 152–154).

Although, there has been a divergence of views concerning the power of a House to expel a Member for acts committed during a preceding Congress, the right of a House to *censure* a Member for such prior acts is supported by clear precedent in both Houses of Congress—namely, the case of *Ames* and *Brooks* in the House of Representatives and the case of Senator McCarthy in the Senate. In *Ames* and *Brooks* the acts for which censure was voted occurred more than 5 years prior to censure and two congressional elections had intervened. Furthermore, the question of punishment for acts during a preceding Congress was the subject of full and conflicting discussion in the reports of the special investigating committee and the House Judiciary Committee. The question was also debated at length by the House.[29] With the prior acts issue thus fully in mind, the House voted overwhelmingly to censure Ames and Brooks (2 Hinds, sec. 1286).

In McCarthy's case, as noted above, one of the counts on which censure was voted in 1954 concerned his conduct toward the Gillette subcommittee in 1952 during the preceding Congress. The report of the select committee discussed at length the contention by Senator McCarthy that since he was reelected in 1952, the committee lacked power to consider, as a basis for censure, any conduct on his part occurring prior to January 3, 1953, when he took his seat for a new term (S. Rept. 2508, 83d Cong., pp. 20–23, 30–31). The committee stated (p. 22):

> 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 own 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.

[29] See Cong. Globe, 42d Cong., 3d sess., pp. 1722, 1817–1819, 1821, 1825, 1827–1830.

Elaborating on its view that only the Senate can pass judgment upon conduct adverse to its processes and committees, the select committee added (pp. 30–31):

> 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.

2. Other forms of punishment

Although rarely exercised, the power of a House to impose upon a Member punishment other than censure but short of expulsion seems established. There is little reason to believe that the framers of the Constitution, in empowering the Houses of Congress to "punish" Members for disorderly behavior and to "expel" (art. I, sec. 5, clause 2), intended to limit punishment to censure.[30] Among the other types of punishment for disorderly behavior mentioned in the authorities are fine and suspension.[31]

In the case of Senators Tillman and McLaurin in 1902, during the 57th Congress, the Senate specifically considered the question of punishment other than expulsion or censure. The case arose on February 22, 1903, and involved a heated altercation on the floor of the Senate in which the two men came to blows. The Senate went immediately into executive session and adopted an order declaring both Senators to be in contempt of the Senate and referring the matter to a committee. The President pro tempore ruled that neither Senator could be recognized while in contempt and subsequently directed the clerk to omit the names of McLaurin and Tillman from a rollcall vote on a pending bill. On February 28, the committee to which the matter had been referred recommended a resolution of censure, which the Senate adopted, stating that Tillman and McLaurin are "censured for the breach of the privileges and dignity of this body, and from and after the adoption of this resolution the order adjudging them in contempt of the Senate shall be no longer in force and effect" (2 Hinds, sec. 1665). "The penalty," according to "Senate Election, Expulsion and Censure Cases" (p. 96), "thus, was censure and suspension for 6 days—which had already elapsed since the assault" (footnote omitted).

In the committee report on the Tillman-McLaurin case, three of the 10-member majority submitted their views on the issue of suspension (2 Hinds, pp. 1141–1142):

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[30] House Rule XIV provides in part: "If any member, in speaking or otherwise, transgress the rules of the House * * * and, if the case shall require it, he shall be liable to censure or such punishment as the House may deem proper."

[31] In the course of a debate in 1893 concerning the conduct of Senator Roach (see Hinds, sec. 1289), Senator Mills stated (Congressional Record, 162, 53d Cong., 1st sess.):

"* * * This body is vested with certain enumerated powers to enable them to execute the functions charged upon it by the Constitution. It may compel the attendance of its members. It may use whatever force is necessary to compel the attendance of its members. The decisions of the Supreme Court say it may imprison. It is a very high exercise of judicial power to deprive the citizen of his liberty. It may fine. That is lighter, but still it may be a severe punishment. It may reprimand, and that is regarded both in the Senate and House of Representatives as an intensely severe punishment. The Constitution fixes the limit to the punishment which it may inflict by saying that it may expel by a two-thirds vote * * *"

Since punishment for disorderly behavior may be inflicted by a majority vote in the Senate, what sorts of punishment may be imposed upon a Senator?

* * * * *

* * * The Senate has not like power with Parliament in punishing citizens for contempt, but it has like power with Parliament in punishing Senators for contempt or for any disorderly behavior or for certain like offenses. Like Parliament, it may imprison or expel a member for offenses. "The suspension of members from the service of the House is another form of punishment." (May's Parliamentary Practice, 53.) This author gives instances of suspension in the seventeenth century and shows the frequent suspension of members under a standing order of the House of Commons, passed February 23, 1880.

Says Cushing, section 280: "Members may also be suspended by way of punishment, from their functions as such, either in whole or in part or for a limited time. This is a sentence of a milder character than expulsion."

* * * * *

The Senate may punish the Senators from South Carolina by fine, by reprimand, by imprisonment, by suspension by a majority vote, or by expulsion with the concurrence of two-thirds of its members.

The offense is well stated in the majority report. It is not grave enough to require expulsion. A reprimand would be too slight a punishment. The Senate by a yea-and-nay vote has unanimously resolved that the said Senators are in contempt. A reprimand is in effect only a more formal reiteration of that vote. It is not sufficiently severe upon consideration of the facts.

A minority of four committee members, however, dissented "from so much of the report of the committee as asserts the power of the Senate to suspend a Senator and thus deprive a State of its vote * * *" (p. 1141).

3. Committee view

The 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 discretionary power to punish for disorderly behavior is vested by the Constitution in the House of Representatives, and its exercise is appropriate where a Member has been guilty of misconduct relating to his official duties, noncooperation with committees of this House, or nonofficial acts of a kind likely to bring this House into disrepute.

This Select Committee is of the opinion that the broad power of the House to censure and punish Members short of expulsion extends to acts occurring during a prior Congress. Whether such powers should be invoked in such circumstances is a matter committed to the absolute discretion and sole judgment of the House to be exercised upon consideration of the nature of the prior acts, whether they were known to the electorate at the previous election and the extent to which they

directly involve the authority, integrity, dignity, or reputation of the House.

C. THE SCOPE OF JUDICIAL REVIEW

Pertinent to the issue of judicial reviewability of the action recommended by this Select Committee is recent language of the Supreme Court in *Baker* v. *Carr*, 369 U.S. 186, 217 (1962), where the Court enumerated various factors which establish that a case before it involves "political" (and therefore nonjusticiable) questions:

> Prominent on the surface of any case held to involve a political question is found a textually demonstrable commitment of the issue to a coordinate political department; * * * or the impossibility of a court's undertaking independent resolution without expressing lack of respect due coordinate branches of government; * * * or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

See also *Barry* v. *United States ex rel. Cunningham*, 279 U.S. 597, 613 (1929); *Sevilla* v. *Elizalde*, 112 F. 2d 29, 38 (D.C. Cir. 1940); *Keogh* v. *Horner*, 8 F. Supp. 933 (S.D.Ill. 1934); *Application of James*, 241 F. Supp. 858, 860 (S.D.N.Y. 1965).

In *United States* v. *Johnson*, 337 F. 2d 180 (4th Cir. 1964), aff'd 383 U.S. 169 (1966), where it was held that the Speech or Debate clause [32] precluded a criminal prosecution based on a Member's speech on the floor of the House, the Fourth Circuit stated (p. 190):

> This does not mean that a Member of Congress is immune from sanction or punishment. Nor does it mean that a Member may with impunity violate the law; it means only that the Constitution has clothed the House of which he is a Member with the sole authority to try him. In this respect the Constitution has made the Houses of Congress independent of other departments of the Government. These bodies, the Founders thought, could be trusted to deal fairly with an accused Member and at the same time do so with proper regard for their own integrity and dignity.

Nevertheless, cases may readily be postulated where the action of a House in excluding or expelling a Member may directly impinge upon rights under other provisions of the Constitution. In such cases, the unavailability of judicial review may be less certain. Suppose, for example, that a Member was excluded or expelled because of his religion or race, contrary to the equal protection clause, or for making an unpopular speech protected by the first amendment (cf. *Bond* v. *Floyd*, —— U.S. ——, 87 S. Ct. 339 (1966)). The instant case, of course, does not involve such facts. But exclusion of the Member-elect on grounds other than age, citizenship, or inhabitancy could raise an equally serious constitutional issue. The Supreme Court has stated in *Baker* v. *Carr*, *supra* (369 U.S. at 211):

> Deciding whether a matter has in any measure been committed by the Constitution to another branch of Government, or whether the action of that branch exceeds whatever authority has been committed, is itself a delicate exercise in con-

[32] U.S. Constitution, art. I, sec. 6.

stitutional interpretation, and is a responsibility of this Court as ultimate interpreter of the Constitution.

The Committee believes, however, that, in view of Mr. Powell's breach of the privileges of the House and of the trust reposed in him by the House, action by the House punishing the Member-elect by censure and fine after he is seated, is immune to judicial review.

FINDINGS

1. Mr. Powell is over 25 years of age, has been a citizen of the United States of America for over 7 years, and on November 8, 1966, was an inhabitant of New York State.

2. Mr. Powell has repeatedly asserted a privilege and immunity from the processes of the courts of the State of New York not authorized by the Constitution. Mr. Powell has been held in criminal contempt by an order of the New York State Supreme Court, a court of original jurisdiction, entered on November 17, 1966. This order is now on appeal to the Appellate Division, first department, an intermediate appellate court in the State of New York, and is not a final order. At the time of the Committee's hearings, there were also outstanding three court orders holding Mr. Powell in civil contempt which were issued May 8, 1964, October 14, 1966, and December 14, 1966. The order of May 8, 1964, was vacated when the final judgment against Mr. Powell was satisfied on February 17, 1967.

3. As a Member of Congress, Mr. Powell wrongfully and willfully appropriated $28,505.34 of public funds for his own use from July 31, 1965, to January 1, 1967, by allowing salary to be drawn on behalf of Y. Marjorie Flores as a clerk-hire employee when, in fact, she was his wife and not an employee in that she performed no official duties and further was not present in the State of New York or in Mr. Powell's Washington office, as required by Public Law 89–90, 89th Congress.

4. As a Member of Congress, Mr. Powell wrongfully and willfully appropriated $15,683.27 of public funds to his own use from August 31, 1964, to July 31, 1965, by allowing salary to be drawn on behalf of said Y. Marjorie Flores as a clerk-hire employee when any official duties performed by her were not performed in the State of New York or Washington, D.C., in violation of House Resolution 294 of the 88th Congress and House Resolution 7 of the 89th Congress.

5. As chairman of the Committee on Education and Labor, Mr. Powell wrongfully and willfully appropriated $214.79 of public funds to his own use by allowing Sylvia Givens to be placed on the staff of the House Education and Labor Committee in order that she do domestic work in Bimini, the Bahama Islands, from August 7 to August 20, 1966; and in that he failed to repay travel charged to the committee for Miss Givens from Miami to Washington, D.C.

6. As chairman of the Committee on Education and Labor, Mr. Powell on March 28, 1965, wrongfully and willfully appropriated $72 of public funds by ordering that a House Education and Labor Committee air travel card be used to purchase air transportation for his own son (Adam Clayton Powell III), for a member of his congressional office clerk-hire staff (Lillian Upshur), and for personal friends (Pearl Swangin and Jack Duncan), none of whom had any connection with official committee business.

7. As chairman of the Committee on Education and Labor, Mr. Powell willfully misappropriated $461.16 of public funds by giving to Emma T. Swann, a staff receptionist, airline tickets purchased with a committee credit card for three vacation trips to Miami, Fla., and return to Washington, D.C.

8. During his chairmanship of the Committee on Education and Labor, in the 89th Congress, Mr. Powell falsely certified for payment from public funds, vouchers totaling $1,291.92 covering transportation for other members of the committee staff between Washington, D.C., or New York City and Miami, Fla., when, in fact, the chairman (Mr. Powell) and a female member of the staff had incurred such travel expenses as a part of their private travel to Bimini, the Bahamas.

9. As chairman of the Committee on Education and Labor, Mr. Powell made false reports on expenditures of foreign exchange currency to the Committee on House Administration.

Conclusions and Recommendations

On the basis of the factual record before it, this Select Committee concludes that Member-elect Adam Clayton Powell meets the qualifications of age, citizenship, and inhabitancy and holds a certificate of election from the State of New York. This Committee concludes, however, that the following conduct and behavior of Adam Clayton Powell has reflected adversely on the integrity and reputation of the House and its Members:

First, Adam Clayton Powell has repeatedly ignored processes and authority of the courts in the State of New York in legal proceedings pending therein to which he is a party, and his contumacious conduct towards the New York courts has caused him on several occasions to be adjudicated in contempt thereof, thereby reflecting discredit upon and bringing into disrepute the House of Representatives and its Members.

Second, as a Member of this House, Adam Clayton Powell improperly maintained on his clerk-hire payroll Y. Marjorie Flores (Mrs. Adam C. Powell) from August 14, 1964, to December 31, 1966, during which period either she performed no official duties whatever or such duties were not performed in Washington, D.C., or New York, as required by law.

Third, as chairman of the Committee on Education and Labor, Adam Clayton Powell permitted and participated in improper expenditures of House funds for private purposes.

Fourth, the refusal of Adam Clayton Powell to cooperate with the Select Committee and the Special Subcommittee on Contracts of the House Administration Committee in lawful inquiries authorized by the House of Representatives was contemptuous and was conduct unworthy of a Member.[33]

Simultaneously with the filing of this report and the hearings in connection therewith, the Select Committee is forwarding copies of its hearings, records, and report to the Department of Justice for prompt and appropriate action, with the request that the House be kept advised in the matter.

[33] The Committee notes that much of the foregoing conduct occurred or first became public knowledge subsequent to the 1966 elections and thus could not have been considered by the voters of Mr. Powell's district.

This Committee recommends that—

1. Adam Clayton Powell be permitted to take the oath and be seated as a Member of the House of Representatives.

2. Adam Clayton Powell by reason of his gross misconduct be censured and condemned by the House of Representatives.

3. Adam Clayton Powell, as punishment, pay the Clerk of the House, to be disposed of by him according to law, $40,000; that the Sergeant at Arms of the House be directed to deduct $1,000 per month from the salary otherwise due Mr. Powell and pay the same to the Clerk, said deductions to continue until said sum of $40,000 is fully paid; and that said sums received by the Clerk shall offset any civil liability of Mr. Powell to the United States of America with respect to the matters referred to in paragraphs Second and Third above.

4. The seniority of Adam Clayton Powell in the House of Representatives commence as of the date he takes the oath as a Member of the 90th Congress.

5. The House direct the Clerk of the House of Representatives to forthwith terminate salary payments to Corrine Huff whose name appears on the clerk-hire payroll of Representative Adam Clayton Powell.

6. The House make a study in depth to determine whether or not existing procedural and substantive rules are adequate in cases involving charges of breach of public trust which have been lodged against any Member.

7. The Committee on House Administration, which currently is undertaking a revision of its auditing procedures, be directed by the House to file annually a report of audit of expenditures by each committee of the House and the clerk-hire payroll of each Member.

The Select Committee has given long, serious and, we believe, mature consideration to the profound responsibility imposed on it, realizing that there is no more important vote a Member can cast during his service in the House than one affecting the right of a Member to a seat he has held for 22 years and to which he has been reelected by a large majority of his constituency. During their deliberations the members of the Committee carefully considered many views and ideas before a decision was reached. Representative Pepper feels strongly that Mr. Powell should not be a Member of the House. Representative Conyers believes that punishment of Mr. Powell beyond severe censure is inappropriate. Other differences of opinion were expressed as to the punishment the House should order, and the ultimate recommendations we make represent the consensus of the Committee. We recommend the adoption of the following resolution:

Whereas the Select Committee appointed pursuant to House Resolution 1 (90th Cong.) has reached the following conclusions:

First, Adam Clayton Powell possesses the requisite qualifications of age, citizenship, and inhabitancy for membership in the House of Representatives and holds a certificate of election from the State of New York.

Second, Adam Clayton Powell has repeatedly ignored the processes and authority of the courts in the State of New York in legal proceedings pending therein to which he is a party, and his contumacious conduct toward the court of that State has caused him on several occasions to be adjudicated in contempt thereof, thereby reflecting

discredit upon and bringing into disrepute the House of Representatives and its Members.

Third, as a Member of this House, Adam Clayton Powell improperly maintained on his clerk-hire payroll Y. Marjorie Flores (Mrs. Adam C. Powell) from August 14, 1964, to December 31, 1966, during which period either she performed no official duties whatever or such duties were not performed in Washington, D.C., or the State of New York as required by law.

Fourth, as chairman of the Committee on Education and Labor, Adam Clayton Powell permitted and participated in improper expenditures of Government funds for private purposes.

Fifth, the refusal of Adam Clayton Powell to cooperate with the Select Committee and the Special Subcommittee on Contracts of the House Administration Committee in their lawful inquiries authorized by the House of Representatives was contemptuous and was conduct unworthy of a Member:

Now, therefore be it resolved,

1. That the Speaker administer the oath of office to the said Adam Clayton Powell, Member-elect from the 18th District of the State of New York.

2. That upon taking the oath as a Member of the 90th Congress the said Adam Clayton Powell be brought to the bar of the House in the custody of the Sergeant-at-Arms of the House and be there publicly censured by the Speaker in the name of the House.

3. That Adam Clayton Powell, as punishment, pay to the Clerk of the House to be disposed of by him according to law, $40,000. The Sergeant-at-Arms of the House is directed to deduct $1,000 per month from the salary otherwise due the said Adam Clayton Powell and pay the same to said Clerk, said deductions to continue while any salary is due the said Adam Clayton Powell as a Member of the House of Representatives until said $40,000 is fully paid. Said sums received by the Clerk shall offset to the extent thereof any liability of the said Adam Clayton Powell to the United States of America with respect to the matters referred to in the above paragraphs 3 and 4 of the preamble to this resolution.

4. That the seniority of the said Adam Clayton Powell in the House of Representatives commence as of the date he takes the oath as a Member of the 90th Congress.

5. That if the said Adam Clayton Powell does not present himself to take the oath of office on or before March 13, 1967, the seat of the 18th District of the State of New York shall be deemed vacant and the Speaker shall notify the Governor of the State of New York of the existing vacancy.

Respectfully submitted.

EMANUEL CELLER, *Chairman.*
JAMES C. CORMAN.
CLAUDE PEPPER.
JOHN CONYERS, Jr.
ANDREW JACOBS, Jr.
ARCH A. MOORE, Jr.
CHARLES M. TEAGUE.
CLARK MACGREGOR.
VERNON W. THOMSON.

ADDITIONAL VIEWS OF HON. JOHN CONYERS, JR.

(1) The question of the right of a Member-elect to be administered the oath and the responsibility of the House to punish its Members should be distinguished with great precision.

(2) Any Member or Member-elect and his counsel should be afforded the right to cross-examine all witnesses brought before this committee or any other committee inquiring into the qualifications, punishment, final right of a Member to be seated, or other related questions.

(3) In his appearance before this Select Committee, his declination to accept the invitation extended by the Hays subcommittee, and his conduct with reference to the litigation in the New York courts, Adam Clayton Powell, Member-elect, acted at all times upon advice of counsel. Therefore, it cannot accurately be held that his conduct impugned the dignity of Congress or was in disrespect of Congress.

(4) A review of all cases of alleged misconduct brought before the House and Senate indicates that punishment has never exceeded censure. There is no precedent for the removal of accumulated seniority combined with a monetary assessment, as is proposed in the instant case.

JOHN CONYERS, Jr.

O

IN RE ADAM CLAYTON POWELL

HEARINGS

BEFORE

SELECT COMMITTEE PURSUANT TO H. RES. 1

NINETIETH CONGRESS

FIRST SESSION

ON

H. Res. 1

TO REPORT UPON THE RIGHT OF ADAM CLAYTON POWELL TO BE SWORN IN AS A REPRESENTATIVE FROM THE STATE OF NEW YORK IN THE 90TH CONGRESS

FEBRUARY 8, 14, 16, 1967

U.S. GOVERNMENT PRINTING OFFICE

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SELECT COMMITTEE PURSUANT TO HOUSE RESOLUTION 1

EMANUEL CELLER, New York, *Chairman*

JAMES C. CORMAN, California	ARCH A. MOORE, JR., West Virginia
CLAUDE PEPPER, Florida	CHARLES M. TEAGUE, California
JOHN CONYERS, JR., Michigan	CLARK MacGREGOR, Minnesota
ANDREW JACOBS, JR., Indiana	VERNON W. THOMSON, Wisconsin

WILLIAM A. GEOGHEGAN, *Chief Counsel*
ROBERT P. PATTERSON, Jr., *Counsel for the Minority*
RONALD L. GOLDFARB, *Counsel*
ROBERT M. LICHTMAN, *Counsel*
ROBERT D. GRAY, *Chief Auditor*
HAROLD J. RESWEBER, Jr., *Clerk*

CONTENTS

IN RE ADAM CLAYTON POWELL

WEDNESDAY, FEBRUARY 8, 1967

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
SELECT COMMITTEE,
Washington, D.C.

The committee met at 10:30 a.m., in room 2141, Rayburn House Office Building, Washington, D.C., Hon. Emanuel Celler, chairman of the committee, presiding.

Committee members present: Hon. Emanuel Celler, James C. Corman, Claude Pepper, John Conyers, Jr., Andrew Jacobs, Jr., Arch A. Moore, Jr., Charles M. Teague, Clark MacGregor, and Vernon W. Thomson.

Committee staff members present: William A. Geoghegan and Robert P. Patterson, Jr., staff counsel.

Also present: Congressman-elect Adam Clayton Powell, Jr.; accompanied by counsel:

Mrs. Jean Camper Cahn, 1308 19th Street NW., Washington, D.C.. Robert L. Carter, 20 West 40th Street, New York, N.Y.; Arthur Kinoy, 511 Fifth Avenue, New York, N.Y.; William M. Kunstler, 511 Fifth Avenue, New York, N.Y.; Frank D. Reeves, Howard University, Post Office Box 1121, Washington, D.C.; Herbert O. Reid, Howard University, Post Office Box 1121, Washington, D.C.; and Henry R. Williams, 271 West 125th Street, New York, N.Y.

Chairman CELLER. The committee will come to order. The photographers will have to stop. The photographers will have to stop; otherwise I will have to have the police escort them out of the room.

On January 10, 1967, the House of Representatives adopted House Resolution 1, which I am going to ask Mr. Geoghegan, chief counsel, to read:

Mr. GEOGHEGAN (reading):

Resolution. Resolved, That the question of the right of Adam Clayton Powell to be sworn in as a Representative from the State of New York in the Ninetieth Congress, as well as his final right to a seat therein as such Representative, be referred to a special committee of nine Members of the House to be appointed by the Speaker, four of whom shall be Members of the minority party appointed after consultation with the minority leader. Until such committee shall report upon and the House shall decide such question and right, the said Adam Clayton Powell shall not be sworn in or permitted to occupy a seat in this House.

For the purpose of carrying out this resolution the committee, or any subcommittee thereof authorized by the committee to hold hearings, is authorized to sit and act during the present Congress at such times and places within the United States, including any Commonwealth or possession thereof, or elsewhere, whether the House is in session, has recessed, or has adjourned, to hold such hearings, and to require, by subpena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence,

memorandums, papers, and documents, as it deems necessary; except that neither the committee nor any subcommittee thereof may sit while the House is meeting unless special leave to sit shall have been obtained from the House. Subpenas may be issued under the signature of the chairman of the committee or any member of the committee designated by him, and may be served by any person designated by such chairman or member.

Until such question and right have been decided, the said Adam Clayton Powell shall be entitled to all the pay, allowances, and emoluments authorized for Members of the House.

The committee shall report to the House within five weeks after the members of the committee are appointed the results of its investigation and study, together with such recommendations as it deems advisable. Any such report which is made when the House is not in session shall be filed with the Clerk of the House.

Chairman CELLER. On January 19, 1967, pursuant to the House resolution, and after consultation with the minority leader, the Speaker appointed the following Members to constitute the special committee contemplated by said House resolution:

Hon James C. Corman; Hon. Claude Pepper; Hon. John Conyers, Jr.; Hon. Andrew Jacobs, Jr.; Hon. Arch A. Moore, Jr.; Hon. Charles M. Teague; Hon. Clark MacGregor; Hon. Vernon W. Thomson, and myself as chairman.

In furtherance of the functions assigned to it by House Resolution 1, the committee, by letter dated February 1, 1967, invited Representative-elect Powell to appear and testify. The letter of invitation reads as follows, and I will ask Chief Counsel Geoghegan to read the letter.

Mr. GEOGHEGAN (reading):

Dated February 1, 1967.

Hon. ADAM CLAYTON POWELL,
U.S. House of Representatives,
Washington, D.C.

DEAR MR. POWELL: I enclose a copy of House Resolution 1, 90th Congress, pursuant to which the Speaker on January 19, 1967, after consultation with the Minority Leader, appointed the following Members to carry on the inquiry contemplated therein:

Honorable Emanuel Celler, Chairman; Honorable James C. Corman; Honorable Claude Pepper; Honorable John Conyers, Jr.; Honorable Andrew Jacobs, Jr.; Honorable Arch A. Moore, Jr.; Honorable Charles M. Teague; Honorable Clark MacGregor; Honorable Vernon W. Thomson.

The Committee has directed me to invite you to appear before it on Wednesday, February 8, 1967, at 10:30 A.M., in Room 2141, Rayburn House Office Building, Washington, D.C., to give testimony and to respond to interrogation concerning your qualifications of age, citizenship and inhabitancy, and the following other matters:

(1) The status of legal proceedings to which you are a party in the State of New York and in the Commonwealth of Puerto Rico, with particular reference to the instances in which you have been held in contempt of court;

(2) Matters of your alleged official misconduct since January 3, 1961.

You are advised that you may be accompanied by counsel and that the hearings will be conducted in accordance with paragraph 26, rule XI of the Rules of the House of Representatives.

Sincerely yours,

EMANUEL CELLER, *Chairman.*

Chairman CELLER. We are met this morning to hear testimony from Mr. Powell on the matters enumerated in the letter of invitation.

First, however, the following documents will be placed in the record:

(1) House Resolution 1, 90th Congress.

(2) Chairman Celler's letter, dated February 1, 1967, to Representative-elect Powell.

(3) Notice of appearance of counsel for Mr. Powell.
(4) Motion and brief filed by counsel on behalf of Representative-elect Powell, including appendixes 1, 2, and 3 thereto.
(5) Brief filed with the committee by the American Civil Liberties Union.
(The documents referred to are as follows:)

90TH CONGRESS
1ST SESSION

H. RES. 1

IN THE HOUSE OF REPRESENTATIVES

JANUARY 10, 1967

Mr. UDALL submitted the following resolution; which was considered and agreed to

RESOLUTION

Resolved, That the question of the right of Adam Clayton Powell to be sworn in as a Representative from the State of New York in the Ninetieth Congress, as well as his final right to a seat therein as such Representative, be referred to a special committee of nine Members of the House to be appointed by the Speaker, four of whom shall be Members of the minority party appointed after consultation with the minority leader. Until such committee shall report upon and the House shall decide such question and right, the said Adam Clayton Powell shall not be sworn in or permitted to occupy a seat in this House.

For the purpose of carrying out this resolution the com-

mittee, or any subcommittee thereof authorized by the committee to hold hearings, is authorized to sit and act during the present Congress at such times and places within the United States, including any Commonwealth or possession thereof, or elsewhere, whether the House is in session, has recessed, or has adjourned, to hold such hearings, and to require, by subpena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memorandums, papers, and documents, as it deems necessary; except that neither the committee nor any subcommittee thereof may sit while the House is meeting unless special leave to sit shall have been obtained from the House. Subpenas may be issued under the signature of the chairman of the committee or any member of the committee designated by him, and may be served by any person designated by such chairman or member.

Until such question and right have been decided, the said Adam Clayton Powell shall be entitled to all the pay, allowances, and emoluments authorized for Members of the House.

The committee shall report to the House within five weeks after the members of the committee are appointed the results of its investigation and study, together with such rec-

ommendations as it deems advisable. Any such report which is made when the House is not in session shall be filed with the Clerk of the House.

Dated February 1, 1967.

HON. ADAM CLAYTON POWELL,
U.S. House of Representatives,
Washington, D.C.

DEAR MR. POWELL: I enclose a copy of House Resolution 1, 90th Congress, pursuant to which the Speaker on January 19, 1967, after consultation with the Minority Leader, appointed the following Members to carry on the inquiry contemplated therein:

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You are advised that you may be accompanied by counsel and that the hearings will be conducted in accordance with paragraph 26, rule XI of the Rules of the House of Representatives.

Sincerely yours,

EMANUEL CELLER, *Chairman.*

SELECT COMMITTEE,

HOUSE OF REPRESENTATIVES,

CONGRESS OF THE UNITED STATES

In the Matter of the Right of ADAM CLAYTON POWELL, Jr., to His Seat as the Representative From the Eighteenth Congressional District of New York, *Respondent.*

NOTICE OF APPEARANCE

The attorneys listed below hereby appear on behalf of Adam Clayton Powell, Jr., Member-Elect from the 18th Congressional District of the State of New York, and respectfully request that copies of all notices, communications, reports,

and other papers and documents relative to the proceeding be served by mail upon them at their office addresses as indicated below.

Respectfully submitted.

JEAN CAMPER CAHN,
Washington, D.C.
ROBERT L. CARTER,
New York, N.Y.
HUBERT T. DELANY,
New York, N.Y.
ARTHUR KINOY,
New York, N.Y.
WILLIAM M. KUNSTLER,
New York, N.Y.
FRANK REEVES,
Washington, D.C.
HERBERT O. REID,
Washington, D.C.
HENRY R. WILLIAMS,
New York, N.Y.
Attorneys for Respondent.

SELECT COMMITTEE
HOUSE OF REPRESENTATIVES
CONGRESS OF THE UNITED STATES

In the Matter of the Right of ADAM CLAYTON POWELL, Jr., to His Seat as the Representative From the Eighteenth Congressional District of New York, *Respondent.*

MOTION

Congressman-Elect Adam Clayton Powell, Jr. respectfully moves that the Select Committee report to the House of Representatives that Adam Clayton Powell, member-elect to the 90th Congress from the 18th Congressional District of the State of New York, having been duly elected by the people of the district and possessing all the constitutional qualifications for membership in this House, should be sworn in forthwith as a Representative from the State of New York in the 90th Congress and is entitled to a seat in the House of Representatives.

In support of this motion the Congressman-Elect attaches hereto as Exhibit A the duly authenticated Certificate of his Election; as Exhibit B his certificate of birth establishing the constitutionally prescribed age and citizenship for a member of this House, and as Exhibit C conclusive evidence of the constitutionally prescribed inhabitancy and residence in the State of New York.

Since the validity of the election and returns from the 18th Congressional District of New York has not been questioned, and the sole and exclusive qualifications for membership in the House of Representatives prescribed by the Constitution of the United States have been met by the Congressman-Elect, this Committee is required under the Constitution and Precedents of Congress to recommend the immediate swearing in and seating of the Member-Elect.

The Congressman-Elect further respectfully requests that the Select Committee set down as promptly as is convenient this motion for consideration by the

Committee, at which time the Congressman-Elect be afforded the opportunity to be heard in support of the motion.

Respectfully submitted.

JEAN CAMPER CAHN,
Washington, D.C.
ROBERT L. CARTER,
New York, N.Y.
HUBERT T. DELANY,
New York, N.Y.
ARTHUR KINOY,
New York, N.Y.
WILLIAM M. KUNSTLER,
New York, N.Y.
FRANK REEVES,
Washington, D.C.
HERBERT O. REID,
Washington, D.C.
HENRY R. WILLIAMS,
New York, N.Y.
Attorneys for Respondent.

SELECT COMMITTEE
HOUSE OF REPRESENTATIVES
CONGRESS OF THE UNITED STATES

In the Matter of the Right of ADAM CLAYTON POWELL, JR., to His Seat as the Representative From the Eighteenth Congressional District of New York, *Respondent.*

POINTS AND AUTHORITIES IN SUPPORT OF THE MOTION OF THE CONGRESSMAN-ELECT TO THE SELECT COMMITTEE THAT THE COMMITTEE IMMEDIATELY RECOMMEND THE SWEARING-IN AND SEATING OF THE CONGRESSMAN-ELECT

STATEMENT OF THE CASE

On January 10, 1967, the Honorable Gerald R. Ford, Member from Michigan and Minority Leader, in proposing the resolution establishing this Select Committee, stated that the issue submitted to this Committee by the House "is exclusively the question of the qualifications of one of our numbers elected November 8 to sit as a Member of the House of Representatives." 90 Cong. Rec., 1st Sess., H. 7.

The Member-Elect has submitted to this Committee clear evidence that he has been duly elected by the people of the 18th Congressional District and that he possesses all the constitutional qualifications for membership in the House as prescribed by Article I, Section 2, Clause 2 of the Constitution of the United States. There has been no challenge to the election or the returns. The Member-Elect is over the age of twenty-five, has been more than seven years a citizen of the United States, and is an inhabitant of the state in which he was chosen. Under the Constitution and the relevant Precedents of this House, the Select Committee is required to recommend the immediate swearing-in and seating of the Member-Elect.

POINT ONE

The House of Representatives is required under the Constitution of the United States to seat a duly elected Congressman who meets all the constitutional qualifications set forth for membership in the House in Article I, Section 2, Clause 2: "No Person shall be a Representative who shall not have attained to the Age of twenty-five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of the State in which he shall be chosen."

A. This was the clear mandate of the Constitutional Convention

1. The history of the proceedings at the Convention, during which the age, citizenship and inhabitancy qualifications were accepted, reveals the clear intention of the Enactors that the legislature was to have no power to alter or add to

the constitutional qualifications. See Professor Charles Warren, *The Making of Our Constitution* (1928), at p. 420.

"Such action would seem to make it clear that the Convention did not intend to grant to a single branch of Congress, either to the House or to the Senate, the right to establish any qualifications for its members, other than those qualifications established by the Constitution itself, *viz.*, age, citizenship, and residence. For certainly it did not intend that a single branch of Congress should possess a power which the Convention had expressly refused to vest in the whole Congress. As the Constitution, as then drafted, expressly set forth the qualifications of age, citizenship, and residence, and as the Convention refused to grant to Congress power to establish qualifications in general, the maxim *expressio unitus exclusio alterius* would seem to apply. . . . The elimination of all power in Congress to fix qualifications clearly left the provisions of the Constitution itself as the sole source of qualifications."

2. This conclusion of the Convention that the Legislature may not refuse to seat a duly elected member who meets the Constitutional requirements, reflected the concern of the Founders that the vesting of any power in the legislature to modify or alter the strict constitutional qualifications was "improper and dangerous."

(i) See Farrand, Records of the Federal Convention, Vol. 2, p. 249.

"Mr. [Madison] was opposed to the Section [a proposal later defeated that each House have general power to fix qualifications] as vesting an improper & dangerous power in the Legislature. The qualifications of electors and elected were fundamental articles in a Republican Govt. and ought to be fixed by the Constitution. If the Legislature could regulate those of either, it can by degrees subvert the Constitution. A Republic may be converted into an aristocracy or oligarchy as well by limiting the number capable of being elected, as the number authorized to elect. In all cases where the representatives of the people will have a personal interest distinct from that of their Constituents, there was the same reason for being jealous of them, as there was for relying on them with full confidence, when they had a common interest. This was one of the former cases. . . . It was a power also, which might be made subservient to the views of one faction against another. Qualifications founded on artificial distinctions may be devised, by the stronger in order to keep out partizans of [a weaker] faction. . . . Mr. [Madison] observed that the British Parlimt. possessed the power of regulating the qualifications both of the electors, and the elected; and the abuse they had made of it was a lesson worthy of our attention. They had made the changes in both cases subservient to their own views, or to the views of political or religious parties."

(ii) The same concern led Alexander Hamilton to conclude in Number 68 of the Federalist Papers:

"The qualifications of the person who may choose or be chosen, as has been remarked on another occasion, are defined and fixed in the Constitution; and are unalterable by the Legislature."

3. All leading commentators agree that the intention of the Constitutional Convention was to establish a firm Constitutional mandate that the Legislature has no power to vary, alter or add to the constitutional qualifications and must seat as a member any duly elected representative who meets these qualifications. See for example:

Justice Story, *Treatise on the Constitution*, § 625
Cooley, *Constitutional Limitations*, p. 78
Cushing, *Law and Practice of Legislative Assemblies*, 2d Ed., p. 27, § 65
Tucker, *Treatise on the Constitution*, p. 394
Foster, *Treatise on the Constitution*, p. 367
Paschal, *Annotated Constitution*, 2d Ed., p. 305, § 300
McCrary, *Law of Elections*, § 312

See also:

33 Virginia L. Rev. 332, 334 (1947) "In summary, it seems obvious from an inspection of the language of the Constitution and the attendant circumstances that the framers of the Constitution intended the Senate to be bound by the qualifications enumerated therein."
4 Notre Dame Lawyers 3 (1928)
15 Georgetown L. J. 382 (1927)
30 Law Notes 181 (1927)

4. Only this Term of Court the Supreme Court has once again reminded the Nation that the clear intention of the Founding Fathers was that the legislature was to have no power to alter, change or add to the constitutional qualifications for membership in either House.

See *Julian Bond et al* v. *James "Sloppy" Floyd* et al,—U.S.—, 87 Sup. Ct. 339 (1966), footnote 13.

POINT TWO

The most important and persuasive precedents of the House and Senate recognize this fundamental constitutional mandate.

1. The first occasion on which the implications of the qualification clause were fully debated in the House was in 1807, only twenty years after the Constitutional Convention. In the contested election case of *William McCreery*, Tenth Congress, 1807, 1 Hinds § 414, the House after "exhaustive debate", 1 Hinds p. 381, affirmed the constitutional mandate that the constitutional qualifications of age, citizenship and inhabitancy were the sole qualifications for membership in the House. Thus the Chairman of the Committee on Elections placed in this manner the proposition later affirmed by the full House:

> "Mr. FINDLEY said, that being chairman of the Committee of Elections, it became his duty to explain the principles by which that committee were governed in making the report, but being apprehensive that he could not make himself extensively heard, he would not detain the Committee long. The Committee of Elections considered the qualifications of members to have been unalterably determined by the Federal Convention, unless changed by an authority equal to that which framed the Constitution at first; that neither the State nor the Federal Legislatures are vested with authority to add to those qualifications, so as to change them . . . Congress, by the Federal Constitution, are not authorized to prescribe the qualifications of their own members, but they are authorized to judge of their qualifications; in doing so, however, they must be governed by the rules prescribed by the Federal Constitution, and by them only. These are the principles on which the Election Committee have made up their report, and upon which their resolution is founded."

In announcing its adherence to the constitutional mandate the House laid down certain fundamental guidelines:

(a) "The people had delegated no authority either to the States or to the Congress to add to or diminish the qualifications prescribed by the Constitution." 1 Hinds at p. 382. See in particular, Annals of Congress for the 10th Congress, pps. 872, 875, 887–888, 893, 895, 909, 910, 915–916.

(b) If they could do this [deviate from strict constitutional qualifications] any sort of dangerous qualifications might be established—of property, color, creed, or political professions." 1 Hinds at p. 382; Annals of Congress for the 10th Congress, pps. 873, 878, 895, 908–909, 913.

(c) "The people had a natural right to make a choice of their Representatives, and that right should be limited only by a convention of the people, not by a legislature." 1 Hinds at p. 382, Annals of Congress for the 10th Congress, pps. 873–874, 875, 895. Accordingly, the House voted to seat the Congressman-elect after finding that he possessed the constitutional qualifications, holding that these qualifications are exclusive and the sole requirements for taking the seat. Annals of Congress for the 10th Congress, pps. 878, 910, 911–912, 914, 918.

2. The first full discussion of the constitutional mandate in the Senate appears in the case of *Humphrey Marshall of Kentucky* in the Fourth Congress, S. Jour. 4th Congress, 1st Session, pps. 194, 220, 223–228. The charge against the Senator-elect was that he had committed "gross fraud" and perjury in a lawsuit and the court had entered a decree against him. The Senate approved a report of its committee that the Senate was without jurisdiction to consider this as a grounds for excluding the Senator-elect, since the Senate had no constitutional power to add to the qualifications stated in the Constitution.

[These two cases, arising in the earliest days of the Republic have, of course, great importance, for as Chief Justice Taft said in *Myers v. United States*, 272 U.S. 52, 175 (1926), "This Court has repeatedly laid down the principle that a contemporaneous legislative exposition of the Constitution when the founders of our Government and framers of our Constitution were actively

participating in public affairs acquiesced in for a long term of years fixes the construction to be given its provisions."]

3. The fact that the Congress "acquiesced in" this acceptance of the constitutional mandate "for a long term of years," see *Myers v. United States, supra*, is evidenced in the contested election cases of *Turney v. Marshall* and *Fouke v. Trumbull* in the 34th Congress, 1856, 1 Hinds, p. 384. In these cases the House reaffirmed after full debate the principles of the earlier decisions requiring the seating of Congressmen-elect upon a showing solely of the constitutional qualifications. The report of the Election Committee, presented by Representative John A. Bingham (R. Ohio) re-emphasized these concepts:

(a) "It is a fair presumption that when the Constitution prescribes these qualifications as necessary to a Representative in Congress, it was meant to exclude all others." 1 Hinds, at p. 385.

(b) "By the Constitution, the people have a right to choose as Representative any person having only the qualifications therein mentioned, without superadding thereto any additional qualifications whatever." 1 Hinds, at p. 386.

(c) "To admit such a power [to deviate from the sole constitutional qualifications] . . . is to prevent altogether the choice of a Representative by the people." 1 Hinds, at p. 385.

The Committee concluded that a failure to seat a Congressman-elect who had the constitutional qualifications would be "absolutely subversive of the rights of the people under that Constitution." 1 Hinds, at p. 386.

4. These concepts were forcefully restated by the Senate in Congress, 1 Hinds § 433. The Senator-elect was challenged on the ground that he had engaged in conduct "very unbecoming and very reprehensible in a loyal citizen." Cong. Globe, 1862, p. 861. In opening the debate, Senator Harris placed the fundamental propositions which govern such a case before the Senate:

> "The question submitted to the committee was whether or not evidence of this description could be allowed to prevail against his *prima facie* right to take his seat as Senator. The committee were of opinion that they could not. The Constitution declares what shall be the qualifications of a Senator. They are in respect to his age, in respect to his residence, in respect to his citizenship; and the committee were of opinion that the Senate were limited to the question, first, whether or not the person claiming the seat and presenting his credentials produced the requisite evidence of his election or appointment; and second, whether there was any question as to his constitutional qualifications."

Upon this presentation of the governing concepts, the Senate seated the Senator-elect, finding that he had the requisite sole constitutional qualifications.

The debate in the Senate reaffirming the original constitutional mandate reflects fundamental considerations. See for example, the remarks of Senator McDougall that the refusal to seat a constitutionally qualified Senator-elect may be—

> "one of the heaviest blows that can be struck at the foundation of our republic institutions. This is no common matter of business. It is an assertion of the right of a majority of this body to refuse entrance here to a person clothed with all the miniments of right by a sovereign State, and against whom is alleged no constitutional or legal disqualification. Whose right is it that he should be here? The right of the people of the State of Oregon—their Constitution and the laws of Congress under it, which alone bind them in this matter."

and the remarks of Senator Browning that such a practice—

> "is one that is capable of immense abuse, immense wrong; and one which it is within the range of possible things might at some time or other be used for the worst purposes of tyranny. I am not willing to aid in establishing such a precedent."

5. The most recent congressional actions involving full debate over the meaning of constitutional qualifications reveal a continued adherence to the fundamental constitutional mandate.

(a) *The case of Francis N. Shoemaker*, in the 73rd Congress, 1933, is one of the latest full discussions on this question in the House of Representatives. Here the House reaffirmed the fundamental constitutional mandate. Representative-elect Shoemaker had been convicted of a crime in Minnesota and had been sentenced to a term in the penitentiary. The House, in seating the Congressman-

elect, re-emphasized the basic concept that the sole consideration before the House was the presence of the constitutional qualifications. Finding these qualifications present, and finding that the conviction of the Representative-elect had not deprived him of his "citizenship," the House voted to seat him. 77 Cong. Rec. 131, 132, 133, 134, 136, 139 (1933).

(b) *The case of William Langer of North Dakota* in the 77th Congress (1942), S. Journ. 77th Cong., 1st Sess., pp. 8 et seq., 2nd Sess., pp. 3 et seq. The Senator-elect was challenged at the taking of the oath. The "charges against Langer were numerous and chiefly involved moral turpitude, embracing kickbacks, conversion of proceeds of legal settlements, acceptance of a bribe in leasing government property, and premature payments on contracts of advertising." *Senator Election, Expulsion & Censure Cases*, p. 141. The Senate after full debate seated the Senator-elect.

The debate, which resulted in the seating of the Senator-elect, reflected a restatement of the fundamental principles asserted in the first days of the Republic. See, for example, the statement of Senator Murdock who presented the view which was ultimately adopted by the Senate:

> "What do we judge? A man comes here and presents his credentials and claims that he has the constitutional qualifications to be a Senator. As judges of that fact, we look at his credentials; we consider his constitutional qualifications. Where do we find them stated? We find them set out in the Constitution. I believe it was contemplated by the framers of the Constitution that when a man came here with credentials from his State, and claimed to have the constitutional qualifications, the matter could be judged by the Senate in not to exceed a week or 2 weeks' time; but when the word 'judge' is construed to mean the power to add qualifications, about which the State does not know, about which the Senate does not know, then, of course, there is brought about the type of farce which resulted in taking 4 years to determine that Reed Smoot was entitled to sit here as a United States Senator, and the type of farce which has resulted in Senator LANGER's right to a seat being held in abeyance for more than a year, the committee searching his life almost from childhood up to the present time.
>
> "Oh, did the men who wrote the Constitution ever contemplate that such a thing as that would happen? In framing the Constitution they had the right to decide what tribunal should be the judge of the morals and the intellectual qualifications of the men sent here, and they decided that the people of the sovereign States should have that power, restricted only by the very definite but simple qualifications enunciated in the Constitution itself."

In the course of the debate the Senate reaffirmed the basic concept that the constitutional qualifications are exclusive and the legislature is restricted to a consideration of the presence of these qualifications and these qualifications alone. It is of some interest that in seating Senator Langer, the Senate in 1933 based its action in part upon the following report of the Judiciary Committee of the House of Representatives in the cases of *Ames* and *Brooks* in the 42nd Congress, 2 Hinds, p. 866 (1872). The House Judiciary Committee Report, approvingly referred to by Senator Murdock and Senator Barkley (later Vice-President), is of particular interest here:

> ". . . 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.'

"Your committee are further emboldened to take this view of this very important constitutional question because they find that in the same section it is provided what shall be the qualifications of a Representative of the people, so chosen by the people themselves. On this it is solemnly enacted, unchanged during the life of the Nation, that 'no person shall be a representative who shall not have attained the age of 25 years, and been 7 years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

"Your committee believe that there is no man or body of men who can add or take away one jot or title of these qualifications. The enumeration of such specified qualifications necessarily excludes every other. It is respectfully submitted that it is nowhere provided that the House of Representatives shall consist of such Members as are left after the process of 'purgation and purification' shall have been exercised for the public safety, such as may be 'deemed necessary' by any majority of the House. 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."

POINT THREE

The legislature has deviated from the constitutional mandate on rare occasions under intense partisan pressure and public hysteria. These isolated cases have been subsequently overruled or discarded by the House or Senate.

1. The case of *Brigham Roberts* in the 56th Congress, 1899, 1 Hinds, Section 474, involved a member-elect from Utah who was barred from his seat on the ground that he was a polygamist in accord with the Mormon faith and had been convicted of violating the federal Edmonds Act prohibiting polygamy. The House, responding to a wave of anti-Mormon feeling throughout the country, barred Roberts despite a strong minority report which reasserted the constitutional principles previously adhered to by the House. Only a few years later the Senate sharply repudiated the *Roberts* action, seating, in the case of *Reed Smoot of Utah*, in the 58th Congress, 1903, 1 Hinds, Sections 481–484, a Senator-elect despite his adherence to the Mormon faith. The Senate forcefully reasserted the governing constitutional mandate that the sole question before the legislature is the presence of the constitutional qualifications. And even more significantly, the House itself, in 1933, in the case of *Shoemaker*, *supra*, pointedly disregarded the *Roberts* case as binding precedent. Similarly, in the *Langer* case, *supra*, the Senate specifically approvingly followed the minority report in *Roberts*.

2. Following the Civil War, in a group of cases, the House barred members-elect who had participated in the Rebellion. See the cases of the *Kentucky Members* in the 40th Congress, 1867. However, it was pointed out in subsequent Congresses that the Congress itself recognized that this action was unconstitutional under Article I, finding it necessary to adopt Section 3 of the Fourteenth Amendment to sanction barring of members-elect on this additional ground of loyalty to the Confederacy. See the discussion in the *Langer* case, *supra*, Cong. Rec. 1942, Mar. 16, p. 2484.

3. The case of *Victor Berger* in the 66th Congress, 58 Cong. Rec. (1919) involved the refusal to seat a Congressman-elect who had been found guilty in World War I of violation of the Espionage Act. The House took the position that Berger had in effect committed "treason" which foreclosed his right to hold office under the United States pursuant to the congressional constitutional power to fix the penalty for treason. The majority House report further justified the exclusion of Berger under Section 3 of the Fourteenth Amendment, barring from the office of Representative any one who has "given aid or comfort to the enemies" of the United States.

POINT FOUR

Only this Term of Court the Supreme Court of the United States has forcefully reminded the Nation that a legislature may not exclude a duly elected Representative of the people on the basis of its own conception of public interest.

In *Bond* v. *Floyd*, —— U.S. ——, 87 S. Ct. 339, December 5, 1966, the Supreme Court, in a unanimous opinion written for the Court by the Chief Justice ordered seated in the Georgia legislature, a Representative-elect who possessed all the constitutional qualifications but had been barred by the legislature for reasons unrelated to these qualifications. In his dissenting opinion below, later upheld by the Court, Chief Judge Tuttle of the Fifth Circuit Court of Appeals, after examining carefully all the relevant precedents of the United States House of Representatives and Senate, held that—

> "Bond was found disqualified on account of conduct not enumerated in the Georgia Constitution as a basis of disqualification. This was beyond the power of the House of Representatives. It runs counter to the express provisions of the Georgia Constitution giving to the people the right to elect their representatives, and limiting the Legislature in its right to reject such elected members to those grounds which are expressly in Georgia's basic document."

The Supreme Court, in its opinion by the Chief Justice, ordered Bond seated in the Georgia House of Representatives, finding, in addition to Chief Judge Tuttle's conclusion, that the action of the Georgia House violated the First Amendment. In the course of the opinion, the Chief Justice, for the Court, took the occasion to remind the nation that the fundamental constitutional mandate of the Founding Convention was that a legislature had no power to refuse to seat a representative who meets the constitutional qualifications. Thus the Court wrote, in footnote 13:

> "Madison and Hamilton anticipated the oppressive effect on freedom of expression which would result if the legislature could utilize its power of judging qualifications to pass judgment on a legislator's political views. At the Constitutional Convention of 1787, Madison opposed a proposal to give to Congress power to establish qualifications in general. Warren, *The Making of the Constitution* (1928), 420–422. The Journal of the Federal Convention of 1787 states:
>
> "'Mr. Madison was opposed to the Section as vesting an improper and dangerous power in the Legislature. The qualifications of electors and elected were fundamental articles in a Republican Govt. and ought to be fixed by the Constitution. If the Legislature could regulate those of either, it can by degrees subvert the constitution. * * * Qualifications founded on artificial distinction may be devised, by the stronger in order to keep out partizans of a weaker faction.
>
> * * * * * *
>
> "'Mr. Madison observed that the British Parliament possessed the power of regulating the qualifications both of the electors, and the elected: and the abuse they had made of it was a lesson worthy of our attention. They had made the changes in both cases subservient to their own views, or to the views of political or Religious parties.' 2 Farrand, The Records in the Federal Convention of 1787 (Aug. 10, 1787), pp. 249–250.
>
> "Hamilton agreed with Madison that:
>
> "'The qualifications of the persons who may choose or be chosen * * * are defined and fixed by the constitution: and are unalterable by the legislature.' The Federalist, No. 60 (Cooke ed. 1961), 409."

CONCLUSION

Under the clear mandate of the Constitution of the United States and the most important and persuasive precedents of the House of Representatives, the House is required to seat a duly elected Congressman who meets all the constitutional qualifications for membership in the House. Since the Member-elect is over the age of twenty-five, has been a citizen of the United States for over seven years, and is an inhabitant of the State from which he was elected, the Select Committee should recommend the immediate swearing and seating of the Member-elect. As Hamilton wrote in the first days of the Republic, these qualifications "are defined and fixed in the Constitution and are unalterable by the Legislature." Number 68, Federalist Papers. And as Madison said on the floor of the Constitutional Convention, any weakening of this firm principle would "subvert the Constitution." Farrand, Vol. 2, p. 249.

The Select Committee should recommend the immediate swearing-in and seating of the Member-elect.

Respectfully submitted.

JEAN CAMPER CAHN,
Washington, D.C.
ROBERT L. CARTER,
New York, N.Y.
HUBERT T. DELANY,
New York, N.Y.
ARTHUR KINOY,
New York, N.Y.
WILLIAM M. KUNSTLER,
New York, N.Y.
FRANK D. REEVES,
Washington, D.C.
HERBERT O. REID,
Washington, D.C.
HENRY R. WILLIAMS,
New York, N.Y.
Attorneys for Congressman-Elect ADAM CLAYTON POWELL, Jr.

EXHIBIT "A"

BOARD OF ELECTIONS,
IN THE CITY OF NEW YORK,
New York, N.Y., January 23, 1967.

To Whom It May Concern:

I hereby certify that ADAM CLAYTON POWELL has been duly elected a Congressman in the 18th Congressional District of New York on November 8, 1966.

A copy of the statement of the Canvassing Board of the City of New York is hereby annexed and made part hereof.

MAURICE J. O'ROURKE.

STATEMENT OF THE CANVASSING BOARD OF THE CITY OF NEW YORK, HELD WITHIN THE COUNTY OF NEW YORK, in relation to the votes cast for the various Offices at the GENERAL ELECTION held on the 8th Day of November 1966.

The Canvassing Board in the City of New York, within the County of NEW YORK, City of New York, having met on the 9th, 14th, 17th, 21st, 25th and 28th days of November and the 1st day of December 1966 to canvass the votes given in the several election districts of said County at the General Election held on the 8th Day of November, in the year aforesaid, comprising the assembly districts; all within NEW YORK County, in the City of New York, do hereby certify as follows: That the whole number of votes cast for the office of REPRESENTATIVE IN CONGRESS, 18th DISTRICT, was 92,970 of which each of the following Candidates received:—

Lassen L. Walsh, Republican, 10,711.
Adam C. Powell, Democrat, 45,308.
Richard Priteaux, Liberal, 3,954.
Ryland E. D. Chase, Conservative, 1,214.
of which were scattered, 0;
of which were unrecorded, 31,783.
Total, 92,970.

We Certify this statement to be correct, and have caused the same to be attested by the signatures of the members of this Board, or a majority thereof, on this 1st day of December, 1966.

THOMAS MALLEE,
Secretary.

I hereby certify that the above tabulation, as taken from the returns filed by the Inspectors of Election, is correct.

CARL TURCHIN,
Chief Clerk, Borough of Manhattan.
MAURICE J. O'ROURKE,
Chairman.
JAMES M. POWER,
J. J. DUBERSTEIN,
Canvassing Board.

STATE OF NEW YORK

DEPARTMENT OF STATE

ALBANY

I hereby certify that at a meeting of the STATE BOARD OF CANVASSERS which canvassed the vote cast at the General Election held in this State on the 8th day of November, 1966, and whose original determination is on file in this department ADAM C. POWELL was, by the greatest number of votes cast at said election, duly elected REPRESENTATIVE IN CONGRESS EIGHTEENTH CONGRESSIONAL DISTRICT.

Witness my hand and seal of office at the City of Albany this 15th day of December, 1966.

JOHN P. LOMENZO,
Secretary of State.

STATE OF NEW YORK, *ss:*

We the Attorney-General, State Senators and Members of Assembly, constituting the State Board of Canvassers, having canvassed the whole number of votes given for the office of REPRESENTATIVE IN CONGRESS in the several congressional districts as enumerated at the general election held in said State on the eighth day of November, 1966, according to the certified statements of the said votes received by the Secretary of State, in the manner directed by law, do hereby determine, declare and certify that for the—

First Congressional District, OTIS G. PIKE
Second Congressional District, JAMES R. GROVER, JR.
Third Congressional District, LESTER L. WOLFF
Fourth Congressional District, JOHN W. WYDLER
Fifth Congressional District, HERBERT TENZER
Sixth Congressional District, SEYMOUR HALPERN
Seventh Congressional District, JOSEPH P. ADDABBO
Eighth Congressional District, BENJAMIN S. ROSENTHAL
Ninth Congressional District, JAMES J. DELANEY
Tenth Congressional District, EMANUEL CELLER
Eleventh Congressional District, FRANK J. BRASCO
Twelfth Congressional District, EDNA F. KELLY
Thirteenth Congressional District, ABRAHAM J. MULTER
Fourteenth Congressional District, JOHN J. ROONEY
Fifteenth Congressional District, HUGH L. CAREY
Sixteenth Congressional District, JOHN M. MURPHY
Seventeenth Congressional District, THEODORE R. KUPFERMAN
Eighteenth Congressional District, ADAM C. POWELL
Nineteenth Congressional District, LEONARD FARBSTEIN
Twentieth Congressional District, WILLIAM F. RYAN
Twenty-first Congressional District, JAMES H. SCHEUER
Twenty-second Congressional District, JACOB H. GILBERT
Twenty-third Congressional District, JONATHAN B. BINGHAM
Twenty-fourth Congressional District, PAUL A. FINO
Twenty-fifth Congressional District, RICHARD L. OTTINGER
Twenty-sixth Congressional District, OGDEN R. REID
Twenty-seventh Congressional District, JOHN G. DOW
Twenty-eighth Congressional District, JOSEPH Y. RESNICK
Twenty-ninth Congressional District, DANIEL F. BUTTON
Thirtieth Congressional District, CARLETON J. KING

Thirty-first Congressional District, ROBERT C. McEWEN
Thirty-second Congressional District, ALEXANDER PIRNIE
Thirty-third Congressional District, HOWARD W. ROBISON
Thirty-fourth Congressional District, JAMES M. HANLEY
Thirty-fifth Congressional District, SAMUEL S. STRATTON
Thirty-sixth Congressional District, FRANK J. HORTON
Thirty-seventh Congressional District, BARBER B. CONABLE, JR.
Thirty-eighth Congressional District, CHARLES E. GOODELL
Thirty-ninth Congressional District, RICHARD D. McCARTHY
Fortieth Congressional District, HENRY P. SMITH, III
Forty-first Congressional District, THADDEUS J. DULSKI

were, by the greatest number of votes given at said election, duly elected REPRESENTATIVE IN CONGRESS.

Given under our hands at the Department of State, the 15th day of December, in the year of our Lord one thousand nine hundred sixty-six:

LOUIS J. LEFKOWITZ,
Attorney-General.
JULIAN B. ERWAY,
State Senator.
NATHAN PROLLER,
State Senator.
HARVEY M. LIPSET,
Member of Assembly.
CLARENCE D. LANE,
Member of Assembly.

STATE OF NEW YORK
Department of State (*ss*)

I certify that I have compared the foregoing with the original certificate filed in this department, and that the same is a correct transcript therefrom and of the whole of such original.

Given under my hand and official seal of office, at the City of Albany, this 15th day of December, 1966.

JOHN P. LOMENZO,
Secretary of State.

EXHIBIT "B"

STATE OF CONNECTICUT BUREAU OF VITAL STATISTICS

CERTIFICATE OF BIRTH

1. Name of child: Adam Clayton Powell.
2. Sex: Male.
3. Place of birth—Town: New Haven, No. 56 ____ Street.
4. Date of birth: 29 day of Nov., 1908.
5. Full name of Father: Adam Clayton Powell.
6. Age of Father: 43 years.
7. Color of Father: Colored.
8. Residence of Father—Town: New Haven; State or Country, Conn.
9. Birthplace of Father—Town: Franklin Co.; State or Country, Va.
10. Occupation of Father: Minister.
11. Maiden name of Mother: ____ F. Schaffer.
12. Age of Mother: 37 years.
13. Color of Mother: Colored.
14. Residence of Mother—Town: New Haven; State or Country, Conn.

15. Birthplace of Mother—Town: Loop Creek; State or Country, West Virginia.
16. Number of child of Mother: 2; No. living: 2.
17. Remarks
I Certify the above from the best information I can obtain.
Dated Dec. 5, 1908; Name J. H. Porter, M.D. (capacity in which he signs)
Address 198----------
This certificate received for record on December 7, 1908.
Registrar By A. P. Allen.
I certify that this a true transcript of all the information on the birth record as recorded in this office:

Attest: GAETANO MASELLA,
Registrar of Vital Statistics.

Dated January 19, 1967; Town of New Haven.

EXHIBIT "C"

The Member-Elect has been duly adjudicated an inhabitant of the State of New York by the courts thereof. In numerous instances, these courts, in order to justify service of process on him by other than personal service, have litigated and decided that issue. In this connection see:

1. Testimony of Raymond Rubin, attorney for plaintiff in *Esther James* v. *Adam Clayton Powell, Jr., et al.*, Supreme Court of the State of New York, New York County, July 25, 1966, as follows:

"Question: What is Adam Clayton Powell's address of residence?
Answer: 120 W. 138 Street, New York, New York.
Question: What is the source of your information as to his residence?
Answer: Several-fold.
Question: What are they?
Answer: One, the testimony of Adam Clayton Powell, Jr. personally given before Mr. Justice Frank in my presence on Tuesday, July 19th, 1966, that he resided at 120 West 138th Street, New York, New York. Second, I have personally been to the building at 120 West 138th Street, New York, New York, and have been [sic] his name in the doorbell for Apartment 5-D, I believe it is. Third, he has given that address as his official address for congressional purposes." (Official Transcript, pp. 6-7)

2. Testimony of Jay Leonard Tauber, a process server for Mrs. James in the above case, as follows:

Cross Examination by Mr. Williams:
Q. How did you know it was Mr. Powell's door?
A. Mr. Powell's name is on the—downstairs in the lobby of the hall the name appears with another name; it says Apartment 5-D and I went up to Apt. 5-D and I affixed the paper on the door.

* * * * *

Q. Can you tell us whether you got a response on December 17th, 18th or the 20th?
A. The first date, the first day I got a response.
Q. Tell us what the conversation was.
A. I told the woman who opened up the peep-hole that I had a legal paper to serve on Mr. Powell, as in the past, many times in the past.
(Official Transcript pp. 19-20.)

3. Testimony of Adam Clayton Powell, Jr. in the above case as follows:

The WITNESS: I reside in New York at 120 West 138th Street, Apartment 5-D, and when I am in Washington, my address is the Rayburn Office Building, Suite 2161, House of Representatives, United States Congress.

* * * * *

Direct Examination by Mr. Rubin:

* * * * *

Q. Sir, how long have you resided at 120 West 138th Street?
Mr. WILLIAMS: I object. Not relevant.
The REFEREE: Overruled.
Mr. WILLIAMS: I strenuously object, Mr. Referee. We are here about—
The REFEREE: I will leave it to the time, as long as he can go back to December 14, 1965.
Mr. WILLIAMS: All right.
The REFEREE: At least to that.
Mr. WILLIAMS: All right.
The WITNESS: At least to that, your Honor.
Q. And is it Apartment 5–D? A. 5–D.
Q. Who else resides in that apartment? A. Mr. and Mrs. Odell Clark.
Q. Is your name on the doorbell at that address? A. Yes, sir.
Q. And upstairs on the fifth floor is the door to your apartment near the elevator? A. Yes, sir.
Q. And is it on the right of the elevator? A. Yes, sir. A little bit to the right. As you step off it's in front, really.
(Official Transcript, pp. 36–38.)

4. The testimony of Mrs. Robbie L. Clark in the above case, as follows:
Direct examination by Mr. Williams:
Q. Mrs. Clark, where do you reside? A. I reside at 120 West 138th Street.
Q. In what apartment? A. 5–D.
Q. For how long have you resided there? A. I resided there 25 years.
Q. Who else resides there with you? A. Congressman Powell and my husband.
Q. During the month of December, 1965, were you residing there? A. I was on vacation.
Q. No. Did you live there? A. In '65. Sure.
Q. In December of '65, did you live there? A. I lives there.
Q. Your husband also lived there? A. When he's in the city.
Q. Yes. And Congressman Powell? A. Yes.
Q. Is he living there? A. That's right, when he's in the city.

* * * * *

Cross examination by Mr. Rubin:
Q. You have the only key to the apartment? A. Congressman Powell, my husband and I.
(Official Transcript, pp. 48–49, 54.)

5. Testimony of Jay Leonard Tauber, *supra*, in *Esther James* v. *Adam Clayton Powell, Jr., et al.*, Supreme Court of the State of New York, New York County, August 9, 1966, as follows:
Direct examination by Mr. Rubin:

* * * * *

Q. What did you do particularly in your attempt to serve him personally? A. I went to the defendant's residence—
Q. Where? A. 120 West 138th Street.
Q. Do you know the apartment number? A. Yes, apartment 5–D.
Q. By the way, is that in the Borough of Manhattan, City and County of New York? A. Yes, it is.
The COURT. Let us stop for a minute. Is it conceded that that was the defendant's residence at the time?
Mr. WILLIAMS. 120 West 138th Street.
The COURT. Whether the address—Mr. Witness, what was the address?
The WITNESS. 120 West 138th Street.
The COURT. 120 West 138th Street, I understand.
Mr. WILLIAMS. It is conceded, your Honor.
The COURT. Very well.
Q. What apartment number did you go to? A. 5–D.
(Transcript, pp. 19–20.)
Cross examination by Mr. Williams:

* * * * *

The COURT. How many times have you effected service at this place [120 West 138th Street]?
The WITNESS. I would say at least a dozen times.
The COURT. Starting when?
The WITNESS. Going back three years ago or so, something, maybe more, I don't know. At least three years ago.
(Official Transcript, pp. 45–46.)

6. Testimony of Odell Clark in the above case that he and his wife shared Apartment 5–D with Mr. Powell [Official Transcript, p. 111] and that Mr. Powell paid approximately five-sixths of the total monthly rental [Official Transcript, pp. 111–1121.

7. In both of the above proceedings as well as in numerous others, the New York courts have sustained Mr. Powell's continuing inhabitancy in that state.

The Member-elect has voted, worked and resided in New York, New York from infancy. He has filed all appropriate Federal and New York State income tax returns in New York as well as the estimate required under New York City's recently enacted income tax statute. (See attached documents), and paid all taxes required of him as a resident of the State and City of New York.

IT-208

N. Y. State Department of Taxation and Finance

NEW YORK STATE COMBINED INCOME TAX RETURN-19 2

or other Taxable Year Beginning ____ 19____ Ending ____ 19____

FOR RESIDENT MARRIED PERSONS FILING A JOINT FEDERAL RETURN WHO ELECT TO FILE SEPARATE NEW YORK STATE RETURNS

First names and middle initials of husband and wife | Last name

Your Social Security No.

Occupation

Home Address ____ Number and street or rural route ____ Apt. No.

Wife's Social Security No.

Occupation

City, village or post office ____ Postal zone number ____ State

A. Were both husband and wife New York State residents during the entire year? ☐ Yes ☐ No

If "No," give period of N.Y. residence: From (mo., day, yr.) ____ To (mo., day, yr.) ____

B. County in which you live ____

		(a) JOINT AMOUNT	(b) HUSBAND	(a) WIFE
1. Total income (from line 9, Sch. A, on back of this form)		$ 45[illegible]	$ 7[illegible]	$ [illegible]
Additions	2. Interest income on state and local bonds, other than New York			
	3. Other additions (Specify)			
Note: If no entries are required for lines 3 to 7, enter amount from line 1 on line 8.	4. Sum of lines 1, 2 and 3		$	$
Subtractions	5. Interest income on United States obligations			
	6. Line 4 less line 5		$	$
	7. Other subtractions (Specify)			
8. Line 6 less line 7 (Total New York income)			$ 22[illegible]	$ [illegible]
9. Standard Deduction: 10% of combined husband and wife income on line 8 — to be divided between them as desired, but their total deduction may not exceed $1000			$	$
10. Total itemized deductions from Federal return		$ 1[illegible]		
11. Life insurance premiums		300		
12. Sum of lines 10 and 11		$ 1502.5		
13. Income taxes included in amount on line 10 and interest paid to carry bonds exempt from New York income tax		1[illegible]6		
14. Line 12 less line 13 (New York itemized deduction)		$ 13525	$ [illegible]	$ [illegible]
15. Line 8 less line 9 or 14			$ 1[illegible]	$ [illegible]
16. Exemptions (refer to instructions)			1[illegible]	[illegible]
17. Line 15 less line 16 (New York taxable income)			$ 17[illegible]	$ 13[illegible]
18. Tax on amount on line 17 (from rate schedule on back of this form)			$ [illegible]	$ 101 60
19. Statutory credit (the printed amount must be used)			12 50	
20. Line 18 less line 19 (New York tax)			$ 11[illegible]	$ [illegible]

	HUSBAND	WIFE
21. New York tax withheld – attach Forms IT-2102	$	$
22. Payments on New York Estimated Tax	500	
23a. Line 21 plus line 22	$	$
b. Refer to instructions before making entry on this line. Enter payments from line 23a in applicable column for husband and wife		$ 5[illegible] — $
24. If your tax (line 20) is larger than your payments (line 23b), enter Balance Due. Pay full balance due with this return to "New York State Income Tax Bureau"		$ 6[illegible] $ -589 12
25. If your payments (line 23b) are larger than your tax (line 20), enter Overpayment		$ $
26. Amount of line 25 to be (a) Credited on 1963 Estimated Tax		$ $
(b) Refunded		$ $
(c) Applied to Unincorporated Business Tax on attached Form IT-202		$ $

Do not write in spaces below

Husband's signature and date ____ Wife's signature and date ____

Signature of preparer other than taxpayers ____ address ____ date ____

IT-208 Page 2 1962

SCHEDULE A: Income from Federal Form 1040. (Enter in Column a the items below from the line numbers as they appear on page 1 of your Federal Form 1040. Omit lines 1 through 3. Make first entry from line 4. Enter in Columns b and c the items of income which would have been reportable on separate Federal returns of husband and wife.)

	(a) JOINT AMOUNT	(b) HUSBAND	(c) WIFE
4. Total wages, salaries, tips, etc., and excess of allowances over business expenses, excluding sick pay	$	$	$
5. a. Dividends			
b. Interest			
c. Rents, royalties, pensions, etc.			
6. Business income (state type.....)			
Total receipts $..... Gross profit $.....			
7. Sale or exchange of property			
8. Farm income			
9. Total (add lines 4 through 8)	$	$	$

(If the total of Cols. b and c is not equal to Col. a, attach explanation) (See instructions)

SCHEDULE B: Income from Schedule B Federal Form 1040. (Enter the items below at the parts as they appear on page 1 in a separate Schedule B prepared as part of your Federal Form 1040. Omit Parts I and II. Make first entry from Part III.)

Part III. Pension and Annuity Income	$
Part IV. Rent and Royalty Income	
Part V. Other Income or Losses 1. Partnerships	
2. Estates or Trusts	
3. Other Sources	
Total income or loss from Parts III, IV and V (same as line 5c, Col. a of Schedule A above)	$

SCHEDULE C: Itemized deductions from Federal Form 1040. (Enter the items below as they appear on page 2 of your Federal Form 1040.)

Contributions	$
Interest expense	
Taxes	
Medical and dental expense	
Other deductions. (Explain principal items on lines below)	
Total other deductions	
Total deductions (as shown on page 2 of Federal Form 1040)	$

TAX RATE SCHEDULE

Compute tax for husband and wife separately on income reported on line 17 in Columns b and c, page 1.

If amount on line 17, page 1, is Over	but not over	Enter on line 18, page 1:	
Not over $1,000		2% of amount on line 17	
$1,000	$3,000	$20 plus 3%	of excess over $1,000
3,000	5,000	80 plus 4%	of excess over 3,000
5,000	7,000	160 plus 5%	of excess over 5,000
7,000	9,000	260 plus 6%	of excess over 7,000
9,000	11,000	380 plus 7%	of excess over 9,000
11,000	13,000	520 plus 8%	of excess over 11,000
13,000	15,000	680 plus 9%	of excess over 13,000
15,000		860 plus 10%	of excess over 15,000

REMINDER:

1. **Please read the instructions received with this return.**
2. **Both husband and wife must sign the return.**
3. **Attach a remittance for the full amount of the balance due as stated on line 24 in cols. b and c, page 1.**
4. **Make remittance payable to New York State Income Tax Bureau.**
5. **Attach copy numbered "1" of each Withholding Tax Statement (Form IT-2102) received from your employers. You must attach Forms IT-2102 to substantiate the total amount claimed on line 21 of this return.**
6. **Mail return on or before the due date to the New York State District Tax Office which serves your county.**

IT-208
N. Y. State Department of Taxation and Finance

NEW YORK STATE COMBINED INCOME TAX RETURN-1963

or other Taxable Year Beginning ..... 19..... Ending ..... 19.....

FOR RESIDENT MARRIED PERSONS FILING A JOINT FEDERAL RETURN WHO ELECT TO FILE SEPARATE NEW YORK STATE RETURNS

First names and middle initials of husband and wife	Last name	Your social security no.
Adam and Yvette	Powell	

Occupation Mini
and Congres
Wife's social security no.
Occupation Secretary

Home Address e/o Chester A. Bagley, 2 Maryton Rd. (Number and street or rural route) Apt. No.

White Plains, New York (City, village or post office) (State) (Postal ZIP code)

A. Were both husband and wife New York State residents during the entire year? ☐ Yes ☐ No
If "No," give period of N. Y. residence: From: (mo., day, yr.) ..... To: (mo., day, yr.) .....

B. County where you live .....

		(a) JOINT AMOUNT	(b) HUSBAND	(c) WIFE
1. Total income (from line 9, Sch. A, on back of this form)		49,533 80	36,045 33	13,488 47
Note: If no entries are required on lines 2 to 7, enter amount from line 1 on line 8.	Additions: 2. Interest income on state and local bonds, other than New York			
	3. Other			
	4. Sum of lines 1, 2 and 3			
	Subtractions: 5. Interest income on United States obligations			
	6. Line 4 less line 5			
	7. Other			
8. Line 6 less line 7 (Total New York income)			36,045 33	13,488 47
9. Standard Deductions: 10% of combined income on line 8—to be divided between husband and wife as desired, but total may not exceed $1000				
10. Total itemized deductions from Federal return		21,767 81		
11. Life insurance premiums and other deductions		300 00		
12. Sum of lines 10 and 11		22,067 81		
13. Income taxes included in amount on line 10 and other subtractions		1,452 00		
14. Line 12 less line 13 (New York itemized deduction)		20,615 81	20,615 81	
15. Line 8 less line 9 or 14			15,429 52	13,488 47
16. Exemptions: (see instructions)			1,800 00	600 00
17. Line 15 less line 16 (New York taxable income)			13,629 52	12,888 47
18. Tax on amount on line 17 (from rate schedule on back of this form)			736 06	673 12
19. Statutory credit			12 50	15 00
20. Line 18 less line 19 (New York tax)			724 56	658 12

Note: If an amount is entered on line 14 above, omit entries on lines 10 through 13. New York itemized deduction in column (a) on line 14 may be divided as desired by husband and wife in columns (b) and (c).

	HUSBAND	WIFE
21. New York tax withheld – attach Forms IT-2102		
22. Payments on New York estimated tax	1,000 00	

23a. Line 21 plus line 22			
b. See instructions before making entry on this line. Enter payments from line 23a in applicable column for husband and wife	724 16	275 84	
24. If your tax (line 20) is larger than your payments (line 23b), enter BALANCE DUE. Pay full balance due with this return to "New York State Income Tax Bureau"	--	382 72	
25. If your payments (line 23b) are larger than your tax (line 20), enter OVERPAYMENT.			
26. Amount of line 25 to be: (a) Credited to 1964 estimated tax on Form IT-2105			
(b) Refunded			
(c) Applied to unincorporated business tax on attached Form IT-202			

Do not write in spaces below

Husband's signature and date

Wife's signature and date

Signature of preparer other than taxpayer address date

IT-208 Page 2

SCHEDULE A: Income from Federal Form 1040. (Enter in Column a the items below from the line numbers as they appear on page 1 of Federal Form 1040. Omit lines 1 through 3. Make first entry from line 4. Enter in Columns b and c the items of income which would have been reportable on separate Federal returns of husband and wife.)

	(a) JOINT AMOUNT	(b) HUSBAND	(c) WIFE
4. Total wages, salaries, tips, etc., and excess of allowances over business expenses, excluding sick pay	35,809 32	22,500 00	13,30
5. a. Dividends			
b. Interest	90 00	90 00	
c. Rents, royalties, pensions, etc. (explain in Schedule B below)	13,634 40	13,456 28	17 12
6. a. Business income (state type)			
Total receipts Gross profit			
b. Sale or exchange of property			
Net long-term gain or loss from Sch. D Fed. Form 1040			
c. Farm income			
7. Total (add lines 4 through 6c)			
8. Payments by self-employed persons to retirement plans, etc.			
9. Total income (subtract line 8 from line 7)	49,533 80	36,046 28	13,48 40

(If the total of Cols. b and c is not equal to Col. a, attach explanation)

SCHEDULE B: Income from Schedule B Federal Form 1040. (Enter the items below as they appear on page 1 in sec. Schedule B of Federal Form 1040. Omit Parts I and II. Make first entry from Part III.)

Part III. Pension and annuity income	
Part IV. Rent and royalty income	17 10
Part V. Other income or losses 1. partnerships	
2. estates or trusts	
3. other MISC.	13,45 38
Total of Parts III, IV and V (same as line 8c, Col. a of Schedule A above)	13,62 48

SCHEDULE C: Itemized deductions from Federal Form 1040. Complete this schedule only if itemized deduction is cl... on line 14, page 1. (Enter the items below as they appear on page 2 of Federal Form 1040.)

Contributions	1,45
Interest expense	
Taxes	3,35 60
Medical and dental expense	
Other	16,9 21
Total deductions (as shown on page 2 of Federal Form 1040)	21,7 81

TAX RATE SCHEDULE

Compute tax for husband and wife separately on income reported on line 17 in Columns b and c, page 1.

If amount on line 17, page 1, is: not over $1,000 over	but not over:	Enter on line 16, page 1: 2% of amount on line 17	of excess over
$1,000	$3,000	$20 plus 3%	$1,000
3,000	5,000	80 plus 4%	3,000
5,000	7,000	160 plus 5%	5,000
7,000	9,000	260 plus 6%	7,000
9,000	11,000	380 plus 7%	9,000
11,000	13,000	520 plus 8%	11,000
13,000	15,000	680 plus 9%	13,000
15,000		860 plus 10%	15,000

REMINDER:
1. Please read the instructions received with this return.
2. Both husband and wife must sign the return.
3. Attach a remittance for the full amount of the balance due as stated on line 24 in cols. b and c, page 1.
4. Make remittance payable to New York State Income Tax Bureau.
5. Attach copy numbered "1" of each Withholding Tax Statement (Form IT-2102) received from your employers to substantiate the total amount claimed on line 21.
6. Mail return on or before the due date to the New York State District Tax Office which serves your county.

(1/63) 62804 (3127)

IT-208 N. Y. State Department of Taxation and Finance

N. Y. STATE COMBINED INCOME TAX RETURN - 1964

or taxable year beginning ..... 19..... ending ..... 19.....

FOR RESIDENT MARRIED PERSONS FILING A JOINT FEDERAL RETURN WHO ELECT TO FILE SEPARATE NEW YORK STATE RETURNS

First names and initials of husband and wife	Last name	Husband's social sec.
Adam and Yvette	Powell	119 | 03 |

Occupation Min. & Congress

Home Address c/o Chester A. Bagley 2 Maryton Rd.

Wife's social security

Number and street or rural route — Apt. No.

White Plains — New York

City, village or post office and State — Postal ZIP code

Occupation Secretary

A. Were both husband and wife New York State residents during the entire year? ..... ☐ Yes ☐ No

If "No," give period of N. Y. residence: From (mo., day, yr.) ..... To (mo., day, yr.) .....

B. County where you live.

	(a) JOINT AMOUNT	(b) HUSBAND	(c) WIFE
1. Total income (from line 11, Sch. A on back of this form)	40,994 58	27,460 75	13,534 63
Note: If no entries are required on lines 2 to 4, enter amount from line 1 on line 5. 2. Additions			
3. Sum of lines 1 and 2			
4. Subtractions			
5. Line 3 less line 4 (Total New York income)		27,460 75	13,534 63
6. Itemized deduction — Complete lines 6a to 6e.			
a. Total itemized deductions from Federal return	15,503 66		
b. Life insurance premiums and other deductions	300 00		
c. Sum of lines 6a and 6b	16,603 66		
d. Income taxes included in line 6a and other subtractions	750 00		
e. Enter line 6c less line 6d or claim Standard Deduction by entering 10% of combined income on line 5, but not more than $1000. Amount in column e may be divided as desired by husband and wife in columns b and c	15,053 66	15,053 66	
7. Line 5 less line 6e		12,406 09	13,534 63
8. Exemptions: (see instructions)		600 00	1,800 00
9. Line 7 less line 8 (New York taxable income)		11,806 09	11,734 63
10. Tax on amount on line 9 (from rate schedule on back of this form)		584 48	578 77
11. Statutory credit		12 50	
12. Line 10 less line 11 (Personal income tax)		571 98	566 27
13. Unincorporated business tax from Form IT-202			
14. Sum of lines 12 and 13 (Total tax)			

	HUSBAND	WIFE
15. New York tax withheld – attach Forms IT-2102		
16. Payments on New York estimated tax		
17a. Sum of lines 15 and 16		
b. See instructions before making entry on this line. Enter payments from line 17a in applicable column for husband and wife		

18. If your payments (line 17b) are less than your tax (line 14), enter BALANCE DUE. Pay full balance due with this return to "New York State Income Tax Bureau"

19. If your payments (line 17b) are larger than your tax (line 14), enter OVERPAYMENT.

20. Amount of line 19 to be: (a) Credited to 1965 estimated tax on Form IT-2105 (b) Refunded

Do not write in spaces below

Husband's signature and date — Wife's signature and date

Signature of preparer other than taxpayer — address — date

IT-201 — N. Y. State Department of Taxation and Finance

N. Y. STATE INCOME TAX RESIDENT RETURN-1965

or taxable year beginning ..... 19..... ending ..... 19.....

First name and initial	Last name	Your social security no.
ADAM C.	POWELL	109 03 6[illegible]

Occupation

Home Address (If joint return of husband and wife, use first names and initials of both) — Number and street or rural route — Apt. No.

Spouse's number if joint return: 582 03 01

Occupation

City, village or post office and State — Postal ZIP code

If husband and wife file a joint Federal return and elect to file separate State returns, you must use Form IT-208.

A. If married, are you filing a joint Federal return? ..... ☐ Yes ☐ No

B. Is your spouse filing a separate New York return? ..... ☐ Yes ☐ No

If "Yes," enter name of spouse.

D. Were you a New York State resident for the entire year? .... ☐ Yes ☐ No

If "No," give period of N.Y. residence: From (mo., day, yr.) ____ To (mo., day, yr.) ____

C. County of residence

1. Total income (line 9 of Federal Form 1040)		60381 [illegible]
2. Additions		
3. Sum of lines 1 and 2		
4. Subtractions (CLERK'S SALARY PAID TO WIFE, RESIDENT)		19644 33
5. Line 3 less line 4 (Total New York income)		40737 41
6. Standard Deduction OR Itemized Deductions (Enter 10% of line 5 on line 6e, but not more than $1000. If husband and wife file separate returns, the total of these entries for both may not exceed $1000.)		
a. Total itemized deductions from Federal return	1101 V —	
b. Life insurance premiums and other deductions	300 —	
c. Sum of lines 6a and 6b	1312 .	
d. Income taxes included in line 6a and other subtractions	1038 —	
e. Line 6a less line 6d or Standard Deduction		1667 [illegible] —
7. Line 5 less line 6e		2806 [illegible] 41
8. Exemptions from Federal return		2000
9. Line 7 less line 8 (New York taxable income)		2166 [illegible] 41
10. Tax on amount on line 9 (from rate schedule on back)		1526 34
11. Statutory credit — check box and enter amount claimed: ☐ $10.00 Single ☐ $25.00 Head of Household or Surviving spouse with dependent child ☐ $12.50 Married — filing separate returns ☒ $25.00 Married — filing joint return		25 -1
12. Line 10 less line 11		1501 34
13. Unincorporated business tax from Form IT-202		
14. Sum of lines 12 and 13		

	HUSBAND	WIFE	TOTAL
15. New York tax withheld — attach Forms IT-2102	250 —		
16. Payments on New York estimated tax			
17. Sum of lines 15 and 16			250 —
18. If line 14 is larger than line 17, enter Balance Due. Remit in full with this return to New York State Income Tax Bureau			1351 34
19. If line 17 is larger than line 14, enter Overpayment			
20. Amount of line 19 to be: (a) Credited to 1966 estimated tax on Form IT-2105			
(b) Refunded			

Do not write in spaces below

Sign here ▶ ____ If joint return, both husband and wife must sign — date

Signature of preparer other than taxpayer — address — date

Form 1N-NYC-5-400M-727109(66) 114

Instruction Sheet—Page 1

THE CITY OF NEW YORK—DEPARTMENT OF FINANCE

DECLARATION OF ESTIMATED PERSONAL INCOME TAX (RESIDENTS), UNINCORPORATED BUSINESS INCOME TAX (INDIVIDUALS), AND EARNINGS TAX ON NONRESIDENTS (SELF-EMPLOYED)

To be Filed on Form NYC-5 Pursuant to Laws as Embodied in Chapter 46, Titles T, S and U of the Administrative Code.

Read the instructions carefully and retain this sheet for future reference.

Assistance in the preparation of the Declaration will be rendered at the borough offices of the Bureau of City Collections and at the Office of Special Taxes, 139 Centre Street, New York, N. Y. 10013.

For information with respect to the above Laws, apply to the Department of Finance, Correspondence and Information Division, Legal Bureau, 139 Centre Street, New York, N. Y. 10013.

The Declaration must be complete in all details.
Prepare the Declaration in duplicate and retain the duplicate copy for your files.

All schedules and working papers used in connection with the preparation of the Declaration must be retained and made available for inspection upon demand by the Director of Finance.

TAXPAYER'S COPY

FORM NYC-5 CITY OF NEW YORK—DEPARTMENT OF FINANCE

DECLARATION OF ESTIMATED PERSONAL INCOME TAX (RESIDENTS), UNINCORPORATED BUSINESS INCOME TAX (INDIVIDUALS), AND EARNINGS TAX ON NONRESIDENTS (SELF-EMPLOYED)

FOR CALENDAR YEAR 1966 OR FISCAL YEAR ENDING ..... 19.....

ACCOUNT NUMBER

1966

ITEM NO.

1. ESTIMATED TAX (SEE INSTRUCTIONS) .. $ 100 —
2. COMPUTATION OF INSTALLMENT: CHECK PROPER BOX AND ENTER AMOUNT INDICATED:
   - [X] IF THIS DECLARATION IS DUE ON SEPTEMBER 15, 1966, ENTER 1/2 OF ITEM 1 ..... $ 50 —
   - [ ] JANUARY 15, 1967, ENTER ENTIRE AMOUNT OF ITEM 1 ..... $ 100 —
3. LESS: CREDIT FOR NEW YORK CITY GROSS RECEIPTS TAX (SEE INSTRUCTIONS) ..... $ —
4. AMOUNT PAID WITH THIS DECLARATION $ 50 —

YOUR SOCIAL SECURITY NUMBER

SPOUSE'S NUMBER, IF JOINT DECLARATION

IF THIS IS A JOINT DECLARATION CHECK BOX [ ]

MAKE CHECK OR MONEY ORDER PAYABLE TO THE ORDER OF THE CITY COLLECTOR

MAIL DECLARATION AND REMITTANCE TO DEPARTMENT OF FINANCE P.O. BOX 3700, CHURCH ST. STA. NEW YORK, N.Y. 10008

SIGNATURE OF TAXPAYER

SIGNATURE OF SPOUSE, IF JOINT DECLARATION

10/3/66
DATE

ADAM C. POWELL
C/O CHESTER A. FARLEY
2 MARYTON RD.
WHITE PLAINS, N.Y.

KEEP THIS COPY FOR YOUR RECORDS

Location of Borough Offices of the Bureau of City Collections

MANHATTAN	139 Centre St., New York, N. Y. 10013
THE BRONX	Tremont and Arthur Aves., Bronx, N. Y. 10457
BROOKLYN	Room 1, Municipal Bldg., Brooklyn, N. Y. 11201
QUEENS	Borough Hall, Kew Gardens, N. Y. 11424
RICHMOND	Room 200, 350 St. Marks Place, St. George, S. I., N. Y. 10301

AMERICAN CIVIL LIBERTIES UNION,
New York, N.Y., January 25, 1967.

Hon. EMANUEL CELLER,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN CELLER: We enclose two copies of an *amicus* brief which we request permission to file with the Select Committee on the right of Adam Clayton Powell, Jr. to a seat in the House of Representatives. Our hope is to be of aid to the Committee in its deliberations. Additional copies are being sent to each member of the House.

We further request permission to offer testimony through the Chairman of the American Civil Liberties Union, an attorney, Ernest Angell. Mr. Angell would be prepared to testify on the constitutional points raised in our brief, which, in our opinion, are alone before the Committee.

With kind regard.

Sincerely yours,

JOHN DEJ. PEMBERTON, Jr.,
Executive Director, ACLU.
ARYEH NEIER
Executive Director, NYCLU.

SELECT COMMITTEE, HOUSE OF REPRESENTATIVES, CONGRESS OF UNITED STATES, 90TH CONGRESS, 1ST SESSION

In the Matter of the Right of Adam Clayton Powell, Jr., to a Seat as the Representative from the Eighteenth Congressional District, New York, New York

BRIEF OF AMICI, AMERICAN CIVIL LIBERTIES UNION AND NEW YORK CIVIL LIBERTIES UNION

ERNEST ANGELL,
OSMOND K. FRAENKEL,
EDWARD J. ENNIS,
NANETTE DEMBITZ,
JOHN DE J. PEMBERTON, Jr.,
MARVIN M. KARPATKIN,
ELEANOR HOLMES NORTON,
ALAN H. LEVINE,
c/o American Civil Liberties Union,
New York, N.Y.
LAWRENCE SPEISER
c/o American Civil Liberties Union,
Washington, D.C.
Attorneys for Amici.

Interest of Amici

The American Civil Liberties Union and its New York affiliate, the New York Civil Liberties Union, are organizations committed to the protection of constitutional rights and individual liberty. Concerned solely with constitutional principle, *amici* have traditionally defended the rights of citizens of every persuasion in and through the courts, the legislatures, and the executive departments of government.

The right to representation in legislative bodies in accordance with the mandate of the voters is among the most basic principles of a democratic republic. When so intrinsic a right is challenged, concern is occasioned for our most precious institutions.

The right of Adam Clayton Powell, Jr. to assume the seat to which he was elected in the House of Representatives is therefore an issue of pressing public concern, for it is indivisible from the rights of the voters of his district to be represented. Indeed, it is necessarily the concern of the national electorate. In the public interest therefore, the American Civil Liberties Union and the New

York Civil Liberties Union seek permission to intervene in these proceedings as *amici* in support of the right of Mr. Powell to assume his seat in the House of Representatives after qualifying pursuant to the requirements enumerated in Article 1, Clause 2, Section 2 of the Constitution.[1]

Statement of the Case

The House of Representatives refused to administer the oath of office to Adam Clayton Powell, Jr. on January 10, 1967, the opening day of the 90th Congress (R16). Although the Members who spoke during the debate expressed varying reasons for desiring Mr. Powell to stand aside,[2] Rep. Gerald R. Ford, the author of the resolution that passed the House, was of the view that "the issue * * * is exclusively the question of the qualifications of one of our members elected November 8 to sit as a Member of the House of Representatives (R7)."

A resolution offered by Rep. Morris K. Udall would have referred "the question of the final right of Adam Clayton Powell to a seat * * * to a select committee," thereby erecting no immediate bar to seating Mr. Powell (R4). Upon the defeat of his resolution, Mr. Udall endorsed the Ford resolution because "the motion to seat [Mr. Powell] will not pass * * *. [I]f there is any chance for him to prove his case, to have a hearing to get his seat, we should pass the substitute resolution and have the committee appointed (R16).[3]"

On January 19, 1967 a Select Committee of nine Congressmen was appointed to determine "the question of the right" of Mr. Powell to be sworn as well as his final right to be seated. By the terms of the approved resolution, the Committee must report to the House within five weeks of its appointment (R4).

Argument

The most basic democratic principles and the plain requirements of the Constitution compel a determination that elected Representatives who meet the express constitutional qualifications for membership in the House must be seated

Article 1, Section 2, Clause 2 sets down the qualifications[4] for membership in the House of Representatives:

"No person shall be a Representative who shall not have attained the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of the State in which he shall be chosen."

The enumeration of qualifications is immediately significant, because it is inclusive and limited.[5] It provides a plain standard for Congressional judgment.[6] But the specifications in Article I, Section 2, Clause 2 have intrinsic importance beyond the commonly accepted rule of law that enumerated instances are meant to be comprehensive. In their substance, the required qualifications are objective, leaving only the most minimum discretion to the House.

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[1] Inasmuch as no present record of evidence exists in this case, *amici* are without any basis to determine whether Mr. Powell in fact meets the constitutional qualifications of age, citizenship and inhabitancy. However, *amici* urge that no other qualifications may properly be considered and that any hearings must be confined to these questions.

[2] See generally R4–R16. References throughout the Statement of the Case are to the Congressional Record, 113 Cong. Rec. 1–16 (daily ed. Jan. 10, 1967).

[3] Without debate on the same day, the House voted to administer the oath to Benjamin B. Blackburn of Georgia, referring the question of his final right to a seat in a contested election to the Committee on House Administration (R16–17).

[4] The challenge of five Mississippi Congressmen in the 89th Congress (1965) by Negroes claiming to have been disenfranchised by the State of Mississippi affords a recent example of a constitutionally proper challenge. There the challenge was to the elections, which may constitutionally be examined by Congress under its power to "be the judge of the elections, returns, and qualifications of its own members." Article 1, Section 5, Clause 1.

[5] No less an authority than Mr. Justice Story regarded the enumeration as dispositive: "It would seem but fair reasoning, upon the plainest principles of interpretation, that when the Constitution established certain qualifications as necessary for office, it meant to exclude all others as prerequisites. From the very nature of such a provision, the affirmance of these qualifications would seem to imply a negation of all others." *Story on the Constitution*, ¶ 625. See also Cooley, *Constitutional Limitations* 78; Cushing, *Law and Practice of Legislative Assemblies* 27 (2nd ed.). Foster, *Treatise on the Constitution* 367; McCrary, *Law of Elections*, ¶ 312. Paschal, *Annotated Constitution* 305 (2nd ed.) Tucker, *Treatise on the Constitution* 394.

[6] For cases directly involving the enumerated qualifications, see *John Young Brown*, 1 Hinds ¶ 418 (excluded for age); *John Bailey*, 1 Hinds ¶ 484 (excluded for noninhabitancy); *Jennings Piggott*, 1 Hinds ¶ 369 (excluded for non-inhabitancy).

No other rule for seating Congressmen would be compatible with democratic elections and government. With broader discretion to judge the qualifications of its members, Congress would have the power of final approval of elected representatives. This power is denied Congress, since there can be no proper exercise of a power to review a decision which in a democracy belongs exclusively to the electorate.[7]

Moreover, such power is constitutionally denied because its exercise is fraught with possibilities for bias. On the occasion of the challenge to Senator Reed Smoot, Senator Knox reminded his colleagues of the way in which the enumerated qualifications facilitate objectivity of judgment in the seating of Congressmen:

"The simple constitutional regulations of qualification do not in any way involve the moral qualifications of the man; they relate to facts outside the realm of ethical considerations and are regulations of fact easily established. Properly enough, therefore, as no sectional, partisan, or religious feeling could attach itself to an issue as to whether or not a man is thirty years of age, had been a citizen of the United States and an inhabitant of a State for the periods prescribed, the decision as to their existence rests with the majority of the Senate." [8]

The authors of the Constitution were intensely aware of the ramifications of the limitation on qualifications. Madison regarded a Congressional power to establish qualifications as "an improper and dangerous power in the Legislature." [9] In his authoritative work, *The Making of Our Constitution* (1928), Professor Charles Warren further reports of Madison the view that:

"If the Legislature could regulate them [qualifications], 'it can by degrees subvert the Constitution * * * by limiting the number capable of being elected * * *. Qualifications founded on artificial distinctions may be devised by the stronger, in order to keep out partisans of a weaker faction.' He also pointed out 'the British Parliament possessed the power of regulating the qualifications * * * of the elected and the abuse they had made of it was a lesson worthy of our attention.' They had made changes in qualifications 'subservient to their own views or to the views of political or religious parties.' The Convention evidently concurred in these views; for it defeated the proposal to give to Congress power to establish qualifications in general, by a vote of seven States to four * * *" (p. 420).

In Number 68 of the Federalist Papers, Hamilton too was without doubt that the requirements for Congressional office "are defined and fixed in the Constitution; and are unalterable by the Legislature."

To its credit, Congress has with few exceptions—all arising in times of special stress—been faithful to the Constitutional mandate and the intent of the Constitutional fathers. In modern cases, Congressional adherence to constitutional principle has been striking. Senator William Langer was seated in 1942 despite a challenge involving "charges [that] were numerous * * * chiefly involv[ing] moral turpitude," including kickbacks, conversion and bribery.[10] Rep. Francis Shoemaker was seated by the House in 1933, though convicted of a crime and sentenced.[11]

The modern Congressional practice of strict adherence to the constitutional qualifications repeats the interpretation developed in the very first cases. In the first fully debated House case, *William McCreery*, 10th Con., 1807, 1 Hinds ¶414. the House voted in favor of seating McCreery on the principle, as put by Rep. Findley, Chairman of the Committee on Elections, that Congress is "not authorized to *prescribe* the qualifications of their own members, but they are authorized to *judge* of their qualifications; in doing so, however, they must be governed by the rules prescribed by the Federal Constitution." (Emphasis added.) Only this term the Supreme Court appeared to approve this view in *Bond* v. *Floyd*, 35

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[7] See generally Brief filed by Special Committee of the Association of the Bar of the City of New York (Hon. Charles Evans Hughes, chairman) supporting the right of five elected Socialists to seats in the New York State Assembly. *In the Matter of Louis Waldman, August Claessens, Samuel A. Dewitt, Samuel Orr* and *Charles Solomon* (January 21, 1920).

[8] *Id.* at 14.

[9] Quoted in Warren, *The Making of Our Constitution* 420 (1928).

[10] See *Senate Election, Expulsion & Censure Cases* 141.

[11] The crime was not a felony under Minnesota law, but a resolution was offered to have Mr. Shoemaker stand aside. A motion allowing him to be seated won approval. 77 Cong. Rec. 73–74 (1933).

Law Week 4038 (December 5, 1966). Though disapproving the exclusion of Bond on free speech grounds, the unanimous Court noted the views of Madison and Hamilton on the exclusiveness of the enumerated qualifications. 35 Law Week at 4043, n. 13. See also the case of *Humphrey Marshall*: S. Jour., 4th Cong. 1st Sess., pp. 194, et seq (Senate refused to consider charges of "gross fraud" and perjury because not among qualifications for which Congress could exclude); compare *Bond* v. *Floyd*, 251 F.Supp. 333, 345 (Judge Tuttle dissenting) (N.D. Ga. 1966).[12]

Despite its laudable record, Congress has in rare instances of extreme political tension wavered from its usual judicious adherence to constitutional principle and precedent.[13] These deviations occurred in three categories of cases reflecting anti-Mormon,[14] anti-Confederate,[15] and anti-radical[16] feeling. We urge the repudiation of what little life may be left in precedents which reflect the anachronistic prejudices of prior eras.

CONCLUSION

The prescribed limitations in Article 1, Section 2, Clause 2 were designed to free the question of eligibility for Congressional membership from any relationship to transient political moods or tensions. If so late in our history, Congress should decide to venture beyond the constitutionally enumerated qualifications, it would resurrect a long discredited view of the Constitution and choose as its model periods bespeaking furor instead of fairness.

It would appear from the debates on the approved resolution that some Members consider Mr. Powell's conduct relevant to his eligibility to be seated. We strongly urge this Committee to declare that Mr. Powell's conduct in no way bears upon his qualifications and that no evidence pertaining to that conduct may be considered by this Committee. Both the Constitution and the great weight of precedent demand that the Committee limit its inquiry solely to the enumerated qualifications of age, citizenship, and inhabitancy.

Respectfully submitted.

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OSMOND K. FRAENKEL,
EDWARD J. ENNIS,
NANETTE DEMBITZ,
JOHN DE J. PEMBERTON, Jr.,
MARVIN M. KARPATKIN,
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New York, N. Y.,
LAWRENCE SPEISER,
c/o American Civil Liberties Union,
Washington, D.C.,
Attorneys for Amici.

Dated: January 25, 1967.

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[12] See also *Turney* v. *Marshall*, 1 Hinds 385; *Woods* v. *Peters*, 1 Hinds 387; *Benjamin Stark*, 1 Hinds 433, 435; *Fouke* v. *Trumbull*, 1 Hinds 384; *Ames and Brooks*, 2 Hinds 866.

[13] Indeed it would be unusual if so political a body as the Congress were to have had a perfect record in such cases throughout our history. As Chafee wisely notes:

"The precedents rarely afford a satisfactory formulation of the principle on which the House acted, which can be automatically applied in subsequent cases after the manner of court decisions. A legislature is not by nature a judicial body. Its members are chosen and organized for carrying out policies, and not, like judges, for the sole purpose of thinking together . . . Moreover, the basis of legislative discussion is often obscure because of the number of persons who join in debate." Chafee, *Freedom of Speech*, 343–344 (1920).

The nonjudicial nature of congressional precedent renders even more necessary strong adherence to constitutional language by this committee.

[14] Case of *Brigham Roberts*, 56 Cong., 1899, 1 Hinds 474. But see case of *Reed Smoot*, 58th Cong., 1903; 1 Hinds 481–484 (Mormon subsequently seated by Senate).

[15] Cases of *Kentucky Members*, 40th Cong., 1867. But see Sec. 3 of the 14th amendment, enacted subsequently, which expressly disqualified former active Confederates from serving in Congress.

[16] Case of *Victor Berger*, 66th Cong., 58th Cong., 58th Cong. (1919). But see *Bond* v. *Floyd*, 35 Law Week 4038 (Dec. 5, 1966).

In addition, it should be noted that the committee will take official notice of the published hearings and report of the Special Subcommittee on Contracts of the Committee on House Administration of the U.S. House of Representatives, 89th Congress, second session, relating to expenditures during the 89th Congress by the House Committee on Education and Labor and the clerk-hire status of Y. Marjorie Flores (Mrs. Adam Clayton Powell).

The provisions of the Constitution of the United States which are immediately relevant to the committee's investigators are the following:

> No person shall be a Representative who shall not have attained to the age of twenty-five years, and have been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen. (Art. I, sec. 2, cl. 2) ;
>
> Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members. . . (Art. I, sec. 5, cl. 1) ; and
>
> Each House may determine the Rules of its Proceedings punish its Members for disorderly behavior, and, with the Concurrence of two-thirds, expel a Member. (Art. I, sec. 5, cl. 2).

In addition the Chair wishes to clarify the procedure which the committee has adopted to govern today's hearing.

First, by letter to Representative-elect Powell dated February 1, 1967, we advised that he may be accompanied by counsel and that paragraph 26, rule XI of the Rules of the House will apply.

Second, by resolution adopted by the committee in executive session, counsel for Representative-elect Powell may be heard by the committee for purposes of legal argument for a reasonable length of time as the Chair may direct, and

Third, the committee has directed the Chair to inform the Representative-elect that he will be afforded an opportunity to make a statement to the committee at the close of his interrogation, on all maters contained in the letter of invitation to him to testify.

The members of this committee regard their assignment as a high public trust. We recognize the gravity of our responsibilities and are determined to discharge our duties faithfully under the Constitution, the precedents, and the relevant facts. Our mandate, though broad, does not make us final arbiters of any question. Only the House itself can speak with finality. Our duty is to advise the House. We invite the Representative-elect, who is our witness today, to aid us in our deliberations to the end that our advice to the House may be well informed and wise.

Will counsel for Mr. Powell please identify themselves now for the record.

Mr. KUNSTLER. My name is William N. Kunstler. I am one of Mr. Powell's counsel.

Mr. REID. I am Herbert O. Reid.

Mr. REEVES. Frank D. Reeves.

Mrs. CAHN. Jean Camper Cahn.

Mr. CARTER. Robert L. Carter.

Mr. WILLIAMS. Henry R. Williams.

Chairman CELLER. Does counsel wish to present orally any legal argument at this time? If so I will recognize one counsel for that purpose.

Mr. CARTER. Mr. Chairman, my name again is Robert L. Carter. I would like to make an oral presentation of what we regard as the legal and constitutional considerations governing this hearing.

We have set this out before the committee in a——

Chairman CELLER. You are making that presentation now?

Mr. CARTER. If I may.

Chairman CELLER. Then I am going to ask that you limit your presentation. How many minutes do you want?

Mr. CARTER. I am very brief. I probably will not take more than 15 minutes. I will try to keep it within that limitation.

Chairman CELLER. We will allow you 15 minutes. If that is insufficient, you may make an application for an extension of time.

Mr. CARTER. All right, sir.

I might say at this time that Mr. Kinoy, who is sitting next to me—I want to raise the substantive constitutional considerations——

Chairman CELLER. We will not recognize Mr. Kinoy. We will recognize one counsel for this purpose.

Mr. CARTER. We have set forth in our brief and motion, attached to our motion which has already been referred to, a brief written presentation of what we regard to be the considerations that ought to govern disposition of this case.

We have, if you please, amplified these in a more extensive brief which, with the permission of the chairman, I would like to file at this time.

Chairman CELLER. That will be received.

(The document referred to follows:)

SELECT COMMITTEE, HOUSE OF REPRESENTATIVES, CONGRESS OF THE UNITED STATES

IN THE MATTER OF THE RIGHT OF ADAM CLAYTON POWELL, JR., TO HIS SEAT AS THE REPRESENTATIVE FROM THE EIGHTEENTH CONGRESSIONAL DISTRICT OF NEW YORK, RESPONDENT

BRIEF OF MEMBER-ELECT IN SUPPORT OF MOTION

JEAN CAMPER CAHN,
Washington, D.C.,
ROBERT L. CARTER,
New York, N.Y.,
HUBERT T. DELANY,
New York, N.Y.,
ARTHUR KINOY,
WILLIAM M. KUNSTLER,
New York, N.Y.,
FRANK D. REEVES,
HERBERT O. REID,
Washington, D.C.,
HENRY R. WILLIAMS,
New York, N.Y.,
Attorneys for Congressman-Elect Adam Clayton Powell, Jr.

STATEMENT OF THE CASE

On January 10, 1967, the House of Representatives in House Resolution 1, resolved as follows:

"*Resolved*, That the question of the right of Adam Clayton Powell to be sworn in as a Representative from the State of New York in the Ninetieth Congress, as well as his final right to a seat therein as such Representative, be referred to a special committee of nine Members of the House to be appointed by the Speaker, four of whom shall be Members of the minority party appointed after consultation with the minority leader. Until such committee shall report upon and the House shall decide such question and right, the said Adam Clayton Powell shall not be sworn in or permitted to occupy a seat in this House."

The Honorable Gerald R. Ford, Member from Michigan and Minority Leader, in proposing this resolution establishing the Select Committee, stated that the issue submitted to this Committee by the House "is exclusively the question of the qualifications of one of our numbers elected November 8 to sit as a Member of the House of Representatives." 90 Cong. Rec., 1st Sess., H. 7.[1]

The Member-Elect has submitted to this Committee clear evidence that he has been duly elected by the people of the 18th Congressional District and that he possesses all the constitutional qualifications for membership in the House as prescribed by Article I, Section 2, Clause 2 of the Constitution of the United States. There has been no challenge to the election or the returns. The Member-Elect is over the age of twenty-five, has been more than seven years a citizen of the United States, and is an inhabitant of the state in which he was chosen.[2]

Immediately after the appointment of the Select Committee by the Speaker, the Member-Elect filed the following motion with the Select Committee:

"Congressman-Elect Adam Clayton Powell, Jr., respectfully moves that the Select Committee report to the House of Represetnatives that Adam Clayton Powell, Member-elect to the 90th Congress from the 18th Congressional District of the State of New York, having been duly elected by the people of the district and possessing all the constitutional qualifications for membership in this House, should be sworn in forthwith as a Representative from the State of New York in the 90th Congress and it entitled to a seat in the House of Representatives.

"In support of this motion the Congressman-Elect attaches hereto as Exhibit A the duly authenticated Certificate of his Election; as Exhibit B his certificate of birth establishing the constitutionally prescribed age and citizenship for a member of this House, and as Exhibit C conclusive evidence of the constitutionally prescribed inhabitancy and residence in the State of New York.

"Since the validity of the election and returns from the 18th Congressional District of New York has not been questioned, and the sole and exclusive qualifications for membership in the House of Representatives prescribed by the Constitution of the United States have been met by the Congressman-Elect, this Committee is required under the Constitution and Precedents of Congress to recommend the immediate swearing in and seating of the Member-Elect.

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[1] It is perfectly clear that the only issue submitted to the Select Committee by the House was the question of the Member-Elect's constitutional qualifications to be sworn in and take his seat as a Representative of the 18th Congressional District of New York. This was carefully enunciated by the proponents of the Ford Resolution, H. Res. 1. Representative Ford carefully stated:

"The issue before us today is not the question of whether or not Mr. Powell should be chairman of that great Committee on Education and Labor. The issue, as I see it, is exclusively the question of the qualifications of one of our numbers elected November 8 to sit as a Member of the House of Representatives.

"This is a constitutional responsibility of every one of us."

In response to an inquiry from the Majority Leader, Rep. Ford replied:

"Before the gentleman from Arizona responds to what I understand is an interrogatory by the distinguished majority leader, let me point out that the citations that the gentleman from Oklahoma makes involve elections. They do not involve the qualifications of a Member. In the Constitution itself, in section 5, there is a distinction, and for the purpose of letting all Members know, let me read that section. Section 5 says: 'Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members.' This is not a question of elections or returns. This is a question of qualifications."

Representative Ford further stated:

"But, Mr. Speaker, it is important that today we deal with this constitutional question and deal with it alone."

See, also, Representative Stratton, supporting the resolution of the Minority Leader:

"* * * the question before us today is a question of qualifications." (Cong. Rec., Jan. 10, H. 10.)

[2] The Member-Elect has submitted to the Select Committee full documentary evidence that he meets these constitutional qualifications. See Exhibits A, B, C and D to the Motion duly filed with the Committee on January 23, 1967.

"The Congressman-Elect further respectfully requests that the Select Committee set down as promptly as is convenient this motion for consideration by the Committee, at which time the Congressman-Elect be afforded the opportunity to be heard in support of the motion."

A Memorandum of Points and Authorities was submitted in support of the Motion. This Brief is submitted in further amplification and support of the Motion.

Point I. The House of Representatives is Required Under the Constitution of the United States to Seat a Duly Elected Congressman Who Meets all the Constitutional Qualifications Set Forth for Membership in the House in Article I, Section 2, Clause 2: "No Person Shall Be a Representative Who Shall not Have Attained to the Age of Twenty-five Years, and Been Seven Years a Citizen of the United States, and Who Shall Not When Elected, Be an Inhabitant of the State in Which He Shall Be Chosen"

A. IT WAS THE CLEAR INTENTION OF THE ENACTORS AT THE CONSTITUTIONAL CONVENTION OF 1787 THAT THE LEGISLATURE WAS TO HAVE NO POWER TO ALTER, ADD TO, OR VARY THE CONSTITUTIONAL QUALIFICATIONS FOR MEMBERSHIP IN EITHER HOUSE

1. The history of the proceedings at the Convention, during which the age, citizenship and inhabitancy qualifications were accepted and all other qualifications whatsoever were rejected, reveals the clear intention of the Enactors that the legislature was to have no power to alter or add to the constitutional qualifications, and that accordingly the power of each House to be the "judge of the . . . qualifications of its own members", (Article I, Section 5), was, by the Constitution itself, restricted to the qualifications of age, citizenship and inhabitancy set forth in Article I, Section 2, Clause 2.

The legislative history of both of these critical clauses during the Constitutional Convention makes this amply clear. As Professor Charles Warren describes the proceedings in his authoritative study of the Constitutional Convention, *"The Making of our Constitution"*, (1928), the intention of the Founding Fathers that the legislature was to have no power to alter or add to the Constitutional qualifications could not have been clearer. After agreeing upon the age, citizenship and inhabitancy qualifications, 2 Farrand, *Records of the Federal Convention*, p. 248, et seq, the Convention turned to a proposal of Gouveneur Morris which would "leave the Legislature entirely at large" to set qualifications for membership in each House. 2 Farrand, p. 250. The effect of this proposal, Professor Warren points out, "if adopted, would have been to allow Congress to establish any qualifications which it deemed expedient." *Warren*, at p. 420.

A debate, sweeping in its consequences for the establishment of representative democracy in this country, then developed. Mr. Williamson and Mr. Madison strongly opposed such a proposal. Mr. Williamson argued:

"This could surely never be admitted. Should a majority of the Legislature be composed of any particular description of men, of lawyers for example, which is no improbable supposition, the future elections might be secured to their own body." 2 Farrand, *Records of the Federal Convention*, p. 250.

Mr. Madison warned that to permit the Congress to establish any qualifications it deemed expedient, would be "improper and dangerous". Madison's own summary of his position at the Convention is compelling:

"Mr. (Madison) was opposed to the Section as vesting an improper & dangerous power in the Legislature. The qualifications of electors and elected were fundamental articles in a Republican Govt. and ought to be fixed by the Constitution. If the Legislature could regulate those of either, it can by degrees subvert the Constitution. A Republic may be converted into an aristocracy or oligarchy as well by limiting the number capable of being elected, as the number authorised to elect. In all cases where the representatives of the people will have a personal interest distinct from that of their Constituents, there was the same reason for being jealous of them, as there was for relying on them with full confidence, when they had a common interest. * * * It was a power also, which might be made subservient to the views of one faction agst. another. qualifications founded on artificial distinctions may be devised, by the stronger in order to keep out partizans of (a weaker) faction."

* * * * * * *

"Mr. (Madison) observed that the British Parliamt. possessed the power of regulating the qualifications both of the electors, and the elected; and the abuse they had made of it was a lesson worthy of our attention. They had made the changes in both cases subservient to their own views, or to the views of political or Religious parties."

As Professor Warren points out:

"The Convention evidently concurred in these views, for it defeated the proposal to give to Congress power to establish qualifications in general by a vote of seven states to four—." Warren, p. 421, Farrand, Vol. 2, p. 250.

The conclusion which flows from this legislative history, as Professor Warren emphasizes, is perfectly clear:

"Such action would seem to make it clear that the Convention did not intend to grant to a single branch of Congress, either to the House or to the Senate, the right to establish any qualifications for its members, other than those qualifications established by the Constitution itself, *viz.*, age, citizenship, and residence. For certainly it did not intend that a single branch of Congress should possess a power which the Convention had expressly refused to vest in the whole Congress. As the Constitution, as then drafted, expressly set forth the qualifications of age, citizenship, and residence, and as the Convention refused to grant the Congress power to establish qualifications in general, the maxim *expressio unius exclusio alterius* would seem to apply * * *. The elimination of all power in Congress to fix qualifications clearly left the provisions of the Constitution itself as the sole source of qualifications." *Warren*, at p. 420.[8]

This conclusion of the Constitutional Convention that the Legislature may not refuse to seat a duly elected member who meets all the constitutional qualifications was no dry, technical consideration on the part of the Founders, but reflected a deep concern that the vesting of any power in the legislature to modify or alter the strict constitutional qualifications for membership in either House would be "improper and dangerous" to the first principles of representative democracy. See Farrand, Vol. 2, p. 249. Thus Mr. Madison warned that any deviation from this strict concept would "subvert the Constitution", Farrand, Vol. 2, p. 249. He warned that to permit a Legislature to regulate in any way the qualifications of elected representatives of the people was the path by which "a Republic may be converted into an aristocracy or oligarchy" Farrand, Vol. 2, p. 249.

This powerful conviction of the Founders that the qualifications of elected representatives of the people were fundamental articles in a Republican Government and ought to be fixed by the Constitution", [remarks of Mr. Madison, Farrand, Vol. 2, p. 249] reflected a determination to guarantee that recent activities of the British Parliament subversive of the rights of the British people never be tolerated in this country. Thus Mr. Madison "observed that the British Parliament possessed the power of regulating the qualifications both of the electors, and the elected; and the abuse they had made of it was a lesson worthy of our attention. They had made the changes in both cases subservient to their own views, or to the views of political or religious parties" Farrand, Vol. 2, p. 250.

As Professor Warren points out, "Madison's reference was undoubtedly to famous election case of John Wilkes, in England, who had been rejected as a member by the House of Commons" *Warren*, p. 470. By refusing to seat Wilkes,

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[8] The clear intention of the Enactors to restrict Congressional power to "judge" the "qualifications" of its members to the constitutionally enumerated qualifications is evidenced throughout the Convention proceedings. For example, Prof. Warren points out:

"It is, moreover, especially to be noted that the provision that 'each House shall be the judge of * * * the qualifications of its own members' did not originate with this Convention. Such a provision was found in the State Constitutions of Delaware, Maryland, Massachusetts, New Hampshire, New Jersey, North Carolina, Pennsylvania, and South Carolina. It was taken originally from William Penn's charter to Pennsylvania of 1701, which provided that the Assembly 'shall have power to choose a Speaker and their other officers, and shall be judges of the qualifications and elections of their own members.' Each of the State Constitutions contained provisions establishing many qualifications for members of the Legislature—residence, age, religion, property, and others (qualifications expressed in both affirmative and negative terms); and it was with reference to possession of such qualifications that their Legislatures were authorized to judge as to their members. There is, so far as appears, no instance in which a State Legislature, having such a provision in its Constitution, undertook to exclude any member for lack of qualifications other than those required by such Constitution. In the Constitutions of Massachusetts and New Hampshire, it was specifically stated that the qualifications of which the Legislature was to 'judge' were to be 'the qualifications of their own members *as pointed out in the Constitution*'." *Warren*, at pp. 423–424.

a champion of popular democracy, the British Parliament was in what authoritative commentators have since called a "parliamentary despotism" and "legislative tyranny" which "infringed more and more upon the fundamental rights of the electorate of England." Professor Wittke, *The History of English Parliamentary Privilege* (1921) [4]

These recent activities of the British Parliament led the Founders to conclude that if the Legislature could regulate the qualifications of its members it could "by degrees subvert the Constitution" since history had shown that "qualifications founded on artificial distinctions may be devised by the stranger, in order to keep out partizans of a weaker faction" Farrand, Vol. 2, p. 250.

These considerations, born out of the struggle to create in this country a government truly responsible to the people led the Founding Fathers to reject as "dangerous" (Farrand, Vol. 2, p. 249) the proposition that either House may in its discretion refuse to seat a duly elected Representative of the people who meets all the constitutional qualifications set forth in Article One, and to adopt as a fundamental and guiding principle of American constitutional law the concept enunciated by Alexander Hamilton in the Federalist Papers:

"The qualifications of the person who may choose or be chosen, as has been remarked on another occasion, are defined and fixed in the Constitution; and are unalterable by the Legislature." Federalist Papers, Number 68.

B. LEGAL COMMENTATORS UNIFORMLY AGREE THAT THE INTENTION OF THE FOUNDING CONVENTION WAS TO RESTRICT CONGRESS SOLELY TO THE QUALIFICATIONS FOR MEMBERSHIP SET FORTH IN THE CONSTITUTION

All leading commentators agree that the intention of the Constitutional Convention was to establish a firm Constitutional mandate that the Legislature has no power to vary, alter or add to the constitutional qualifications and must seat as a member any duly elected representative who meets these qualifications. Legal scholarship uniformly has concluded that the clear intention of the Convention was that the constitutional qualifications enumerated in Article 1, Section 2, Clause 2 are sole and exclusive.

Mr. Justice Story, for example, in his famous *Commentaries* states:

"It would seem but fair reasoning upon the plainest principles of interpretation that when the Constitution established certain qualifications as necessary for office, it meant to exclude all others as prerequisites. From the very nature of such a provision, the affirmation of these qualifications would seem to imply a negative of all others." Story, *Commentaries on the Constitution* (5th Ed., p. 460)

Similarly, Cushing, in his treatise on Legislative Assemblies, comes to the same conclusion:

"The Constitution of the United States having prescribed the qualifications required of representatives in Congress, the principal of which is inhabitancy within the State in which they shall respectively be chosen; leaving it to the States only to prescribe the time, place, and manner of holding the election; it is a general principle, that neither Congress nor the States can impose any additional qualifications. It has therefore been held, in the first place, that it is not competent for Congress to prescribe any further qualifications, or to pass any law which shall operate as such." Cushing, *Elements of the Law and Practice of Legislative Assemblies in the United States of America*, § 65, p. 27 (1866).

The conclusions of the Honorable George W. McCrary, former Chairman of the Committee of Elections of the House of Representatives, in his classic treatise on Elections are equally emphatic:

"Where the constitution prescribes the qualifications for an office, the legislature can not add others not therein prescribed." McCrary, *Elections*, 3d Ed. § 312, p. 214 (1887).

and, at § 590, p. 387:

"The power given to each House of Congress to 'judge of the election returns and qualifications of its own members,' does not authorize an inquiry into the moral character of a person elected and returned as a member . . . The term 'qualifications', as used in the constitution, means the constitutional qualifications, to wit: that the person elected shall have attained the age of twenty-

[4] See, also, *Mahan's History of England*, V. 349 et seq. and authorities cited in *Warren*, p. 420.

five years, been seven years a citizen of the United States, and shall be an inhabitant of the State in which he shall be chosen."[5]

Only this Term of Court the Supreme Court of the United States has once again reminded the nation that the clear intention of the Founding Fathers was that the national Legislature was to have no power to alter, change or add to the constitutional qualifications for membership in either House.

In *Bond* v. *Floyd*, —— U.S. ——, 87 S. Ct. 339, December 5, 1966, the Supreme Court, in a unanimous opinion written for the Court by the Chief Justice, ordered seated in the Georgia legislature, a Representative-elect who possessed all the constitutional qualifications but had been barred by the legislature for reasons unrelated to these qualifications. In his dissenting opinion below, later upheld by the Court, Chief Judge Tuttle of the Fifth Circuit Court of Appeals, after examining carefully all the relevant precedents of the United States House of Representatives and Senate, held that:

"Bond was found disqualified on account of conduct not enumerated in the Georgia Constitution as a basis of disqualification. This was beyond the power of the House of Representatives. It runs counter to the express provisions of the Georgia Constitution giving to the people the right to elect their representatives, and limiting the Legislature in its right to reject such elected members to those grounds which are expressly in Georgia's basic document."

The Supreme Court, in its opinion by the Chief Justice, ordered Bond seated in the Georgia House of Representatives, finding, in addition to Chief Judge Tuttle's conclusion, that the action of the Georgia House violated the First Amendment. In the course of the opinion, the Chief Justice, for the Court, took the occasion to remind the nation that the fundamental constitutional mandate of the Founding Convention was that the national Legislature as well had no power to refuse to seat a representative who meets the constitutional qualifications. Thus the Court analyzed, in footnote 13 of the *Bond* opinion, the intentions of the Enactors:

"Madison and Hamilton anticipated the oppressive effect on freedom of expression which would result if the legislature could utilize its power of judging qualifications to pass judgment on a legislator's political views. At the Constitutional Convention of 1787, Madison opposed a proposal to give to Congress power to establish qualifications in general. Warren, *The Making of the Constitution* (1928), 420–422. The Journal of the Federal Convention of 1787 states:

" 'Mr. Madison was opposed to the Section as vesting an improper and dangerous power in the Legislature. The qualifications of electors and elected were fundamental articles in a Republican Govt. and ought to be fixed by the Constitution. If the Legislature could regulate those of either, it can by degrees subvert the constitution. * * * Qualifications founded on artificial distinction may be devised, by the stronger in order to keep out partizans of a weaker faction.

* * * * * * *

" 'Mr. Madison observed that the British Parliament possessed the power of regulating the qualifications both of the electors and the elected: and the abuse

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[5] For further statements of the same views, see generally, Cooley, *Constitutional Limitations*; Tucker, *Treatise on the Constitution*, p. 394; Foster, *Treatise on the Constitution*, p. 367; Paschal, *Annotated Constitution*, 2d Ed., p. 305, § 300; Willoughby, *Constitutional Law of the United States*, 2d ed., § 337; Meecham, *Public Offices*, 164 (1890); Throop, *Public Offices*, § 73.

See also, 33 Virginia Law Review, 322, 334 (1947):

"In summary, it seems obvious from an inspection of the language of the Constitution and attendant circumstances that the framers of the Constitution intended the Senate to be bound by the qualifications enumerated therein."

and 30 Law Notes 181 (1927):

"It takes a violent straining of its language to suggest a power to annex a qualification, good moral character, for instance, which the Constitution does not prescribe. Senators are the representatives of the states, and the choice, except as the Constitution affixes qualifications, should lie with the state. The character and ability of the person chosen is a matter for decision by the state whose representative he is. So the making of the Senate the judge of the 'elections' of its members clearly was designed to give no more than a power to determine whether the election was had in accordance with the law of the state. Were the language less clear, the possible consequences of a different holding would be conclusive. Under the existing Congressional interpretation, the 'lame ducks' by rallying their party associates to their aid, could perpetuate themselves in office, in defiance of the people's vote, by refusing arbitrarily to seat their chosen successors."

See, also, McGuire, O. R., *The Right of the Senate to Exclude or Expell a Senator*, 15 Georgetown L. J. 382 (1927); Momsem, Reuben, *The Right of the Senate to Exclude a Senator-Elect*, 4 Notre Dame Lawyer 3 (1928); Beck, James N., *The Vanishing Rights of the States*, "The Provisions of the Constitution", p. 54 (1926).

they had made of it was a lesson worthy of our attention. They had made the changes in both cases subservient to their own views, or to the views of political or Religious parties.' 2 Farrand, *The Records in the Federal Convention of 1787* (Aug. 10, 1787), pp. 249–250.

"Hamilton agreed with Madison that:

" 'The qualifications of the persons who may choose or be chosen * * * are defined and fixed by the constitution: and are unalterable by the legislature.' The Federalist, No. 60 (Cooke ed. 1961), 409."

In this clear statement, only two months ago, the High Court once again has seen fit to forcefully remind the nation and the Congress that the intention of the Founding Fathers was that the legislature may not exclude a duly elected Representative of the people who possesses all the stated constitutional qualifications for membership in either House.

Point II. The Most Important and Persuasive Precedents of the House and Senate Recognize This Fundamental Constitutional Mandate

1. The first occasion on which the implications of the qualification clause were fully debated in the House was in 1807, only twenty years after the Constitutional Convention. In the contested election case of *William McCreery*, Tenth Congress, 1807, 1 Hinds § 414, the House, after "exhaustive debate", I Hinds p. 381, affirmed the constitutional mandate that the constitutional qualifications of age, citizenship and inhabitancy were the sole qualifications for membership in the House. Thus the Chairman of the Committee on Elections placed in this manner the proposition later affirmed by the full House:

"The Committee of Elections considered the qualifications of members to have been unalterably determined by the Federal Convention, unless changed by an authority equal to that which framed the Constitution at first; that neither the State nor the Federal Legislatures are vested with authority to add to those qualifications, so as to change them. That the State Legislatures cannot prescribe the qualifications of their own members is evident, it is believed from their respective constitutions; and that they are authorized to judge of the qualifications of their own members by their own constitutional rules only, and of the election of their own members by their respective election laws, must be admitted. Congress, by the Federal Constitution are not authorized to prescribe the qualifications of their own members, but they are authorized to judge of their qualifications; in doing so, however, they must be governed by the rules prescribed by the Federal Constitution, and them only. These are the principles on which the Election Committee have made up their report, and upon which these resolution is founded." *Annals of Cong.*, Nov. 1807, p. 872.

The case arose on the question of whether the Representative-Elect, though qualified according to the Federal Constitution to take a seat in Congress, should be denied that seat because he did not meet an additional requirement set for Congressmen by the Constitution of his State. In announcing its adherence to the constitutional mandate that the House could not refuse to seat a Member-Elect who met the three constitutional qualifications, the House laid down certain fundamental guidelines.

(a) "The people had delegated no authority either to the States or to the Congress to add to or diminish the qualifications prescribed by the Constitution." 1 Hinds at p. 382. See in particular Annals of Congress for the 10th Congress, pp. 872, 875, 887–88, 893, 895, 909, 910, 915–16.

(b) "If they could do this [deviate from strict constitutional qualifications] any sort of dangerous qualifications might be established—of property, color, creed, or political professions." 1 Hinds at p. 382; Annals of Congress for the 10th Congress, pp. 873, 878, 895, 908–09, 913.

(c) "The people had a natural right to make a choice of their Representatives, and that right should be limited only by a convention of the people, not by a legislature." 1 Hinds at p. 382, Annals of Congress for the 10th Congress, pp. 873–74, 875, 895. Accordingly, the House voted to seat the Congressman-Elect after finding that he possessed the constitutional qualifications, holding that these qualifications are exclusive and the sole requirements for taking the seat. Annals of Congress for the 10th Congress, pp. 878, 910, 911–12, 914, 918.

These principles, responsive to the fundamental mandate established only twenty years previously, reflected an abiding concern on the part of the members

of this House in the first days of the Republic that what was here involved was basically the right of the people to elect their own representatives. Thus Representative Desha expressed the deep-felt sentiments of the House underlying its actions in this precedent-making decision when he said:

"On this occasion, the question was on the Federal Constitution, and whether any State Legislature, or any other power of legislation, could add qualifications to any member of that House. . . . every contraction of qualifications for Representatives was an abridgment of the liberty of the citizens. The power of adding other qualifications than those fixed by the Constitution would . . . be a breach of the right of suffrage. . . . We are placed here as guardians of the people's rights and privileges. Do not then let us hold out with one hand a fair appearance of zeal for the rights of the people and the public good, and at the same time take every advantage imaginable with the other, by curtailing their Constitutional privileges, and, instead of allowing the people a complete range to select a man worthy of representing them in Congress, confine them to certain situations. I dislike this kind of political hypocrisy. I dislike anything that looks like sporting with the rights of the people, with the rights of those that I consider the firm supporters of the republican fabric."

In this first landmark case in 1807 the House set forth the guiding principles which control the question now before this Select Committee. To fail to seat a Congressman-Elect who meets all of the constitutional qualifications for membership in the House would be "an abridgment of the liberty of the citizens" and a "breach of the right of suffrage."

This case, arising in the earliest days of the Republic, has, of course, great importance, for as Chief Justice Taft said in *Myers* v. *United States*, 272 U.S. 52, 175 (1926), "This Court has repeatedly laid down the principle that a contemporaneous legislative exposition of the Constitution when the founders of our Government and framers of our Constitution were actively participating in public affairs, acquiesced in for a long term of years, fixes the construction to be given its provisions."

2. The fact that the Congress "acquiesced in" this acceptance of the constitutional mandate "for a long term of years," see *Myers* v. *United States*, *supra*, is evidenced in the contested election cases of *Turney V. Marshall* and *Fouke* v. *Trumbull* in the 34th Congress, 1856, 1 Hinds, p. 384. In these cases the House reaffirmed after full debate the principles of the earlier decisions requiring the seating of Congressmen-Elect upon a showing solely of the constitutional qualifications. The report of the Election Committee, presented by Representative John A. Bingham (R. Ohio), re-emphasized these concepts:

(a) "The qualifications of a Representative, under the Constitution, are that he shall have attained the age of 25 years, shall have been seven years a citizen of the United States, and when elected, an inhabitant of the state in which he shall be chosen. It is a fair presumption that when the Constitution prescribes these qualifications as necessary to a Representative in Congress it was meant to exclude all others." 1 Hinds, at p. 385.

(b) "By the Constitution, the people have a right to choose as Representative any person having only the qualifications therein mentioned, without superadding thereto any aditional qualifications whatever." 1 Hinds, at p. 386.

(c) "To admit such a power [to deviate from the sole constitutional qualifications] . . . is to prevent altogether the choice of a Representative by the people." 1 Hinds, at p. 385.

The Committee concluded that a failure to seat a Congressman-Elect who had the constitutional qualifications would be "absolutely subversive of the rights of the people under that Constitution." 1 Hinds, at p. 386.[6]

3. These controlling concepts were once again forcefully restated by the Senate in the *Case of Benjamin Stark*, 37th Congress (1862), 1 Hinds, § 433. The Senator-Elect was challenged on the ground that he had engaged in conduct "very unbecoming and very reprehensible in a loyal citizen." Cong. Globe, 1862, p. 861. In opening the debate for the majority of the Election Committee,

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[6] The decision of the House in *Turney* v. *Marshall* was adhered to by the Senate in a parallel situation in the *Case of Trumbull*, 34th Congress, 1 Hinds § 416, p. 387, in which the Senate held that the constitutional qualifications could not be added to. In the later case of *Wood* v. *Peters*, 48th Congress (1884), 1 Hinds § 417, p. 387, the House specifically reaffirmed the principles set forth in Representative Bingham's report for the Election Committee in *Turney* v. *Marshall*, finding that "the authorities cited place the question involved in this case beyond the realm of doubt." 1 Hinds, at p. 389.

Senator Harris placed the fundamental propositions which govern such a case before the Senate:

"The question submitted to the Committee was whether or not evidence of this description could be allowed to prevail against his *prima facie* right to take his seat as Senator. The committee were of opinion that they could not. The Constitution declares what shall be the qualifications of a Senator. They are in respect to his citizenship; and the committee were of opinion that the Senate were limited to the question, first, whether or not the person claiming the seat and presenting his credentials produced the requisite evidence of his election or appointment; and second, whether there was any question as to his constitutional qualifications."

Certain Senators eloquently urged that the dignity of the Senate required an investigation into the "unbecoming" and "reprehensible" prior conduct of the Senator-Elect. Senator Harris responded for the Election Committee in words which reflected the underlying principles first enunciated in the Constitutional Convention:

"[It is suggested that] when a man comes to take his seat here, the Senate can inquire into his former life, see what his conduct has been, whether he has been guilty of crime or not; and if, in the judgment of the Senate, he has been guilty of crime or misconduct, it can deny him the seat to which he was elected by the proper constituency in order to punish him for his offense! Now, I do not undestand that it is competent for the Senate, and I think they step aside from their only jurisdiction when they attempt to punish a man for his crime or misbehavior antecedent to his election. If this were so the Constitution ought to be amended so as to read, that the Legislature of a State, or the Governor of a State, in a certain contingency, shall elect or appoint a Senator, subject to the advice and consent of the Senate. The Senate would then be the ultimate judge whether or not the man ought to have a seat here, and it would be competent for the Senate upon any caprice or any view it might take of the capacity, moral, or intellectual, or political, of a man, to reject him and prevent his taking a seat. Sir, I do not so understand the Constitution. I understand the Senate is the judge of the election of a Senator, of the sufficiency and genuineness of the returns furnished, and the evidence of that election; and also of the constitutional qualifications of the individual to hold a seat in the Senate. Beyond that, I apprehend the Senate have no power at all."

Upon this presentation of the governing concepts by the Election Committee, the Senate seated the Senator-Elect, finding that he had the requisite sole constitutional qualifications.

The debate in the Senate reaffirming the regional constitutional mandate once again reflected fundamental considerations. As Senator McDougall stated, the refusal to seat a constitutionally qualified Senator-Elect may be

"One of the heaviest blows that can be struck at the foundation of our republican institutions. This is no common matter of business. It is an assertion of the right of a majority of this body to refuse entrance here to a person clothed with all the miniments of right by a sovereign State, and against whom is alleged no constitutional or legal disqualification. Whose right is it that he should be here? The right of the people of the State of Oregon—their Constitution and the laws of Congress under it, which alone bind them in this matter."

And as Senator Browning declared, such a practice—

"is one that is capable of immense abuse, immense wrong; and one which it is within the range of possible things might at some time or other be used for the worst purposes of tyranny. I am not willing to aid in establishing such a precedent."

As in the earliest days of the Republic, the Senate here reasserted the concept that the limitation of its power to judge the qualifications of a Member-Elect to the constitutional qualifications alone was a fundamental protection for the people themselves. For, as Senator McDougall said on the floor of the Senate, "if the Senator from Oregon is denied a seat, it is a denial to Oregon of her constitutional right of representation." So here, if the Member-Elect possessing all of the constitutional qualifications for membership in the House, is denied a seat, it is a denial to the people of the Eighteenth Congressional District of New York of their constitutional right to representation.

4. The principles restated by the Senate in the *Case of Benjamin Stark* were shortly thereafter put to a severe test and wholly reaffirmed by the House in in the case of *Grafton* v. *Conner*, in the 41st Congress (1870). Representative-Elect Conner was charged with having brutally and severely beaten Negro

soldiers under his command while in the Armed Forces and, while on trial by court martial on those charges, having bribed witnesses and suborned evidence and perjured himself before the court. Cong. Globe, Part 3, 41st Cong., 2nd Ses. 1869–70, pp. 2322–23. The debate on the floor of the House once agin reflected the recognition that the House was bound by the Constitution itself to seat a Member-Elect who possessed the constitutional qualifications. Thus, Representative Orth stated:

"Turn to the Constitution and see what it prescribes in reference to the qualifications of a member of this House. Mr. Conner has the requisite age. He has the requisite residence. He has the requisite certificate of his election from the proper authorities. The Committee of Elections has so reported, and that settles the prima facie case."

Representative Dawes developed again the underlying principles which must govern a committee charged with investigating the right of a member-elect to be sworn in:

"Mr. Speaker, the Committee of Elections of the last Congress had occasion to consider how far it was within their province to consider questions at the threshold, in limine, before a member applying for his seat was sworn in. It arose first on charges brought against members touching their loyalty. The conclusion to which the committee came after very careful examination of this question, and in which they were sustained by the House over and over again, was this: that as to any question which touched the constitutional qualification of a gentleman claiming a seat it was proper that question should be raised at the threshold before he was sworn in. And it was decided by the last House, when any member, upon his responsibility as a member, made any charge against any claimant to a seat that touched his constitutional qualification, the House, before swearing him in, would refer the question to the proper committee to report on it. Beyond that the Committee of Elections came to the conclusion, and the House sustained them, it was not proper to go. That question of itself was a very delicate one, and of course might be carried to such an extent as to involve great abuse to the rights of persons claiming seats here. But never did that committee ask the House to go one inch beyond the question of the constitutional qualification of a member, and never did this House decide that we had the right to go one inch beyond that question."

The statements of Representative Schenck reflected once again the deep concerns which underlie the constitutional principle which governs here:

"I do not understand that it is alleged that any of these constitutional qualifications are not possessed by the gentleman who now seeks to be admitted to a seat upon this floor. What then? It is proposed that as he has once been tried by a court-martial, or a court of inquiry, the result of which is alleged to be unsatisfactory, because of some criminal conduct on his part, because of his suborning witnesses, it is proposed that we shall try the case over again, and ascertain whether he is a person of proper moral character to be admitted to a seat upon this floor.

"Sir, break down the rule of the Constitution, once say that you can go outside of the qualifications prescribed by the Constitution as sufficient to entitle a person to membership, and where are we to stop? Every man who presents himself here as a member-elect will be liable to have alleged against him some crime, some offense against the laws, and thereupon a trial must be instituted. Every man presenting himself here to be sworn in will, by the force of partisan malignity upon the one side or the other, probably have something of that kind alleged against him in order to have him prevented from taking his seat. And while that may not occur now when the House is so unequally divided between parties, there may come a time when the House will be more equally divided, and this course may be resorted to in order to prevent there being added any more to the members of this House of one party or the other.

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"What I wish to say is that we must leave something to the people; and when they have settled all these questions by electing and sending certain persons here, there remains with us nothing but to accept their work."

On the basis of these fundamental considerations, once again the House adhered to its own first principles and seated the challenged Member-Elect. Cong. Globe, 41st Cong. pp. 2322–23. The questions posed to the House in the debate resulting in the seating penetrate to the heart of the constitutional question involved. The question Representative Schenck asked the House is

the question Mr. Madison placed to the Founding Convention. Once the House "breaks down the rule of the Constitution," where is it to stop? This is a question which goes to the very existence of representative democracy, for as the House recognized in 1870, "there may come a time when the House will be mode equally divided, and this course may be resorted to in order to prevent there being added any more to the members of this House of one party or the other." And when this time comes, the very foundations of democratic government are placed in peril and Madison's warning that "a Republic may be converted into an aristocracy or oligarchy" is suddenly real.

5. The most recent Congressional actions which are here in point reveal a continued adherence to the fundamental constitutional mandate that the legislature has no power to refuse to seat a Member-Elect who meets the stated constitutional qualifications for membership in either House.

(a) *The case of Francis N. Shoemaker, in the 73rd Congress* (1933) is one of the latest full discussions on this question in the House of Representatives. In this case the House reaffirmed the fundamental constitutional principles which control here. Representative-elect Shoemaker had been convicted of a crime in Minnesota and had been sentenced to a term in the penitentiary. The House, in seating the Congressman-elect, re-emphasized the basic concept that the sole consideration before the House was the presence of the constitutional qualifications. Finding these qualifications present, and finding that the conviction of the Representative-elect had not deprived him of his "citizenship," the House voted to seat him. 77 Cong. Rec. 131, 132, 133, 134, 136, 139 (1933).

The *Shoemaker* case is the most recent reaffirmance by the House of the concepts which must govern this Select Committee. Representative-elect Shoemaker was challenged as to his right to assume the seat to which he had been elected on the ground that having been convicted of the violation of a federal mail libel statute, and having served a sentence in the federal penitentiary, he was unfit, although constitutionally qualified and duly elected, to serve in the House of Representatives. The debate on the floor of the House which resulted in the seating of the Member-Elect reflects the continued reassertion in this, the latest House precedent to consider this question, of the principles first discussed on the floor in the early days of the Republic. Thus, the sole question which the House can constitutionally consider was placed this way by Representative Lemke, who led the successful fight for the seating of the Member-Elect.

"Mr. Speaker, the question before the House is whether Mr. F. H. Shoemaker is entitled to a seat in this House or whether he is disqualified.

"I make the statement without fear of contradiction that he is not disqualified but is qualified to sit here as a Member of this House under the Constitution of the United States of America and under the rules and regulations of this House.

"In the first place, the qualifications for a Congressman are the following:

"'No person shall be a Representative who shall not have attained to the age of 25 years, had been 7 years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.'

"This is the qualification required by the Constitution of the United States."

Again Representative McKeown stated the proposition which the House was to approve in seating Mr. Shoemaker:

"The Constitution says that there are three qualifications for a Member of the House. Neither the State Legislature . . . nor the Congress of the United States can change these qualifications. They are written into the Constitution by the great fathers of the Republic, and they cannot be changed by law."

Having found that Mr. Shoemaker possessed the three constitutional qualifications, the House resolved that the Member-Elect must be seated and sworn in as a Representative. 77 Cong. Rec. 131, et seq. (1933). This action in the *Shocmaker* case in 1933, the most recent consideration of this question in the House is a forthright reaffirmation of the principles of the Constitution adhered to by the House in its earliest decisions. In the case of *Shocmaker* in the Seventy-Third Congress, as in the case of McCreary in the Tenth Congress, the determinative consideration was that the three constitutional qualifications for membership in the House "are written into the Constitution by the great fathers of the Republic, and they cannot be changed . . ."

(b) The most recent and exhaustive discussion of these guiding principles of constitutional law are to be found in the extensive Senate debate in the case of *Willian Langer of North Dakota* in the 77th Congress (1942), S. Journ. 77th Cong. 1st Sess., pp. 8 et seq., 2nd Sess., pp. 3 et seq. The Senator-elect was challenged at the taking of the oath. The "charges against Langer were numerous and chiefly involved moral turpitude, embracing kickbacks, conversion of

proceeds of legal settlements, acceptance of a bribe in leasing government property, and premature payments on contracts of advertising." *Senate Election, Expulsion & Censure Cases*, p. 141. The Senate after full debate seated the Senator-elect.

The debate, which resulted in the seating of the Senator-elect, reflected a restatement of the fundamental principles asserted in the first days of the Republic.

The debate reaffirmed the central concept that the constitutional power of the Legislature in Article One, Section Five to "judge" the qualifications of its members is restricted to those qualifications set forth in the Constitution itself. Senator Murdock, who led the successful fight for the seating of Senator Langer, placed this question in words which are wholly dispositive here:

"What do we judge? A man comes here and presents his credentials and claims that he has the constitutional qualifications to be a Senator. As judges of that fact, we look at his credentials; we consider his constitutional qualifications. Where do we find them stated? We find them set out in the Constitution. I believe it was contemplated by the framers of the Constitution that when a man came here wih credentials from his State, and claimed to have the constitutional qualifications, the matter could be judged by the Senate in not to exceed a week or 2 weeks' time; but when the word 'judge' is construed to mean the power to add qualifications, about which the State does not know, about which the Senate does not know, then, of course, there is brought about the type of farce which resulted in taking 4 years to determine that Reed Smoot was entitled to sit here as a United States Senator, and the type of farce which has resulted in Senator LANGER's right to a seat being held in abeyance for more than a year, the committee searching his life almost from childhood up to the present time.

"Oh, did the men who wrote the Constitution ever contemplate that such a thing as that would happen? In framing the Constitution they had the right to decide what tribunal should be the judge of the morals and the intellectual qualifications of the men sent here, and they decided that the people of the sovereign States should have that power, restricted only by the very definite but simple qualifications enunciated in the Constitution itself." Cong. Rec. 1947, p. —.

Senator Murdock further carefully defined the meaning of Article One, Section Five, to exclude any possibility that this Clause justified considerations beyond the three constitutional qualifications.

"Mr. MURDOCK. I desire to read again the provision—

"Each House shall be the Judge of the Elections, returns, and Qualifications of its own Members. . . .

"To my mind, the word 'judge' means to look at the qualifications contained in the Constitution. That is what the verb 'judge' means: To judge of something in existence—law or facts—and to apply the law to the facts. To extend the definition of the word 'judge' to mean that we can superadd to these qualifications, in my opinion, is a misconstruction of the word itself." Cong. Rec. 1942, p. 2475.[7]

The following critical exchange between Senator Lucas and Senator Murdock illustrates the original interpretation of Article One, Section Five now once again reaffirmed by the Senate:

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[7] An interesting exchange between Senator Murdock and Senator Overton further amplifies this construction of the impact of the word "judge":

"Mr. OVERTON. I understand the position taken by the able Senator is that section 5, article 1, of the Constitution, which vests in each House the right to judge of elections, returns, and qualifications of its own Members does not vest any authority in the Senate or in the House to add to the qualifications prescribed by the Constitution, and that the word 'judge' is not to be interpreted as the word 'prescribed' would be interpreted, but means simply that the Senate, in this case, for example, sits as a judge and, as a judge, applies certain well-known provisions of the Constitution and of statutory law to the facts of the case.

"Mr. MURDOCK. That is my position.

"Mr. OVERTON. I wish to add one contribution to the argument made by the able Senator—that is, what the Supreme Court of the United States had to say with reference to section 5 of article I, which gives each House the power to judge of the qualifications of its Members. The Supreme Court of the United States, speaking through Mr. Justice Pitney, said:

" 'The power to judge of the elections and qualifications of its Members, inhering in each House by virtue of section 5 of article I, is an important power, essential in our system to the proper organization of an elective body of representatives. But it is a power to judge, to determine, upon reasonable consideration of pertinent matters of fact according to established principles and rules of law; not to pass on arbitrary edict of exclusion.'

"I think that fully supports the contention made by the able Senator from Utah, and I think it correctly interprets the word 'judge' as used in section 5 of article I of the Constitution."

"Mr. LUCAS. The Senator referred to article I, section 5. What does he think the framers of the Constitution meant when they gave to each House the power to determine or to judge the qualifications, and so forth, of its own Members.

"Mr. MURDOCK. In construe the term "judge" to mean what it is held to mean in its common, ordinary usage. My understanding of the definition of the word "judge" as a verb is this: When we judge of a thing it is supposed that the rules are laid out; the law is there for us to look at and to apply to the facts.

"But whoever heard the word "judge" used as meaning the power to add to what already is the law?" Cong. Rec. 1947, p. 2479.

The fundamental wisdom of the refusal of the Founders to permit the Legislature to exclude elected members upon its own conception of their "morality" or "unfitness" is reflected throughout the Senate proceedings. Thus, the report ultimately adhered to by the Senate in vindicating the Senator-elect's right to a seat states in words of insight:

"The power to determine fitness was reserved to the electorate as the best judges of the social, intellectual, and moral qualifications of those whom they saw fit to select as their representatives. The makers of the Constitution doubtless balanced the possibility of an unwise choice of the electorate against the possibility that an agency of government, given unrestricted discretion, might, under the masquerade of morality, decide from motives of partisanship, bigotry, or fanaticism." Cong. Rec. 1947, 2486.

Senator Murdock further explored the basic reasons for rejecting any inquiries by the Legislature other than those into the presence of constitutional qualifications:

"Mr. MURDOCK. I cannot believe that the framers of our Constitution contemplated any such result.

"Now, let us take a further example. If we have the right to go into the moral character or the intellectual ability of a Senator-elect, then do we not have the corresponding duty to do it? Think that over. What would be the result? Every Senator-elect, then, would have his enemies in his own State: we have a right, under the contention of the majority, to go on these fishing trips: if we have the right, we have the duty; and if we have the right and the duty, then what do we become? We become the triers of the moral and the intellectual life of every Senator-elect from the cradle to the time of his election. Who is going to concede that? Who is going to contend for that?

"Now, I wish to submit another example."[8] Cong. Rec. 1947, p. 2489.

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[8] An exchange on the floor between Senator Murdock and Senator Pepper further illustrates the principle underlying the *Langer* case.

"Mr. MURDOCK. . . . I take the position that the Senate has the right under the Constitution to go into the morals of the Senator-elect.

"Mr. PEPPER. I see. The Senator construes section 5, or article I, which gives each House the power to judge of the qualifications of its Members, to be limited to the things prescribed in the Constitution?

"Mr. MURDOCK. Yes.

"Mr. PEPPER. I thank the Senator.

"Mr. MURDOCK. The Senator from Florida states the matter very clearly.

"I read further from Senator Knox's statement, which I do not think I had completed:

" 'The simple constitutional requirements of qualification do not in any way involve the moral quality of the man.'

"I may say to the distinguished Senator from Florida that I am now reading from the argument made by Senator Knox in the Smoot case, which appears on page 49 of the minority views. I continue reading:

" 'They relate to facts outside the realm of ethical consideration and are requirements of facts easily established.' "

A man's age, his citizenship, his inhabitancy—those things are easily ascertained.

"Properly enough, therefore, as no sectional, partisan, or religious feeling could attach itself to an issue as to whether or not a man is 30 years of age, had been a citizen of the United States and an inhabitant of a State for the periods prescribed, the decision as to their existence rests with a majority of the Senate. When, however, a different issue is raised dehors the Constitution upon allegations of unfitness, challenging the moral character of a Senator involving a review of questions considered and settled in the Senator's favor by the action of his State in electing him, then the situation is wholly changed, and a different function is to be performed by the Senate calling for its proper exercise, the highest delicacy and discretion in reviewing the action of another sovereignty.

"If I were asked to state concisely the true theory of the Constitution upon this important point, I would unhesitatingly say—"

This is what Senator Knox said was his construction of the Constitution, and I think it is worth while to consider it:

"First, That the Constitution undertakes to prescribe no moral or mental qualification, and in respect to such qualifications as it does prescribe the Senate by a majority vote shall judge of their existence in each case, whether the question is raised before or after the Senator has taken his seat."

In other words, if the question of age is raised, if the question of citizenship is raised, if the question of residence is raised, whether before the Senator takes his oath or after, all that is required for a decision of such a question is a majority vote.

The central importance of the principles enunciated here by the Senate to the very essence of a Republican form of government was sharply placed on the Senate floor by Senators Millikin and Murdock:

"Mr. MILLIKIN. I suggest to the Senator that a representative form of government is the heart of a republican form of government, and when the Senate undertakes to eliminate a newly elected Senator that, instead of guaranteeing a republican form of government, it is destroying a republican form of government.

"Mr. MURDOCK. I think the Senator is exactly correct, and I thank him for his contribution. To say to a sovereign State that by reason of its inherent power the Senate reserves the right to pass on the morals and the intellectual qualifications of the men who are sent here is disruptive of a republican form of government."—Cong. Rec. 1947, p. 2481.

And in concluding his arguments which led the Senate to seat the Senator-elect, Senator Murdock developed the fundamental considerations which grounded the original mandate of the Founding Fathers that the Legislature had no power to refuse to seat a member who met all constitutional qualifications. Senate Murdock told the Senate:

"It is to be surmised that Madison, who was one member of a committee of three—its members were Madison, Hamilton, and Gouverneur Morris—would be so emphatic with reference to this particular point, and, after retiring in order to put it into immaculate form, would bring it back with the substance changed? No, Mr. President; to make such an assertion is to question the integrity of Madison, a man who fought not for phraseology, not for some technicality, but for substance. The substance was what? That the qualifications of Members of Congress should be specified in the Constitution itself, not left to the discretion of the Congress. Why did he take such a position? Because he knew that the fundamental cornerstone of the government of a republic is the people's right to freedom of choice of those who represent them; and Madison knew that the qualifications should be contained in the Constitution and not left to the whim and caprice of the legislature."—Cong. Rec. 1947, p. 2483.

The debate and actions of the Senate in 1942 in the *Langer* case is most instructive in the present proceeding. It is particularly so, since the Senate in accepting the positions urged upon them by Senator Murdock and Senator (later Vice-President) Barkley, based its actions in large measure upon the following authoritative report of the Judiciary Committee of the House of Representatives for the 42nd Congress. This report, in the cases of *Ames* and *Brooks* in the 42nd Congress, 2 Hinds, p. 866 (1872), was approvingly read to the Senate during the *Langer* debate by Senators Murdock and Barkley and is wholly dispositive here:

". . . 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.'

"Your committees are further emboldened to take this view of this very important constitutional question because they find that in the same section it is provided what shall be the qualifications of a Representative of the people, so chosen by the people themselves. On this it is solemnly enacted, unchanged during the life of the Nation, that 'no person shall be a representative who shall not have attained the age of 25 years, and been 7 years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

"Your committees believe that there is no man or body of men who can add or take away one jot or tittle of these qualifications. The enumeration of such specified qualifications necessarily excludes every other. It is respectfully submitted that it is nowhere provided that the House of Representatives shall consist of such Members as are left after the process of 'purgation and purification' shall have been exercised for the public safety, such as may be 'deemed necessary' by any majority of the House. 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."

As the Judiciary Committee said in this fundamental report, only recently relied upon by the Senate in the *Langer* case, the "answer" to the question posed to this Select Committee by the House "seems to us an obvious one". The House has no "constitutional power over such considerations as 'justice and sound policy' as a qualification in representation." This power is the peoples'. For, as the House Judiciary Committee of the 42nd Congress pointed out "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." This understanding, which goes to the very heart of American representative democracy, requires the conclusion, that this Select Committee, upon finding the presence of the constitutional qualifications of age, citizenship and inhabitancy, must forthwith report to the House that the Member-elect, having been duly elected by the people of his district, must be sworn in and seated.

Point III.—The Legislature Has Deviated From the Constitutional Mandate Only on Rare Occasions Under Intense Partisan Pressure and Public Hysteria. These Isolated Cases Have Been Subsequently Overruled or Discarded by the House or Senate

1. The case of *Brigham Roberts* in the 56th Congress, 1899, 1 Hinds. § 474, involved a member-elect from Utah who was barred from his seat on the ground that he was a polygamist in accord with the Mormon faith and had been convicted of violating the federal Edmonds Act prohibiting polygamy. The House, responding to a wave of anti-Mormon feeling throughout the country, barred Roberts despite a strong minority report which reasserted the constitutional principles previously adhered to by the House. Only a few years later the Senate sharply repudiated the *Roberts* action, seating, in the case of *Reed Smoot of Utah*, in the 58th Congress, 1903, 1 Hinds, §§ 481–84, a Senator-Elect despite his adherence to the Mormon faith. The Senate forcefully reasserted the governing constitutional mandate that the sole question before the legislature is the presence of the constitutional qualifications.[9] And even more significantly, the

[9] The Senate in the case of *Reed Smoot* in the 58th Congress, 1903, was similarly faced with the question of the seating of the Mormon Senator-elect and sharply rejected the premises of the *Roberts* case. The Senator who led the movement not to seat Mr. Smoot, Senator Taylor, had also been the Representative who had led the movement not to seat Mr. Roberts in the House.

The position advanced by Senator Taylor was refuted in the following words by Senator Knox:

"There is no question as to Senator Smoot possessing the qualifications prescribed by the Constitution, and therefore we can not deprive him of his seat by a majority vote. He was at the time of his election over 30 years of age and had been nine years a citizen of the United States, and when elected was an inhabitant of Utah. These are the only qualifications named in the Constitution, and it is not in our power to say to the States, 'These are not enough; we require other qualifications,' or to say that we can not trust the judgment of States in the selection of Senators, and we therefore insist upon the right to disapprove them for any reason.

"This claim of right to disapprove is not even subject to any rule of the Senate specifying additional qualifications of which the States have notice at the time of selecting their Senators, but it is said to be absolute in each case as it arises, uncontrolled by any canon or theory whatever.

"Anyone who takes the trouble to examine the history of the clause of the Constitution as to the qualification of Senators must admit that it was the result of a compromise. The contention that the States should be the sole judges of the qualifications and character of their representatives in the Senate was acceded to with this limitation: a Senator must be 30 years of age, nine years a citizen of the United States, and an inhabitant of the State from which he is chosen. Subject to these limitations imposed by the Constitution, the States are left untrammeled in their right to choose their Senators. This constitutional provision secures a measure of maturity in counsel, and at least a presumption of interest in the welfare of the Nation and State."

The Senate ultimately determined that because Mr. Smoot possessed the constitutional qualifications he was entitled to his seat. And a subsequent move to expel Senator Smoot failed. See generally, 1 Hinds § 478, pp. 550–57

House itself, in 1933, in the case of *Shoemaker*, *supra*, pointedly disregarded the *Roberts* case as binding precedent.[10] Similarly, in the *Langer* case, *supra*, the Senate specifically approvingly followed the minority report in *Roberts*.[11]

2. Following the Civil War, in a group of cases, the House barred members-elect who had participated in the Rebellion. See the cases of the *Kentucky Members* in the 40th Congress, 1867. However, it was pointed out in subsequent Congresses that the Congress itself recognized that this action was unconstitutional under Article I, finding it necessary to adopt Section 3 of the Fourteenth Amendment to sanction barring of members-elect on this additional ground of loyalty to the Confederacy. See the discussion in the *Langer* case, *supra*, Cong. Rec. 1942, March 16, p. 2484.[12]

3. The case of *Victor Berger* in the 66th Congress, 58 Cong. Rec. (1919) involved the refusal to seat a Congressman-elect who had been found guilty in World War I of violation of the Espionage Act. This case does not stand for the proposition that the House has any power to deviate from the constitutional qualifications. The House took the position that Berger had in effect committed "treason" which foreclosed his right to hold office under the United States pursuant to the congressional constitutional power to fix the penalty for treason. The majority House report further justified the exclusion of Berger under Section 3 of the Fourteenth Amendment, barring from the office of Representative anyone who has "given aid and comfort to the enemies" of the United States.[13]

Point IV.—Judicial Decisions Uniformly Support the Proposition That the Legislature Has no Power to Add to or Alter the Constitutional Qualifications

A. DECISIONS OF STATE COURTS

The decisions of the state courts are uniform that a legislature has no power to add to or alter the constitutional qualifications for office whether in respect to the national Congress[14] or various state offices.[15] The opinions of the state courts

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[10] In 1933 those seeking to sustain the refusal to seat the Member-Elect urged the *Roberts* case as a precedent. The House declined to follow the *Roberts* case, and Representative McKeown in responding to the suggestion that the *Roberts* case retained any persuasive force said the following:

"I want to direct your attention to another precedent. You cannot try a man and throw him out of this House on a matter of mere whim. The Constitution says you are to consider three things. You can consider his election, you can consider the returns and his qualifications. . . ." 77 Cong. Rec. at p. 136.

[11] See discussion of *Langer* case, *supra*.

[12] Following ratification of the Fourteenth Amendment, questions as to seating Congressmen arose in the cases of *Smith* v. *Brown* in the 40th Congress, 1868, *Case of Phillip Thomas* in the 40th Congress, 1867, both of whom were challenged on the ground of disloyalty. It was decided in each of those cases that the Member- or Senator-elect could not be seated because he could not subscribe to the loyalty oath required by Congressmen and was hence disqualified from holding office. That disqualification is provided for in the 3rd Section of the Fourteenth Amendment. Had the Constitution not been so amended, even disloyalty could not have been a ground for refusing to seat an elected Representative or Senator. This principle was recently adverted to by Congress itself during the debates on the floor of the Senate in the case of *William Langer* in the 77th Congress (1942). See, for example, the remarks of Senator Connally:

". . . does it not irresistibly follow that the Congress believed that, unless that provision was added to the Constitution, the people of the States could elect men and send them here who had served in the Confederate Army and who had violated, as they thought, the rules of patriotism and loyalty?"

Also note the remarks of Senator White:

"Does it not also signify a belief on the part of Congress that submitted the amendment that, without its adoption, the Senate could not have excluded a Member because of insurrection or participation in rebellion?"

and the reply of Senator Connally:

"I meant to imply that the people had a right to elect them and having a right to elect them, the Senate could not exclude them unless that clause was put in the Constitution. It was the view, evidently of the Congress that submitted the amendment to the Constitution, that without it, if such men were elected the Senate would have no power to exclude them on that ground." Cong. Rec. 1942, p. 2484.

[13] See the interesting opinion of Chief Judge Tuttle in the recent case of *Bond* v. *Floyd*, holding that the case of *Victor Berger* is no precedent for the proposition that the legislature can deviate from the constitutional qualifications.

[14] *Hellmann* v. *Collier*, 217 Md. 93,141 A. 2d 908 (1958); *Shub* v. *Simpson*, 196 Md. 177, 76 A. 2d 332 (1950); *Stockton* v. *McFarland*, 56 Ariz. 138, 106 P. 2d 328, 330 (1940); *State ex rel. Johnson* v. *Crane*, 65 Wyo. 189, 197 P. 2d 864 (1948); *Eaton* v. *Schmahl*, 140 Minn. 219, 167 N.W. 481 (1918); *Chandler* v. *Howell*, 104 Wash. 99, 175 P. 569 (1918); *Ekwall* v. *Stadelman*, 146 Ore. 439, 30 P. 2d 1037 (1934); *O'Sullivan* v. *Swanson*, 127 Neb. 806, 257 N.W. 255 (1934); *In re O'Connor*, 173 Misc. 419, 17 N.Y.S. 2d 758, 759 (1940); *Sundfor* v. *Thorson*, 72 N. Dak. 246, 6 N.W. 2d 89, 90 (1942); *Watson* v. *Cobb*, 2 Kan. 32, 38 (1863); *Wettengel* v. *Zimmerman*, 249 Wis. 237, 24 N.W. 2d 504 (1946).

[15] *Imbrie* v. *Marsh*, 3 N.J. 578, 71 A. 2d 352 (1950); *Hoyne* v. *McCormick*, 261 Ill. 413, 103 N.E. 1053, 1056 (1914); *Graham* v. *Hall*, 73 N.D. 428, 15 N.W. 2d 736, 740–41 (1944);

Footnote continued on following page.

are unswering on this point. See, for example, *Whitney* v. *Bolin*, 85 Ariz. 44, 330 P.2d 1003 (1958) :

"It is our opinion that the constitutional specifications are exclusive and the legislature has no power to add new or different ones."

Wallace v. *Superior Court*, 141 Cal. App. 2d 771, 298 P.2d 68 (1956) :

"We have concluded that it was and is beyond the power of the legislature to add this qualification in view of the fact that the Constitution has established the exclusive qualifications that can be required for the office. . . ."

Hellmann v. *Collier*, 217 Md. 93, 141 A. 2d 908 (1958) :

". . . a state cannot, in any manner, impose additional qualifications to those named in the Federal Constitution upon a candidate for Representative."

In re O'Connor, 173 Misc. 419, 17 N.Y.S. 2d 758, 759 (1940) :

"Browder, it appears, has all the qualifications required by the Constitution. To impose upon him the additional qualification that he alter his philosophy of government or abandon his advocacy of international communism or abdicate his position in the communist party of America as a conditon of being permitted to run for office would in itself constitute a violation of our own law."

See also cases collected at 34 A.L.R. 2d 171; 81 C.J.S. § 67. p. 998.

These state opinions rest heavily upon the precedents and rulings of Congress itself as the Supreme Court of Arizona pointed out in *Stockton* v. *McFarland*, 56 Ariz. 138, (1940) :

"While these authorities are not courts, and it may be urged their decisions are not binding upon this court, yet the reasoning of such distinguished writers, and the unbroken rule followed by the two Houses of Congress, are certainly worthy of our consideration in determining the meaning of the Federal Constitution, for of course in case of a conflict it must prevail."

Based upon these precedents the state courts have uniformly come to the same conclusions as every eminent constitutional commentator. As Chief Justice Vanderbilt put it for the New Jersey Supreme Court in *Imbric* v. *Marsh*, 3 N.J. 578 (1950) :

"The recognized authorities on public law are in accord :

" 'It would seem but fair reasoning upon the plainest principles of interpretation, that when the Constitution established certain qualifications as necessary for office, it meant to exclude all others as prerequisites. From the very nature of such a provision the affirmation of these qualifications would seem to imply a negative of all others * * *. A power to add new qualifications is certainly equivalent to the power to vary them.' 1 Story, Commentaries on the Constitution, § 625.

" 'The legislature cannot add to the constitutional qualifications of an officer.' 1 Cooley on Constitutional Limitations, 140.

" 'It is obviously beyond the power of the legislature in prescribing the oath to be administered to impose upon the officer tests or requirements greater than those which the constitution has declared shall be sufficient.' Mechem on Public Offices and Officers, 164 (1890)."

B. THE MOST RECENT DECISIONS OF THE FEDERAL COURTS EMPHASIZE THE FUNDAMENTAL CONSTITUTIONAL MANDATE THAT A LEGISLATURE MAY NOT REFUSE TO SEAT A MEMBER-ELECT WHO POSSESSES ALL STATED CONSTITUTIONAL QUALIFICATIONS

In *Bond* v. *Floyd*, —— U.S. ——, 87 S. Ct. 339, December 5, 1966, the Supreme Court, in a unanimous opinion written for the Court by the Chief Justice ordered seated in the Georgia legislature, a Representative-elect who possessed all the constitutional qualifications but had been barred by the legislature for reasons unrelated to these qualifications. In his dissenting opinion below, later upheld by the Court, Chief Judge Tuttle of the Fifth Circuit Court of Appeals, after examining carefully all the relevant precedents of the United States House of Representatives and Senate, held that Bond must be seated.

Campbell v. *Hunt*, 18 Ariz. 442, 162 P. 882, 886 (1917) ; *Chenoweth* v. *Acton*, 31 Mont. 37, 77 P. 299, 302 (1904) ; *Chambers* v. *Terry*, 40 Cal. App. 2d 153, 104 P. 2d 663, 666 (1940) ; *Dickson* v. *Strickland*, 114 Tex. 176, 265 S.W. 1012, 1015 (1924) ; *Broughton* v. *Pursifull*, 245 Ky. 137, 53 S.W. 2d 200, 203 (1932) ; *Mississippi County* v. *Green*, 200 Ark. 204, 138 S.W. 2d 377, 379 (1940) ; *Burroughs* v. *Lyles*, 142 Tex. 704, 181 S.W. 2d 570, 574 (1944) ; *Kirett* v. *Mason*, 185 Tenn. 558, 206 S.W. 2d 789, 792 (1947) ; *Buckingham* v. *State*, 42 Del. 405, 35 A. 2d 903 (1944) ; *Wallace* v. *Superior Court*, 141 Cal. App. 2d 771, 298 P. 2d 69 (1956) ; *Whitney* v. *Bolin*, 85 Ariz 44, 330 P. 2d 1003 (1958).

This opinion of Judge Tuttle, 251 F. Supp 333 (1966), later upheld by the Supreme Court on the additional finding that the action of the Georgia House also violated the First Amendment, is highly instructive here.

Chief Judge Tuttle placed the issue in the *Bond* case in these terms:

"The question . . . is whether under the Georgia Constitution, the Legislature can find a lack of qualification beyond those *expressly* provided for in the Constitution itself . . ."

Judge Tuttle then stated:

"In the absence of a strong showing of judicial interpretation to the contrary, it would seem that simple justice would require a holding that where specific qualifications are stated for an office and the Legislature is given the power to judge whether an aspirant for the office is "qualified", the legislature, as judge, should be required to look to the stated qualifications as the measuring stick. To hold to the contrary and permit the House as judge to go at large in a determination of whether Representative-Elect "A" meets undefined, unknown and even constitutionally questionable standards shocks not only the judicial, but also the lay sense of justice."

After a careful and exhaustive analysis of the precedents of the House and Senate, Chief Judge Tuttle then, found:

"Bond was found disqualified on account of conduct not enumerated in the Georgia Constitution as a basis of disqualification. This was beyond the power of the House of Representatives. It runs counter to the express provisions of the Georgia Constitution giving to the people the right to elect their representatives, and limiting the Legislature in its right to reject such elected members to those grounds which are expressly in Georgia's basic document."

The Supreme Court, in its opinion by the Chief Justice, ordered Bond seated in the Georgia House of Representatives, finding, in addition to Chief Judge Tuttle's conclusion, that the action of the Georgia House violated the First Amendment. In the course of the opinion, the Chief Justice, for the Court, reminded the nation that the fundamental constitutional mandate of the Founding Convention was that a legislature had no power to refuse to seat a representative who meets the constitutional qualifications. Thus the Court wrote, in footnote 13:

"Madison and Hamilton anticipated the oppressive effect on freedom of expression which would result if the legislature could utilize its power of judging qualifications to pass judgment on a legislator's political views. At the Constitutional Convention of 1787, Madison opopsed a proposal to give to Congress power to establish qualifications in general. Warren, *The Making of the Constitution* (1938), 420–422. The Journal of the Federal Convention of 1787 states:

" 'Mr. Madison was opposed to the Section as vesting an improper and dangerous power in the Legislature. The qualifications of electors and elected were fundamental articles in a Republican Government and ought to be fixed by the Constitution. If the Legislature could regulate those of either, it can by degrees subvert the Constitution. * * * Qualifications founded on artificial distinction may be devised, by the stronger in order to keep out partisans of a weaker faction.

* * * * * * *

" 'Mr. Madison observed that the British Parliament possessed the power of regulating the qualifications both of the electors, and the elected: and the abuse they had made of it was a lesson worthy of our attention. They had made the changes in both cases subservient to their own views, or to the views of political or Religious parties.' 2 Farrand, The Records in the Federal Convention of 1787 (Aug. 10, 1787), pp. 249–250.

"Hamilton agreed with Madison that:

" 'The qualifications of the persons who may choose or be chosen * * * are defined and fixed by the constitution: and are unalterable by the legislature." The Federalist, No. 60 (Cooke ed. 1961), 409."

In ordering Representative-elect Bond seated in the Georgia House, the Supreme Court has, only two months ago, taken the occasion to restate in their own words the fundamental intentions of the Founding Fathers that the very life of representative democracy requires an unswerving adherence to the principle embedded in the Constitution that the Legislature has no power to refuse to seat a duly elected Member-elect who meets all constitutional qualifications for membership in either House.

CONCLUSION

Under the clear mandate of the Constitution of the United States and the most important and persuasive precedents of the House of Representatives, the House is required to seat a duly elected Congressman who meets all the constitutional qualifications for membership in the House. Since the Member-elect is over the age of twenty-five, has been a citizen of the United States for over seven years, and is an inhabitant of the State from which he was elected, the Select Committee should recommend the immediate swearing and seating of the Member-elect. As Hamilton wrote in the first days of the Republic, these qualifications "are defined and fixed in the Constitution and are unalterable by the Legislature." Number 68, Federalist Papers. And as Madison said on the floor of the Constitutional Convention, any weakening of this firm principle would "subvert the Constitution." Farrand, Vol. 2, p. 249.

The Select Committee should recommend the immediate swearing-in and seating of the Member-elect.

Respectfully submitted.

JEAN CAMPER CAHN,
Washington, D.C.
ROBERT L. CARTER,
New York, N.Y.
HUBERT T. DELANY,
New York, N.Y.
ARTHUR KINOY,
New York, N.Y.
WILLIAM M. KUNSTLER,
New York, N.Y.
FRANK D. REEVES,
Washington, D.C.

Mr. CARTER. I would therefore only like to touch upon the summary, oral summation, of what is set forth in our presentation here.

The letter of invitation, which has been read into the record, suggests that Mr. Powell appear and give testimony regarding his age, his citizenship, and his residence. We regard that as being appropriate.

The letter of invitation also requests that Mr. Powell appear to answer certain questions regarding various State proceedings in New York and the alleged official misconduct since January 3, 1961. We regard that, and we want to make clear that we regard that as being beyond the province of the committee and outside the proper scope of this inquiry.

As far as we can interpret House rule No. 1, which established this committee, it was established to inquire into the qualifications of the Member-elect, Mr. Powell, to sit in the House.

It is our view that Mr. Powell has submitted with the motion his evidence, a certified copy of his evidence of the election from the 18th Congressional District of New York and his possession of all the qualifications that are set forth for membership in the House of Representatives, that are set out in article 1, section 2, clause 2, of the Constitution of the United States.

This evidentiary material was set forth and appended to our motion in exhibits A to D, and they consist of a duly authenticated certificate of his election, his birth certificate showing that Mr. Powell has attained the age of 25 years and is a citizen of the United States of 7 years' duration, and evidence of his inhabitancy and residence of the State of New York.

These, in our judgment, Mr. Chairman and members of the committee, are the sole and exclusive qualifications prescribed by the Constitution, and they control this inquiry and disposition of ths case.

We base this on three propositions. One, we say that it was the clear intention of the framers of the Constitution when the Constitution was framed in 1887 that the Constitution should set the qualifications for membership in the House and the Senate, and no other. And that both the House and the Senate were without power to add or detract from what was set out in the Constitution.

We argue, No. 2, that the precedents and the practice of both the House and the Senate from the time contemporaneous with the adoption of the Constitution to the most recent time that this matter was considered, that the precedents of the House and the Senate are in accord with the view that neither the House nor the Senate nor the States have any right to add to or detract from the qualifications that have been set out in the Constitution.

There are a few cases where this principle that I have indicated have been departed from. But those cases are based on exceptional grounds, and except in the instance of the matter of a person not being seated because of treason or because of participation in the rebellion against the United States in the Civil War, those matters, there is only one instance in which this has been departed from.

The question of treason and the question of the participation and rebellion against the United States was taken care of by an additional amendment which is section 3 of the 14th amendment to the Constitution of the United States, and therefore Congress has that power.

We say to you that that issue is not present here, has not been raised, and therefore is outside the scope of this inquiry in any event.

The other matter in which, the other time in which, the principle was departed from has been repudiated by, one, by the Senate explicitly, and secondly by the House when it later returned to this scope.

We also argue that the judicial precedents, Federal and State, are in accord with this principle.

The first proposition, that it was the intent of the framers of the Constitution that the qualifications that should govern as to the membership in the House or Senate, were those qualifications set out in article 1, section 2, clause 2.

The Constitutional Convention, after having adopted this article, had before it a consideration of a matter from Gouverneur Morris, the delegate from New York. The argument was made by him that Congress—both members of the Legislature—should have the right to establish its own standard of member.

Mr. Madison and other members of the Convention argued that this was a dangerous step, that Mr. Madison, in arguing against it, indicated that this was what had happened with the British Parliament and had been abused and therefore should be a worthy lesson for the newly established Republic that it should not go that line.

He argued that to allow the Congress, or the Legislature, to have this power would submit a subversion of the Constitution and a destruction of representative government.

The views of Mr. Madison were adopted and the proposal of Mr. Morris was rejected by the Convention.

The legal scholars who have examined this matter have all uniformly concluded that this rejection, that what had happened, meant that the Convention had adopted the Madison view. The Madison

view was that the only thing that could be inquired into about a person as to membership in the House or Senate was his age, citizenship, and residency as set out in article 2.

On page 12 of our brief, which we are submitting, Mr. Justice Story makes the comment, in his commentary, in which he says "It would seem fair reasoning that upon the plainest principles of interpretation, that when the Constitution established qualifications as necessary for office, it meant to exclude all others.

Mr. George McCrary——

Chairman CELLER. What is the page? I am looking at the brief.

Mr. CARTER. It is on page 12 of the new brief.

Mr. REEVES. Mr. Chairman, I don't believe you have that brief. I would like to hand it up to the members.

Mr. CARTER. You won't have time to read it, so I will just go on.

Mr. George McCrary, who was the chairman of the Committee of Election of the House of Representatives, in his treatise on elections which was published in 1887, said "Where the Constitution prescribes the qualifications for an office, the legislature cannot add others, therein provide."

Mr. Charles Warren, an authority on the making of the Constitution, reaches the same view.

The Supreme Court of the United States most recently, in deciding a case involving a question from the State, that is, whether the State legislature, the State of Georgia in this instance, had the right to refuse to seat a member of the house—of the State house—on the basis of qualifications not set forth in the Constitution, the Supreme Court, in reaching the conclusion that it did not, pointed to the debates in the Constitutional Convention and the views of Madison and the views of Hamilton which supported that, as supporting their conclusion that the only qualifications that could be utilized by the legislature were those which were specifically and explicitly set forth in the Constitution.

I am referring to a case decided about 6 weeks ago, *Bond* v. *Floyd*, by the Supreme Court of the United States.

I think that what we have is that the legal authorities and scholars feel that this is the view.

When the matter first came before the Congress it came in 1807, in regard to a contested election of a William McCrary, in the 10th Congress. And the House, after exhaustive debate on the matter, reached the conclusion that the only thing that the House could inquire into properly and appropriately to determine a person's qualification to sit in the House were the matters set forth, the three matters which I have indicated before set forth in article 1, section 2, clause 2: age, citizenship, and residency.

In coming to that conclusion, which was adopted, the matter before the House at that time was the fact that Mr. McCrary had come to the House, had been elected, properly elected, but he did not possess a qualification which the State had added as to the necessity for members to sit in the House.

In rejecting that there were three guidelines that the House adopted which have governed dispositions of cases of this matter ever since.

One, the House and the committee, in arguing it, said that the people of the United States delegated no authority to the State or to the

Congress to add or to diminish the qualifications prescribed by the Constitution.

Secondly, the argument was that if either the State or the Congress had that power, that would be dangerous and lead to a subversion of representative government.

And finally, they said that the people have the natural right to determine for their representatives that qualification under a constitutional process, and that this cannot be done by the legislature.

We cite this case, Mr. Chairman. We think that this case is particularly important because, as you know and as the lawyers on the committee know, it is a rule of constitutional adjudication and interpretation that where a matter has been decided by the legislature as to what the meaning of a constitutional provision is, contemporaneously with the time of its adoption, where the persons who participated in the debates and the legislature, members of the legislature were there, that there, if this interpretation is adhered to over a period of time, that it is controlling as to what the provision means.

We submit that this has happened in his particular case, that the McCrary doctrine has been followed by the House and the Senate since that time.

It was applied in 1856 in the election cases of Turny versus Marshall and Foulk versus Trumbull. It was applied in 1862 by the Senate, the same view, in the case of Benjamin Stark. And at that point Mr. Stark was charged with unbecoming and reprehensible conduct. The Senate said that this is not our province, that the only thing we can look into are the three matters which I have indicated.

In 1887, in the 41st Congress, the matter came up in a context involving Grafton versus Conner. This is a particularly interesting case because Mr. Conner was charged with brutalizing Negro soldiers under his command in the armed services, and with perjury and subordination of evidence in the court-martial hearing on the charges. The House at that time decided that he had to be seated because their theory was that they were bound to only look into the——

Chairman CELLER. The Chair will extend your time 5 more minutes.

Mr. CARTER. Thank you, Mr. Chairman.

The most recent full discussion of this matter took place in the House in 1933, in the case of Francis Shoemaker from Minnesota, who was convicted of a crime and had been sentenced to the penitentiary. At that time the House took this view.

More recently in the Senate, in 1942, in a case involving Mr. Langer, the Senate took the view.

The deviations occurred in 1899 in the House, when Mr. Brigham Roberts was refused a seat because he was a Mormon and because of anti-Mormon sentiment, and on the grounds that he had practiced polygamy and had been found guilty of this. The House did refuse to seat him.

In 1903 the Senate, in the case of Senator-elect Reed Smoot, from Utah——

Chairman CELLER. We are familiar with all those precedents.

Mr. CARTER. All right. They took the view that this was error. And I might add that in the Shoemaker case the House returned to the principle and this is what has been the law.

I indicated that in the War case, 1867, there were matters before the House in which there was a refusal to seat several Members of the South that had participated in the Civil War on the side of the Confederacy. This was done under section 3 of the 14th Amendment which was at that time being considered.

Mr. Victor Berger, who was convicted of treason in the Espionage Act of 1919, was refused a seat by the House, but it was on the ground that the House had the right to set the punishment for treason, and secondly, the matter was placed under section 3 of the Consitution.

We contend that all of these authorities have been undeviating, and it is our contention, it is our view, Mr. Chairman, that the only matter that can be properly before this committee is Mr. Powell's age, inquiry into whether he has the age qualification, the citizenship qualification, and the residency qualification. And that any matters outside of that is outside the scope of this hearing, and we would object to any questions outside of that province or any introduction into the record of any matter which is not pertinent to these three considerations. And these are our views as to what action the committee should take as to its scope of the inquiry at the present time.

Chairman CELLER. The committee will take under advisement your motion, and the arguments made thereunder.

Mr. KINOY. Mr. Chairman, I have a few important procedural and jurisdictional motions to make on behalf of the Member-elect. I ask the Chair's permission to make those motions since they go to the heart of the proceeding.

Chairman CELLER. It will be perfectly all right. Will you be very brief?

Mr. KINOY. Yes, they are.

Chairman CELLER. Don't extend your argument, now. Let us know what those motions are, briefly.

Mr. KINOY. Thank you, Mr. Chairman.

On behalf of the Member-elect, we make the following motions:

First, the Member-elect, Adam Clayton Powell, Jr., respectfully moves this committee to limit its inquiry pursuant to article I, section 2, clause 2 of the Constitution of the United States to the three sole qualifications set forth therein for membership in this House; namely, age, citizenship, and inhabitancy, and I do file that motion.

Chairman CELLER. The Chair indicated already it would take that motion under advisement. That is a repetition of what your colleague has indicated.

Mr. KINOY. Yes, your Honor.

The second motion: The Member-elect moves that the select committee terminate any further proceedings on this matter and report forthwith that Congressman-elect Adam Clayton Powell, be sworn as a Member of Congress and asserts as grounds therefor that the proceedings before said committee are beyond its jurisdiction, null and void, in that they are projected beyond the scope of inquiry constitutionally permissible in determining——

Chairman CELLER. That is the same motion in different language. That will be taken under advisement.

Mr. KINOY. Thank you, your Honor.

The Member-elect moves that the select committee terminate any further proceedings on this matter and report forthwith that Con-

gressman-elect Adam Clayton Powell be sworn as a Member of Congress, and asserts as grounds therefor that the proceedings before the select committee are null and void and violative of the Constitution of the United States in that they fail in any respect to give the Member-elect reasonable and requisite notice of any charges relating to his right to his seat as required by the Constitution of the United States, and the rules and applicable precedents of the House of Representatives.

Further, the Member-elect moves——

Chairman CELLER. Wait a minute. Have you concluded that motion?

Mr. KINOY. Yes, sir. This is another motion.

Chairman CELLER. The Chair will take the motion under advisement.

Mr. KINOY. Thank you.

The Member-elect moves that the select committee terminate any further proceedings on this matter and report forthwith that Congressman-elect Adam Clayton Powell be sworn as a Member of Congress, and asserts as grounds therefor that the proceedings before said committee are null and void in that the select committee has failed to accord him any of the attributes of an adversary proceeding as required by the Constitution of the United States, and in particular article I, section 1 thereof, and the due process clause of the fifth amendment to the Constitution of the United States.

Chairman CELLER. That motion will be taken under advisement.

Mr. KINOY. Thank you, Mr. Chairman.

Finally, the Member-elect, Adam Clayton Powell, Jr., moves that he be afforded all of the rights and protections guaranteed by the Constitution of the United States and the rules and precedents to a Member-elect whose right to a seat in the House of Representatives is contested, including but not limited to the following:

1. Fair notice as to the charges now pending against him, including a statement of charges and a bill of particulars by any accuser.

2. The right to confront his accuser, and in particular to attend in person and by counsel all sessions of this committee at which testimony or evidence is taken, and to participate therein with full rights of cross-examination.

3. The right fully in every respect to open and public hearings in every respect in the proceedings before the select committee.

4. The right to have this committee issue its process to summon witnesses whom he may use in his defense.

5. The right to a transcript of every hearing.

These motions, Mr. Chairman, and members of the select committee, are made by the Member-elect by his counsel, since they go to——

Chairman CELLER. Are you going to argue these motions or are you just stating the motions? I won't accept any argument. You are stating the motion. Have you finished your statement as to the motion?

Mr. KINOY. I have, Mr. Chairman.

Chairman CELLER. The motion will be taken under advisement.

Mr. KINOY. With your permission, I would ask, since in every other proceeding that we have discovered, including the proceedings 2 years ago involving the seat of the Mississippi Members to the House, we were afforded an opportunity to talk to the committee.

Chairman CELLER. The Chair will have to deny the request.

Mr. Powell, will you stand up please, and be prepared to take the oath?

Mr. CONYERS. Mr. Chairman, are we going to act on the motions that have been made?

Chairman CELLER. We will take them under advisement.

Mr. REEVES. Mr. Chairman, may I be heard on the point that is being raised by Congressman Conyers? We are in the position as counsel for Congressman Powell——

Chairman CELLER. No.

Mr. Powell will stand and be prepared to take the oath. Will you rise, please——

Mr. REEVES. Mr. Chairman, may I ask the question——

Chairman CELLER. I am sorry. Mr. Powell has been asked to take the oath. We have been very patient in listening to these dilatory motions. We will take them under advisement.

Mr. REEVES. Mr. Chairman, I appeal to the committee——

Chairman CELLER. The Chair will not recognize the gentleman.

Mr. Powell, will you please rise?

Mr. CONYERS. Mr. Chairman, as a member of this committee I must ask an inquiry in good faith. Are we to understand that these motions that have been made, as to which disposition has been stayed, that we are now going to proceed to hear the Member-elect and then subsequently rule on motions which go to the heart of the procedure before us?

Chairman CELLER. Yes, sir. We are going to hear the testimony, and we will rule on the motions subsequently. That is not unusual. It has been done very frequently.

Mr. CONYERS. May I ask, Mr. Chairman, that the committee recess, at least briefly, on a personal point of this one Member who has some serious concern that I would like to share with my distinguished chairman, if I may.

Chairman CELLER. I would like to accede to the gentleman's request. The gentlemen must remember that we have a limited time within which we must act. It will not meet our problem to pass upon these motions. They in due course will be considered fully, naturally, and I say that, fully maturely, by this committee. Therefore I now ask Mr. Powell to rise and be prepared to take the oath.

Mrs. CAHN. Mr. Chairman, is it possible for us to have a 5-minute recess?

Chairman CELLER. I will not have all counsel express their views. We must proceed.

Mrs. CAHN. This is not, Mr. Chairman, a question.

Chairman CELLER. If you wish to confer with counsel, there will be a recess later. You can confer with counsel then.

Mr. REEVES. May we say that under the circumstances we cannot proceed.

Chairman CELLER. I am sorry, sir. I am going to ask Mr. Powell, please, to rise and take the oath.

Mr. KUNSTLER. Mr. Chairman, a point of order, please. I move that——

Chairman CELLER. I am sorry, we cannot consider one, two, three, eight counsel at once. That is utterly impossible.

Mr. KUNSTLER. We are objecting to the word "dilatory."

Chairman CELLER. I will do this: Have one counsel act at this stage of the proceeding. Who do you want to act?

Mr. KUNSTLER. May I make my point of order? You used the word "dilatory" for these proceedings. I would like to move that this word be stricken.

Chairman CELLER. The motion is denied.

TESTIMONY OF ADAM CLAYTON POWELL, REPRESENTATIVE-ELECT FROM NEW YORK, ACCOMPANIED BY MRS. JEAN CARTER CAHN, ROBERT L. CARTER, ARTHUR KINOY, WILLIAM L. KUNSTLER, FRANK D. REEVES, HERBERT O. REID, AND HENRY R. WILLIAMS, COUNSEL

Mr. Powell, will you please rise and take the oath?

Mr. POWELL. Mr. Chairman, I have come here voluntarily. I have asked for open hearings myself. And I, on the advice of counsel, cannot proceed until there has been a ruling on the motions presented.

Chairman CELLER. In other words, you are disinclined to take the oath at this time?

Mr. POWELL. At this time. I will at a later time.

Chairman CELLER. Let the record show that Mr. Powell declined to take the oath.

Mr. POWELL. At this time.

Mr. REEVES. And for the reasons indicated.

Chairman CELLER. At this time.

Mr. Geoghegan, will you proceed to ask the questions of Mr. Powell?

Mr. GEOGHEGAN. Will you please state your name?

Mr. POWELL. Adam Clayton Powell.

Mr. GEOGHEGAN. Where were you born, Mr. Powell?

Mr. POWELL. New Haven, Conn.

Mr. GEOGHEGAN. What year?

Mr. POWELL. 1908.

Mr. GEOGHEGAN. Where do you now make your residence?

Mr. POWELL. 120 West 138th Street, next door to my church.

Mr. GEOGHEGAN. For how long have you resided there?

Mr. POWELL. I resided there since 1964.

Mr. GEOGHEGAN. Where did you reside before that?

Mr. POWELL. I resided on Seventh Avenue and 138th Street.

Mr. GEOGHEGAN. When did you first move to the State of New York?

I say, when did you first move to the State of New York from your place of birth, Connecticut?

Mr. POWELL. My mother and father brought me to New York City when I was 6 months old.

Mr. GEOGHEGAN. Have you ever claimed a residence other than in the State of New York?

Mrs. CAHN. Mr. Chairman, I must object to that because this is irrelevant and immaterial to the proceedings.

Mr. GEOGHEGAN. Your objection will be noted. Will the witness answer.

Mr. POWELL. On advice of counsel, I do not consider that——

Chairman CELLER. The record will show the witness declines to answer.

Mr. GEOGHEGAN. Mr. Powell, you are the minister of the Abyssinian Baptist Church?

Mr. POWELL. Mr. Chairman, I think at this time that we are going to have to withdraw, on the advice of counsel.

Chairman CELLER. Would the gentleman care to express the grounds for the withdrawal?

Mr. REEVES. May I——

Chairman CELLER. I asked the witness.

Mr. POWELL. I will ask my counsel to express the grounds.

Mr. GEOGHEGAN. Will one counsel please express those grounds?

Mr. REEVES. The grounds, sir, are in the light of the motions which have been submitted, which we submit are threshold motions and are procedural, that we do not believe that we can proceed with this inquiry unless and until there has been a ruling by the committee upon those motions.

Mr. GEOGHEGAN. I ask a question of counsel——

Mr. REEVES. The fact being that those motions go to the character and the nature of this hearing. And that thus, until the committee itself has made the determination on the basis of the motions that we have offered, which are contained in our briefs, we are in the position where we do not, and cannot, recognize that there have been established orderly procedures pursuant to which this proceeding can continue and with specific respect to the participation and testimony of Congressman Powell.

Mr. GEOGHEGAN. Is it your position that Mr. Powell would testify subsequent to a ruling on the motions? Or does that depend on the rulings made?

Mr. REEVES. Obviously, Mr. Geoghegan, it would depend on the rulings made.

Mr. REID. Mr. Powell will participate freely in an adversary proceeding on this matter. To proceed freely in a meeting before it is determined whether it is an adversary matter denies us the motions without permitting the committee a chance to rule on them.

Chairman CELLER. The Chair will announce a recess for 30 minutes. The room now will be cleared so that the executive session can be had by the committee. We will reconvene at 12 o'clock sharp.

(Recessed to go into executive session.)

(Open hearing resumed at 12:35 p.m.)

Chairman CELLER. The committee will resume.

The Chair wishes to make a brief statement to this effect: the motions that have been made were properly made and in good faith. The Chair withdraws the characterization of "dilatory."

Mr. Geoghegan will read the first and second motion.

Mr. GEOGHEGAN. For purposes of the record, I do not know if this was the exact order in which the motions were originally offered. I will read what we are designating motions 1 and 2.

Motion 1. The Member-elect moves that the Select Committee terminate any further proceedings on this matter and report forthwith

that Congressman-elect Adam Clayton Powell, be sworn as a Member of Congress and asserts as grounds therefor that the proceedings before said committee are beyond its jurisdiction, null and void in that they are projected beyond the scope of inquiry constitutionally permissible in determining the qualifications of a duly elected Member to be sworn and seated in the Congress of the United States.

Motion No. 2. Member-elect Adam Clayton Powell, Jr., respectfully moves this committee to limit its inquiry, pursuant to article I, section 2, clause 2, of the Constitution of the United States to the three sole qualifications set forth therein for membership in this House; namely, age, citizenship, and inhabitancy.

The chairman has a ruling of the committee on motions Nos. 1 and 2.

Chairman CELLER. The members of this committee were present at the time House Resolution 1 was debated and passed, and believe they were charged with the duty to make recommendations going beyond exclusion and considering the possibility of other disciplinary actions pursuant to article I, section 5, clause 1. Therefore motions 1 and 2 are denied.

Mr. GEOGHEGAN. I will now read motions 3, 4, and 5.

Motion 3 (reading):

The Member-Elect moves that the Select Committee terminate any further proceedings on this matter and report forthwith that Congressman-Elect Adam Clayton Powell be sworn as a Member of Congress and asserts as grounds therefor that the proceedings before the Select Committee are null and void and violative of the Constitution of the United States in that they fail in any respect to give the Member-Elect reasonable and requisite notice of any charges relating to his right to his seat as required by the Constitution of the United States and the rules and applicable precedents of the House of Representatives.

Motion No. 4 (reading):

The Member-Elect moves that the Select Committee terminate any further proceedings on this matter and report forthwith that Congressman-Elect Adam Clayton Powell be sworn as a Member of Congress and asserts as grounds therefor that the proceedings before said Committee are null and void in that the Select Committee has failed to accord him any of the attributes of an adversary proceeding as required by the Constitution of the United States and in particular Article I, Section I and the due process clause of the Fifth Amendment to the Constitution.

Motion No. 5 (reading):

Member-Elect Adam Clayton Powell, Jr., moves that he be afforded all the rights and protections guaranteed by the United States Constitution and the rules and precedents to a Member-Elect whose right to a seat in the House of Representatives is contested, including, but not limited to, the following:

(1) fair notice as to the charges now pending against him, including a statement of charges and a bill of particulars by any accuser;

(2) the right to confront his accusers and in particular to attend in person and by counsel, all sessions of this Committee at which testimony or evidence is taken and to participate therein with full rights of cross-examination;

(3) the right to an open and public hearing;

(4) The right ot have this Committee issue its process to summon witnesses whom he may use in his defense;

(5) the right to a transcript of every hearing.

All motions have been respectfully submitted by counsel of record.

The chairman has a ruling of the committee on motions 3, 4, and 5.

Chairman CELLER. Before reading the ruling on motions 3, 4 and 5 the Chair wishes to announce that in reading the ruling of denial

on motions 1 and 2, he made reference to article I, section 5, clause 1 of the Constitution. That should be clause 2 of section 5, article I of the Constitution.

With respect to motions Nos. 3, 4, and 5, they are likewise denied.

This is not an adversary proceeding. The committee is going to make every effort that a fair hearing will be afforded, and prior to this date has decided to give the Member-elect rights beyond those afforded an ordinary witness under the House rules.

The committee has put the Member-elect on notice of the matters into which it will inquire by its notice of the scope of inquiry and its invitation to appear, as well as by conferences with, and a letter from its chief counsel to the counsel for the Member-elect.

Prior to this hearing the committee decided that it would allow the Member-elect the right to an open and public hearing, and the right to a transcript of every hearing at which testimony is adduced.

The committee has decided to summon any witnesses having substantial relevant testimony to the inquiry upon the written request of the Member-elect or his counsel.

The Member-elect certainly has the right to attend all hearings at which testimony is adduced and to have counsel present at those hearings.

In all other respects, the motion is denied.

Again the committee states that this is an inquiry and not an adversary proceeding.

Mr. GEOGHEGAN. Mr. Chairman.

Chairman CELLER. Mr. Geoghegan.

Mr. GEOGHEGAN. Mr. Chairman, I would like to read into the record at this time a letter dated February 6, from the chief counsel for the committee, to Mrs. Jean Camper Cahn, attorney for Mr. Powell.

DEAR MRS. CAHN: I wish to acknowledge the telegram received today by Chairman Celler from Mr. Powell reading as follows:

"I will appear Wednesday at 10 a.m. with counsel."

I assume that Mr. Powell's telegram was sent in response to the invitation from this Select Committee dated February 1, 1967 inviting him to appear before it on Wednesday, February 8, 1967, at 10:30 A.M., in Room 2141, Rayburn House Office Building, Washington, D.C.

During the meeting last Friday attended by you, Frank D. Reeves, Esq. and Herbert O. Reid, Esq., representing Mr. Powell, and Mr. Robert P. Patterson, Jr. and the undersigned, representing the Select Committee, we discussed the subject matter into which the Select Committee desires to inquire of Mr. Powell when he appears before it. As indicated then, and in the letter dated February 1, 1967 inviting Mr. Powell to testify, these subject matter areas are as follows:

1. Mr. Powell's age, citizenship and inhabitancy;

2. The status of legal proceedings to which Mr. Powell is a party in the State of New York and in the Commonwealth of Puerto Rico, with particular reference to the instances in which he has been held in contempt of court;

3. Matters of Mr. Powell's alleged official misconduct since January 3, 1961.

Among the matters under paragraph 3 into which the Select Committee desires to interrogate Mr. Powell are paragraphs 1 to 11 of the "Conclusions" contained in the Report of the Committee on House Administration, Special Subcommittee on Contracts (pp. 6 and 7) relating to an investigation into expenditures during the 89th Congress by the House Committee on Education and Labor and the clerk-hire status of Y. Marjorie Flores (Mrs. Adam C. Powell). For your convenience a copy of the Report is enclosed.

Sincerely,

WILLIAM A. GEOGHEGAN,
Chief Counsel.

Chairman CELLER. That letter will be received in the record.

Mrs. Cahn?

Mrs. CAHN. We would like to move that the record show that we object to the overruling of our motions and we wish to renew at this point each and every one of the motions.

We wish the committee to understand that we do not waive them in any respect.

Further, we are ready to proceed, but under protest.

We have advised Congressman Powell to be sworn, and to answer under oath any questions concerning age, inhabitancy, and citizenship, but no other.

In order to avoid needless repetition of objections, we would respectfully ask the committee to attempt to confine their questions to Mr. Powell to these matters.

Further, I would like the record to show that to my knowledge I have received at this point no letter from you. I did indeed receive a copy of one of the volumes of the hearings.

Chairman CELLER. The objections that you raise were covered by the motions which have already been denied. We will now proceed with the testimony of Mr. Powell.

Mr. Powell, will you raise your right hand? The Bible is right there before you.

Do you solemnly swear that the testimony you will give in this matter now pending before this committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. POWELL. I do.

Chairman CELLER. Mr. Geoghegan.

Mr. GEOGHEGAN. Will you please state your name?

Mr. POWELL. Adam Clayton Powell.

Mr. GEOGHEGAN. And where were you born, Mr. Powell?

Mr. POWELL. New Haven, Conn.

Mr. GEOGHEGAN. When? The year.

Mr. POWELL. 1908.

Mr. GEOGHEGAN. And when did you move to the State of New York?

Mr. POWELL. Six months old.

Mr. GEOGHEGAN. Where is your present residence, Mr. Powell?

Mr. POWELL. 120 West 138th Street.

Mr. GEOGHEGAN. For how long have you resided there?

Mr. POWELL. Since 1964.

Mr. GEOGHEGAN. Prior to that date where did you make your residence?

Mr. POWELL. Various places, including an apartment on Seventh Avenue. I forget the number. Between 138th and 139th. I think it is 2386. I am not sure.

Mr. GEOGHEGAN. You are a minister of the Abyssinian Baptist Church?

Mr. POWELL. For 38 years.

Mr. GEOGHEGAN. Where is it located?

Mr. POWELL. 132 West 138th Street.

Mr. GEOGHEGAN. And for how long have you been—are you the pastor of the church?

Mr. POWELL. Yes, sir.
Mr. GEOGHEGAN. For how long have you been pastor?
Mr. POWELL. Full pastor since 1937. Prior to that copastor with my late beloved father.
Mr. GEOGHEGAN. What political offices have you held?
Mr. POWELL. I was elected to the New York City Council. I was elected to the U.S. Congress 24 years.
Mr. GEOGHEGAN. For how long have you claimed New York as a residence?
Mr. POWELL. All my life.
Mr. GEOGHEGAN. Do you pay income taxes in the State of New York?
Mr. POWELL. Yes, sir.
Mr. GEOGHEGAN. Do you have an automobile registered in the State of New York?
Mr. POWELL. No. I operate one that is registered, but it belongs to the church.
Mr. GEOGHEGAN. Do you have a driver's license for the State of New York?
Mr. POWELL. Yes, sir.
Mr. GEOGHEGAN. Do you have any other addresses which you use, aside from the address you testified to, as your place of residency?
Mr. POWELL. None that I can remember, no, sir.
Mr. GEOGHEGAN. When was the last time you were in the State of New York?
Mr. POWELL. I came there before my vacation at the end of November.
Mr. GEOGHEGAN. Which year? 1966?
Mr. POWELL. 1966.
Mr. GEOGHEGAN. Could you be as specific as possible with respect to the dates that you were in New York at that time?
Mr. POWELL. No, I cannot.
Mr. GEOGHEGAN. Was it for more than 1 day?
Mr. POWELL. Maybe. I am not sure.
Mr. GEOGHEGAN. Did you spend the night there?
Mr. POWELL. Now and then I did.
Mr. GEOGHEGAN. On the last occasion of your—the last time you visited the State of New York did you spend the night?
Mr. POWELL. I don't recall that time, whether I did or not.
Mr. GEOGHEGAN. This would have been in November, this past November 1966?
Mr. POWELL. That is correct.
Mr. GEOGHEGAN. Do you recall the day of the week?
Mr. POWELL. Oh, yes. Always did.
Mr. GEOGHEGAN. What day was that?
Mr. POWELL. Don't know. Can't remember it.
Mr. GEOGHEGAN. Do you recall from where you traveled to the State at that time?
Mr. POWELL. From Washington.
Mr. GEOGHEGAN. Do you recall how you traveled?
Mr. POWELL. By plane.
Mr. GEOGHEGAN. But you have no recollection as to whether or not you spent the night?

Mr. POWELL. No, I cannot recall, to the best of my memory.
Mr. GEOGHEGAN. Do you recall what the purpose of that visit was?
Mr. POWELL. To preach at my church.
Mr. GEOGHEGAN. May we assume it was on a Sunday?
Mr. POWELL. At least it had to be on a Sunday.
Mr. GEOGHEGAN. Where did you go after you left New York on that occasion?
Mr. POWELL. I don't recall. I think I came back here for the opening of Congress, the Democratic caucus.
Mr. GEOGHEGAN. Prior to this visit to New York, in November 1966, to preach at your church, can you tell us when was the last previous time before then that you were in the State of New York?
Mr. POWELL. I preached at the church on the average of three times every month.
Mr. GEOGHEGAN. This has been your practice for how long?
Mr. POWELL. All my life.
Mr. GEOGHEGAN. Were you in New York in the month of October?
Mr. POWELL. Yes, I was.
Mr. GEOGHEGAN. 1966?
Mr. POWELL. Yes, I was.
Mr. GEOGHEGAN. Were these on Sundays?
Mr. POWELL. Always on Sundays.
Mr. GEOGHEGAN. But you would return before Monday?
Mr. POWELL. I always tried to get back to Congress Monday morning.
Mr. GEOGHEGAN. I am asking you, would you return on Sunday? Would you actually depart the State of New York on Sunday?
Mr. POWELL. Sometimes.
Mr. GEOGHEGAN. Prior to midnight?
Mr. POWELL. Sometimes.
Mr. GEOGHEGAN. On some occasions you stayed beyond midnight?
Mr. POWELL. Correct.
Mr. GEOGHEGAN. On any of these occasions did you leave as late as Monday morning, after, say, 6 a.m.?
Mr. POWELL. Oh, sometimes, yes.
Mr. GEOGHEGAN. When was the last time you were in the State of New York other than on a Sunday or Monday?
Mr. POWELL. I can't recall. I have a political club there, the Alfred I. Isaac Club, that meets on Monday nights, and stayed long enough to talk to them once a month.
Mr. GEOGHEGAN. You gave as your residence a street address. Would you repeat that, please?
Mr. POWELL. 120 West 138th Street, apartment 5–D.
Chairman CELLER. Will you speak into the microphone?
Mr. GEOGHEGAN. And you pay rent there?
Mr. POWELL. Yes, sir.
Mr. GEOGHEGAN. You pay rent there?
Mr. POWELL. Yes, sir; by check.
Mr. GEOGHEGAN. Who is the owner of the apartment to whom you pay the rent?
Mr. POWELL. Mr. Odell Clark, my friend for 30 years.
Mr. GEOGHEGAN. Will you describe your apartment, please? How many rooms is it?

Mr. POWELL. The apartment has a studio couch in the living room—bedroom, kitchen, and a large foyer

Mr. GEOGHEGAN. Can you give us any indication as to when was the last time you spent the night in that apartment?

Mr. POWELL. No, I cannot.

Mr. GEOGHEGAN. Is it possible you did not spend the night in that apartment at all during the year 1966?

Mr. POWELL. That is not true.

Mr. GEOGHEGAN. You did at least some time during 1936 spend the night in that apartment?

Mr. POWELL. Correct.

Mr. GEOGHEGAN. You can't pinpoint the date of the month?

Mr. POWELL. No, sir.

Mr. GEOGHEGAN. You can't identify it with any specific business on which you might have been in the State of New York?

Mr. POWELL. No, sir.

Mr. GEOGHEGAN. Where is your district congressional office located?

Mr. POWELL. It is located in my district club, and located in the office building owned by Dr. Amon Wells.

Mr. GEOGHEGAN. When was the last time you visited your district congressional office?

Mr. POWELL. I can't recall.

Mr. GEOGHEGAN. Would it have been within the past 6 months?

Mr. POWELL. Oh, yes, definitely.

Mr. GEOGHEGAN. Can you recall the date of the week?

Mr. POWELL. No, sir; nor the month.

Mr. GEOGHEGAN. Would it have been on a day other than Sunday?

Mr. POWELL. Yes, sir.

Mr. GEOGHEGAN. Did you vote in the 1966 congressional elections?

Mr. POWELL. Yes, sir. And I have documents to prove it in the board of election in New York City.

Mr. GEOGHEGAN. Did you vote personally or by absentee ballot?

Mr. POWELL. Absentee ballot.

Mr. GEOGHEGAN. Where were you at the time?

Mr. POWELL. I was in Washington, D.C.

Mr. GEOGHEGAN. Where else during the past 2 years, during, say, the time of the 90th Congress, during the time of the 89th Congress, have you spent your time?

Mrs. CAHN. Excuse me. Mr. Chairman, I would like to object to that question as being irrelevant and immaterial. I suppose this inquiry goes to the question of residency and domicile.

Mr. GEOGHEGAN. Inhabitancy.

Mrs. CAHN. I believe this inquiry now, the present question happens to be irrelevant and immaterial to that inquiry.

Chairman CELLER. Objection overruled.

Mr. POWELL. Upon the advice of counsel, I will not answer the question.

Mr. GEOGHEGAN. Can you tell me approximately how much of your time you spent here in Washington or the surrounding area during the period of the 89th Congress?

Mr. POWELL. I was here for 6 days a week and sometimes 5, working with my colleagues, turning out 60 laws, and haven't lost one.

Mr. GEOGHEGAN. Mr. Powell, according to information obtained from various public records in New York, you have been cited four times. You have been ordered arrested four times on two criminal contempt citations and on two civil contempt citations. Is it for this reason that you have not been in New York since November 1966?

Mrs. CAHN. Mr. Chairman, I would like to object to bringing in this matter. We stated beforehand that we would ask Mr. Powell to limit his answers to questions concerning age, inhabitancy, and citizenship, and that we had advised him, unanimously, not to answer the other questions.

Chairman CELLER. I am constrained to overrule your objection.

Mr. POWELL. On advice of counsel I refuse to answer any questions other than age, citizenship, residency in New York.

Mr. GEOGHEGAN. I believe these questions are relevant to those matters.

Mr. POWELL. I am sorry, sir. I will not answer them.

Mr. GEOGHEGAN. Mr. Powell, I would like to ask you whether or not it is your intention to be in the State of New York at any time so long as these arrest orders are pending against you.

Mr. POWELL. I refuse to answer it on the same grounds stated by my counsel, and upon their unanimous advice.

Mr. GEOGHEGAN. Do you have a telephone listing in New York?

Mr. POWELL. I make it a point of not—I do not have a telephone anywhere.

Mr. GEOGHEGAN. You have neither a listed nor unlisted telephone number?

Mr. POWELL. No unlisted, even. Not even in Washington.

Mr. GEOGHEGAN. Mr. Powell, do you own any property other than in the State of New York?

Mrs. CAHN. I am sorry, but I have to once again object. I do not see this as being relevant to the question of age, citizenship, or inabilitancy.

Chairman CELLER. You refuse to answer that, Mr. Powell?

Mrs. CAHN. I advise him not to answer.

Chairman CELLER. The record will show that.

Mr. POWELL. I will not answer any questions except those that were outlined by counsel, because I would not want you to force me to break the Constitution.

Mr. GEOGHEGAN. Do you own or lease any property in Bimini, Bahamas, British West Indies?

Mrs. CAHN. It is the same question, I believe. I advise him not to answer.

Mr. GEOGHEGAN. With respect to the apartment that you——

Chairman CELLER. The record will show that Mr. Powell has declined to answer the question.

Mr. POWELL. Correct, Mr. Celler.

Mr. GEOGHEGAN. With respect to your apartment in New York at 120 West 138th Street, apartment 5–D, does any other person occupy that apartment?

Mr. POWELL. Yes. Mrs. Clark.

Mr. GEOGHEGAN. Mr. Clark?

Mr. POWELL. Mrs. Clark.

Mr. GEOGHEGAN. Mrs. Clark?

Mr. POWELL. Mr. Clark is here in Washington most of the time, working.

Mr. GEOGHEGAN. Mr. Powell, the committee has asked me if I would interrogate you with respect to four outstanding arrest orders in the State of New York, two arising out of criminal contempt citations and two arising out of a civil contempt citation. Are you willing to respond to questions in this connection?

Mr. POWELL. Upon the advice of counsel, no.

Mr. GEOGHEGAN. Mr. Powell, the committee has also directed me to interrogate you into matters developed by the Hayes subcommittee, specifically the conclusions reached by that committee, paragraphs 1 to 11, on pages 6 and 7 of that committee's report. Would you please indicate whether or not you intend to respond to any questions directed to those matters?

Mr. POWELL. On the advice of counsel, I will not respond to any questions except those in the Constitution.

Mr. GEOGHEGAN. One further question. Mr. Clark has indicated the last time you stayed at apartment 5–D, at 120 West 138th Street, was the summer of 1966. Is that correct?

Mr. POWELL. I do not remember.

Mr. GEOGHEGAN. Excuse me. I would like to rephrase the question. Mr. Clark has indicated that the last time you stayed at apartment 5–D, 120 W. 138th Street, was the summer of 1965; is that correct?

Mr. POWELL. I do not remember.

Chairman CELLER. The Chair wishes to state that with reference to your refusal to answer questions propounded to you by counsel, I wish to remind you, the witness, that the mandate of the committee pursuant to House Resolution 1 is very broad. By letter dated February 1, 1967, the committee outlined to you the scope of its inquiry, namely, No. 1, your age, citizenship, and inhabitancy; No. 2, the status of legal proceedings to which you, the witness, is a party in the State of New York and in the Commonwealth of Puerto Rico, with particular reference to the instances in which you had been held in contempt of court; No. 3, matters of your alleged misconduct since January 3, 1961.

Now, in the light of your refusal to testify to these questions, the committee has no alternative but to draw whatever inferences reasonably flow from this public record.

Without the benefit of your testimony the committee will have to draw upon other sources for information it deems relevant, competent, and material to the enumerated issues under investigation.

Under these circumstances, Mr. Powell, I urge you, as chairman, and personally, to reconsider your refusal. We will be glad to declare a short recess, should you wish to consult with your advisers on this score.

Mr. REEVES. Mr. Chairman, so that the record may be clear with regard to the issues to which you just addressed yourself, the Congressman's position, which represents the advice of counsel, is whatever may be the language of the resolution, whatever may be the committee's interpretation of that language, that we believe, as set forth in the various motions, the brief, the argument presented today, that they go beyond the constitutionally permissible scope of inquiry before this committee.

So that the Congressman's refusal to answer the questions which go beyond what we conceive, what we believe to be the appropriate scope of inquiry, is based solely on our position that the Congressman is not unwilling, unprepared to cooperate with the committee, but cannot and will not do so under the circumstances where we believe the proceedings to that extent are illegal and unlawful.

Chairman CELLER. Your objections are properly recorded.

Under the circumstances, it would be useless to continue with Mr. Powell, with his array of counsel.

The meeting is adjourned, subject to——

Mr. REEVES. May I say one more thing, Mr. Chairman?

We have also indicated that to whatever extent—as I understand the committee's ruling, for purposes of any other proceedings in connection with this matter, that Mr. Powell has the right to be present and to be represented by counsel. I assume that that will be followed. Again not waiving objections, any objections that we stated.

Chairman CELLER. That is perfectly proper.

Mr. REEVES. I would like to make one more representation to the committee.

We have, and are prepared to present for the committee, documentary evidence supporting, and in response really to some of the questions which have been asked by counsel, that is documentary evidence above and beyond Mr. Powell's testimony. We would request the opportunity at this time to present that evidence.

Chairman CELLER. When you are ready to submit the data, we will be glad to receive it for whatever it——

Mr. REEVES. We are prepared to submit it right now.

Mr. KUNSTLER. We are prepared to offer it right now.

Chairman CELLER. I would like to know what it is. I suggest that you confer with counsel before you put it in the record.

Mr. KUNSTLER. We would like to make the proffer.

Mr. REEVES. We will make the proffer and you can have it and rule on that which you desire to admit.

Chairman CELLER. I won't promise to put it in the record. Let us know what it is.

Mr. KUNSTLER. I have before me the birth certificate of Adam Clayton Powell from the State of Connecticut, indicating the issue of age and citizenship. It is our No. 1.

Chairman CELLER. We already have that. We will be glad to receive it again.

Mr. KUNSTLER. This is the official document.

I have a bank statement dated December 14, 1966, from the Chase-Manhattan Bank of the city of New York, showing a present balance in Mr. Powell's name, and listing his address at 132 West 138th Street. That is No. 2.

Chairman CELLER. That will be received.

Mr. KUNSTLER. Nos. 3 and 4—3–A and 3–B, are voter registration cards for Mr. Powell. The first one, 3–A, shows his residence at 2368 Seventh Avenue, dated January 7, 1964.

Chairman CELLER. Who issued those cards?

Mr. KUNSTLER. These are issued by the Board of Elections of the city of New York.

I have as 3–B—after his change of residency, showing him at 120 West 138th Street, registered on October 13, 1964.

Chairman CELLER. They will be accepted.

Mr. KUNSTLER. I have No. 4, a telegram dated yesterday, February 7, 1967, from Maurice J. O'Rourke, commissioner, New York City Board of Elections. It reads as follows:

The official records of this office show that Congressman Adam Clayton Powell as a resident and duly qualified voter of New York City voted by absentee ballot in the November 1966 general election in New York City in accordance with Section 151 of the election law. Certified proof follows. I am available for personal appearance in this matter if such appearance is desired by Committee. Maurice J. O'Rourke, Commisisoner, New York City Board of Elections.

Chairman CELLER. That will be accepted.

Mr. REEVES. May we ask in connection with that when the certified evidence arrives that it may be presented to the committee?

Chairman CELLER. Yes, sir.

Mr. KUNSTLER. No. 5 is a document, a photostatic copy of which is before you. It is the certification by John P. Lamenzo, secretary of state of the State of New York, that Mr. Powell was duly elected in the November election.

Chairman CELLER. We will receive it.

Mr. KUNSTLER. No. 6 is the canvassing report of the Board of Elections of the City of New York, dated December 1, 1966, showing the total number of votes cast for Mr. Powell.

Chairman CELLER. That will be accepted.

Mr. KUNSTLER. No. 7–A is a copy of his New York State income tax return for 1962.

Chairman CELLER. That will be accepted.

Mr. KUNSTLER. No. 7–B, his income tax return for New York State, 1963.

Chairman CELLER. Accepted.

Mr. KUNSTLER. No. 7–C, his New York State income tax, 1964.

And 7–D, his New York State income tax resident return for 1965.

Chairman CELLER. They will be accepted.

Mr. KUNSTLER. No. 8 is his estimated income tax form, form 1–N, and New York City 5, which is the estimate of the new city income tax for the city of New York.

Chairman CELLER. That will be included.

Mr. KUNSTLER. That is for 1967.

No. 9–A and 9–B, selected portions of the testimony of various people in the State of New York sustaining the substituted service on Mr. Powell of the various orders in the various court proceedings, showing he was a resident of the City of New York.

And I might add that Mr. Geoghegan's statement about him not sleeping, I believe, except——

Chairman CELLER. You should——

Mr. KUNSTLER. Is contradicted.

Chairman CELLER. You should confer with counsel——

Mr. KUNSTLER. We are only offering excerpted excerpts. Some are in the committee's hands already.

Chairman CELLER. I still think that should be submitted to counsel, and the committee will reserve its acceptance.

Mr. KUNSTLER. I am perfectly happy to do that.

No. 10, in answer to one of Mr. Geoghegan's questions, is a New York State driver's license expiring June 30, 1967, in the name of

Adam Clayton Powell, Jr., showing his residency at 120 West 138th Street, Apartment 5–D.

Chairman CELLER. That will be accepted.

Mr. KUNSTLER. I also want to offer—you can probably take judicial notice of this—the Congressional Directory, the 89th Congress, January 1966, second session, page 111——

Chairman CELLER. We will take official notice of that directory.

Mr. KUNSTLER. It shows his residency.

Chairman CELLER. You don't want the directory in the record.

Mr. KUNSTLER. Just the proffer of page 111, shows him listed as a resident of New York City.

Chairman CELLER. We will take notice of that.

Mr. KUNSTLER. Also the pictorial directory for this year shows him also as a resident of New York City.

Chairman CELLER. Is there a good picture of him?

Mr. KUNSTLER. It is a very good picture of all of you.

Chairman CELLER. We will accept that.

Mr. KUNSTLER. That is page 98 only.

We would like to hold the record open for the following——

Mr. MOORE. You are gaining when you say the pictures all reflect well on us.

Mr. KUNSTLER. I say this advisedly.

I also would like to hold the record open for the following items which we will submit to counsel.

One, the canceled checks showing Mr. Powell's payment of the rent referred to for both his apartment on 138th Street and for the apartment on 7th Avenue.

Chairman CELLER. That will be subject to approval of counsel.

Mr. KUNSTLER. Also showing payments to Consolidated Edison for utilities at the 7th Avenue residence.

Chairman CELLER. Same ruling.

Mr. KUNSTLER. Next, a certification from the board of election re the absentee ballot referred to in Mr. O'Rourke's telegram. When it arrives it will be offered to counsel.

Next, a photostatic record of Representative Powell's voting record, voting registration, for 3 years, from 1962 through 1965.

Chairman CELLER. You say voting record?

Mr. KUNSTLER. The photostat from the board of elections showing his registration, not his congressional voting record.

Chairman CELLER. That will be accepted.

Mr. KUNSTLER. Lastly a photograph of the vestibule of 120 West 138th Street showing the Congressman's apartment and his name that has been there ever since he has lived there.

Chairman CELLER. That will be accepted.

Mr. KUNSTLER. I would like just to make one statement, Mr. Celler. We would like, since some of these are his own documents, like his driver's license and so on, we would like the opportunity to offer them and then replace them.

Chairman CELLER. With photostatic copies?

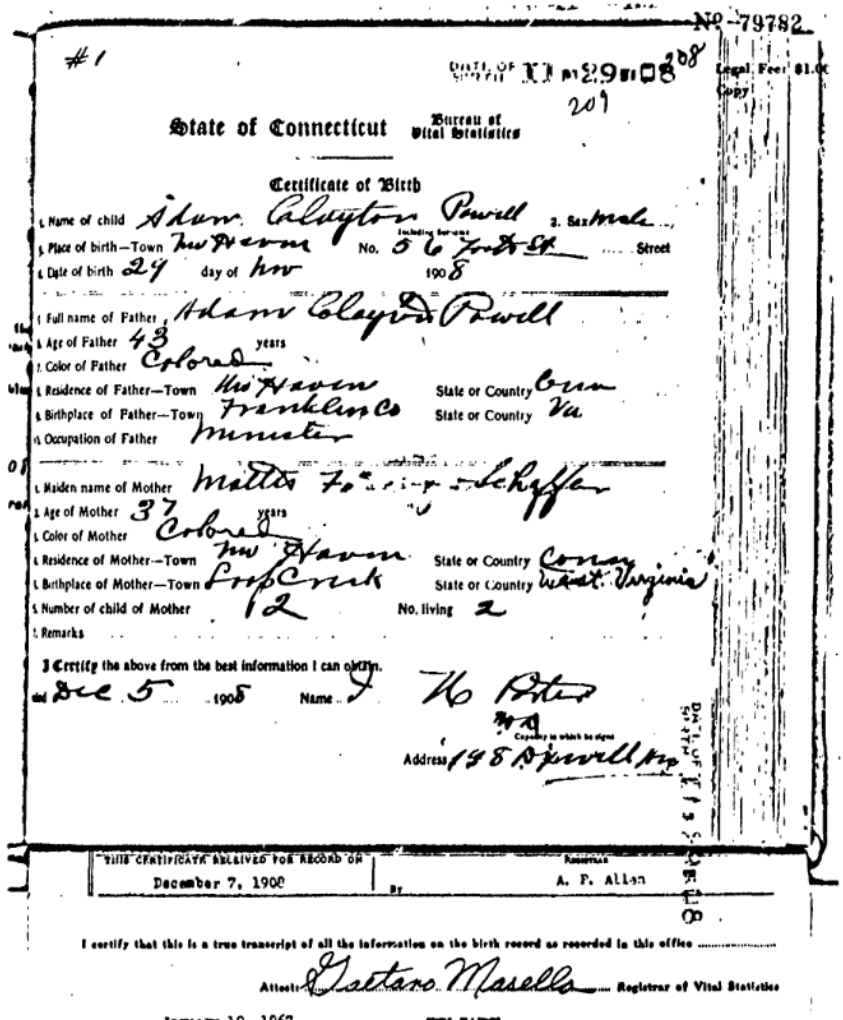
Mr. KUNSTLER. Yes, sir.

Chairman CELLER Very well.

Mr. KUNSTLER. Thank you very much. That is our proffer.

(The documents referred to are as follows:)

EXHIBIT 1



No. 79782

#1

DATE OF BIRTH Nov 29 1908

Legal Fee $1.00 Copy

State of Connecticut Bureau of Vital Statistics

Certificate of Birth

1. Name of child Adam Clayton Powell 2. Sex Male
3. Place of birth—Town New Haven No. 56 Fort St Street
4. Date of birth 29 day of Nov 1908

5. Full name of Father Adam Clayton Powell
6. Age of Father 43 years
7. Color of Father Colored
8. Residence of Father—Town New Haven State or Country Conn
9. Birthplace of Father—Town Franklin Co State or Country Va.
10. Occupation of Father Minister

11. Maiden name of Mother Mattie Fo[illegible]ne Schaffer
12. Age of Mother 37 years
13. Color of Mother Colored
14. Residence of Mother—Town New Haven State or Country Conn
15. Birthplace of Mother—Town Fork Creek State or Country West Virginia
16. Number of child of Mother 2 No. living 2
17. Remarks

I Certify the above from the best information I can obtain.

Dated Dec 5 1908 Name J H Peters M.D.
Capacity in which he signs
Address 198 Dixwell Ave

DATE OF FILING [illegible]

THIS CERTIFICATE RELAYED FOR RECORD ON December 7, 1908 By Registrar A. F. Allen

I certify that this is a true transcript of all the information on the birth record as recorded in this office

Attest: Gaetano Marella Registrar of Vital Statistics

Dated January 10, 1967 Town of NEW HAVEN

EXHIBIT 2

MR ADAM C POWELL
132 WEST 138TH STREET
NEW YORK 32, NEW YORK

THE CHASE MANHATTAN BANK, N.A.
New York

018-1-024761S RES BALANCE FORWARD DEC14 1966 84,

CHECKS AND OTHER CHARGES					DEPOSITS AND OTHER CR	
NO. OF CHECKS		0		BALANCE JAN16	1967	84,

SYMBOLS

CB - CHECK BOOK CHARGE
CC - CERTIFIED CHECK
CM - REFER TO ADVICE
CO - PROCEEDS OF COLLECTION
DM - REFER TO ADVICE
EC - ERROR CORRECTION
IN - INTEREST CHARGE
LS - LIST OF CHECKS
MC - MAINTENANCE CHARGE
MT - MONEY TRANSFER
NG - DEPOSITED CHECK RETURNED UNPAID
OD - OVERDRAWN BALANCE
PL - REFER TO ADVICE
PT - DRAFTS PAID
RM - REMITTANCE BANKING CREDIT
RT - CHECK RETURNED UNPAID
SC - SERVICE OR CHECK CHARGE

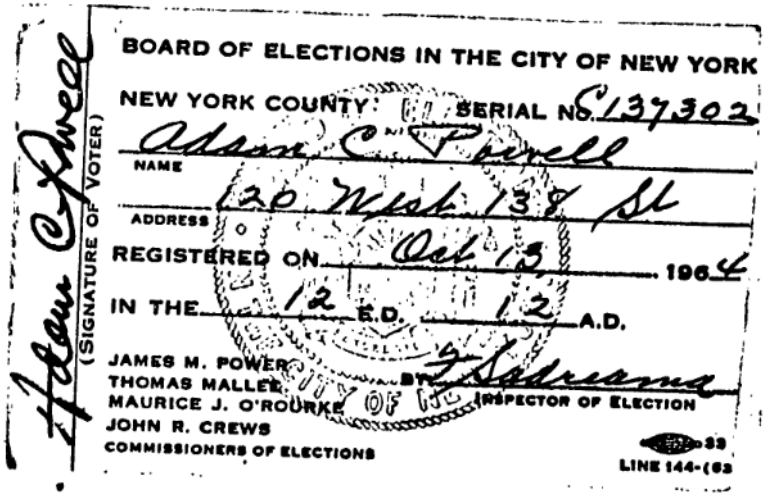
FOR YOUR CONVENIENCE THERE IS PROVISION FOR B RECONCILEMENT ON THE BACK OF THIS STATEMENT

THE LAST AMOUN COLUMN IS YOUR AND WILL BE CO CORRECT UNLE ADVISE US OF AN WITHIN 10 DAYS.

Please complete the Change of Address Order on the back if your address is incorrect.

DAC 100 REV 10/64 PTG 6 66

EXHIBIT 3



BOARD OF ELECTIONS IN THE CITY OF NEW YORK

NEW YORK COUNTY SERIAL NO. C 137302

Adam C. Powell
NAME

120 West 138 St
ADDRESS

REGISTERED ON Oct 13, 1964

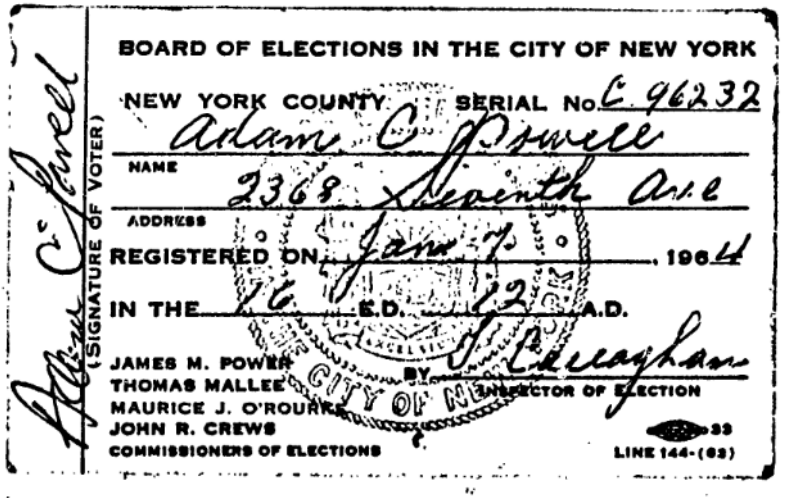
IN THE 12 E.D. 12 A.D.

JAMES M. POWER
THOMAS MALLEE
MAURICE J. O'ROURKE
JOHN R. CREWS
COMMISSIONERS OF ELECTIONS

BY [illegible]
INSPECTOR OF ELECTION

LINE 144-(63)

(SIGNATURE OF VOTER) Adam C. Powell



BOARD OF ELECTIONS IN THE CITY OF NEW YORK

NEW YORK COUNTY SERIAL NO. C 96232

Adam C. Powell
NAME

2368 Seventh Ave
ADDRESS

REGISTERED ON Jan 7, 1964

IN THE 16 E.D. 12 A.D.

JAMES M. POWER
THOMAS MALLEE
MAURICE J. O'ROURKE
JOHN R. CREWS
COMMISSIONERS OF ELECTIONS

BY [illegible]
INSPECTOR OF ELECTION

LINE 144-(63)

(SIGNATURE OF VOTER) Adam C. Powell

EXHIBIT 4

CLASS OF SERVICE
This is a fast message unless its deferred character is indicated by the proper symbol

WESTERN UNION TELEGRAM

W. P. MARSHALL, CHAIRMAN OF THE BOARD
R. W. McFALL, PRESIDENT

SYMBOLS
DL = Day Letter
NL = Night Letter
LT = International Letter Telegram

The filing time shown in the date line on domestic telegrams is LOCAL TIME at point of origin. Time of receipt is LOCAL TIME at point of destination

RBA262 528P EST FEB 7 67 (23)AA273 A
NB091 RX PD NEW YORK NY 7 507P EST
JEAN CAMPER CAHN
1308 19 NORTH WEST WASHDC
THE OFFICIAL RECORDS OF THIS OFFICE SHOW THAT CONGRESSMAN ADAM CLAYTON POWELL AS A RESIDENT AND DULY QUALIFIED VOTER OF NEW YORK CITY VOTED BY ABSENTEE BALLOT IN THE NOVEMBER 1966 GENERAL ELECTION IN NEW YORK CITY IN ACCORDANCE WITH SECTION 151 OF THE ELECTION LAW CERTIFIED PROOF FOLLOWS I AM AVAILABLE FOR PERSONAL APPEARANCE IN THIS MATTER IF SUCH APPEARANCE IS DESIRED BY COMMITTEE
MAURICE J O'ROURKE COMMISSIONER NEW YORK CITY BOARD OF ELECTIONS (23).

BF1201(R2-65)

EXHIBIT 5

FORM 100-A.

STATE OF NEW YORK

DEPARTMENT OF STATE

ALBANY

I Hereby Certify that at a meeting of the

STATE BOARD OF CANVASSERS

which canvassed the vote cast at the General Election held in this State on the 8th day of November, 1966, and whose original determination is on file in this department

ADAM C. POWELL

was, by the greatest number of votes cast at said election, duly elected

REPRESENTATIVE IN CONGRESS EIGHTEENTH CONGRESSIONAL DISTRICT

Witness my hand and seal of office at the City of Albany this 15th day of December, 1966.

John P. Lomenzo
JOHN P. LOMENZO,
Secretary of State

EXHIBIT 6

BOARD OF ELECTIONS
IN
THE CITY OF NEW YORK
GENERAL OFFICE, 80 VARICK STREET
NEW YORK, N. Y. 10013

COMMISSIONERS
JAMES M. POWER, PRESIDENT
THOMAS MALLEE, SECRETARY
MAURICE J. O'ROURKE
J. J. DUBERSTEIN

ADMINISTRATORS
ANGELO SIMONETTI
PHILIP R. DUNST

Carl Turchin, Chief Clerk
Manhattan Borough Office
80 VARICK STREET
NEW YORK, N. Y. 10013
CAnal 6-2600

T. Vincent Appleton, Chief Clerk
Bronx Borough Office
1780 GRAND CONCOURSE
BRONX, N. Y. 10457
CYpress 9-9017

Gus Galli, Chief Clerk
Brooklyn Borough Office
345 ADAMS STREET
BROOKLYN, N. Y. 11201
JAckson 2-2641

Michael J. O'Brien, Chief Clerk
Queens Borough Office
120-14 JAMAICA AVENUE
JAMAICA, N. Y. 11432
JAmaica 6-2600

Edward Grabeski, Chief Clerk
Richmond Borough Office
30 BAY STREET
ST. GEORGE, S. I. 10301
SAint George 7-1900

January 23, 1967

TO WHOM IT MAY CONCERN:

I hereby certify that ADAM CLAYTON POWELL has been duly elected a Congressman in the 18th Congressional District of New York on November 8, 1966.

A copy of the Statement of the Canvassing Board of the City of New York is hereby annexed and made part hereof.

Maurice J. O'Rourke

STATE OF NEW YORK, ss:

We, the Attorney-General, State Senators and Members of Assembly, constituting the State Board of Canvassers, having canvassed the whole number of votes given for the office of REPRESENTATIVE IN CONGRESS in the several congressional districts as enumerated at the general election held in said State on the eighth day of November, 1966, according to the certified statements of the said votes received by the Secretary of State, in the manner directed by law, do hereby determine, declare and certify that for the

First Congressional District	OTIS G. PIKE
Second Congressional District	JAMES R. GROVER, JR.
Third Congressional District	LESTER L. WOLFF
Fourth Congressional District	JOHN W. WYDLER
Fifth Congressional District	HERBERT TENZER
Sixth Congressional District	SEYMOUR HALPERN
Seventh Congressional District	JOSEPH P. ADDABBO
Eighth Congressional District	BENJAMIN S. ROSENTHAL
Ninth Congressional District	JAMES J. DELANEY
Tenth Congressional District	EMANUEL CELLER
Eleventh Congressional District	FRANK J. BRASCO
Twelfth Congressional District	EDNA F. KELLY
Thirteenth Congressional District	ABRAHAM J. MULTER
Fourteenth Congressional District	JOHN J. ROONEY
Fifteenth Congressional District	HUGH L. CAREY
Sixteenth Congressional District	JOHN M. MURPHY
Seventeenth Congressional District	THEODORE R. KUPFERMAN
Eighteenth Congressional District	ADAM C. POWELL
Nineteenth Congressional District	LEONARD FARBSTEIN
Twentieth Congressional District	WILLIAM F. RYAN
Twenty-first Congressional District	JAMES H. SCHEUER
Twenty-second Congressional District	JACOB H. GILBERT
Twenty-third Congressional District	JONATHAN B. BINGHAM
Twenty-fourth Congressional District	PAUL A. FINO
Twenty-fifth Congressional District	RICHARD L. OTTINGER
Twenty-sixth Congressional District	OGDEN R. REID
Twenty-seventh Congressional District	JOHN G. DOW
Twenty-eighth Congressional District	JOSEPH Y. RESNICK
Twenty-ninth Congressional District	DANIEL E. BUTTON
Thirtieth Congressional District	CARLETON J. KING
Thirty-first Congressional District	ROBERT C. McEWEN
Thirty-second Congressional District	ALEXANDER PIRNIE
Third-third Congressional District	HOWARD W. ROBISON
Thirty-fourth Congressional District	JAMES M.HANLEY
Thirty-fifth Congressional District	SAMUEL S. STRATTON
Thirty-sixth Congressional District	FRANK J. HORTON
Thirty-seventh Congressional District	BARBER B. CONABLE, JR.
Thirty-eighth Congressional District	CHARLES E. GOODELL
Thirty-ninth Congressional District	RICHARD D. McCARTHY
Fortieth Congressional District	HENRY P. SMITH, III
Forty-first Congressional District	THADDEUS J. DULSKI

were, by the greatest number of votes given at said election, duly elected REPRESENTATIVE IN CONGRESS.

Given under our hands at the Department of State, the 15th day of December, in the year of our Lord one thousand nine hundred sixty-six.

LOUIS J. LEFKOWITZ, *Attorney-General*
JULIAN B. ERWAY, *State Senator*
NATHAN PROLLER, *State Senator*
HARVEY M. LIFSET, *Member of Assembly*
CLARENCE D. LANE, *Member of Assembly*

STATE OF NEW YORK
Department of State } ss:

I certify that I have compared the foregoing with the original certificate filed in this department, and that the same is a correct transcript therefrom and of the whole of such original.

GIVEN under my hand and official seal of office, at the City of Albany, this 15th day of December, 1966.

John P. Lomenzo

JOHN P. LOMENZO,
Secretary of State

STATEMENT OF THE CANVASSING BOARD OF THE CITY OF NEW YORK, HELD WITHIN THE COUNTY OF NEW YORK, in relation to the votes cast for the various Offices at the GENERAL ELECTION held on the 8th Day of November 1966

The Canvassing Board in the City of New York, within the County of NEW YORK, City of New York, having met on the 9th, 14th, 17th, 21st, 25th and 28th days of November and the 1st day of December ~~days of November~~, 1966 to canvass the votes given in the several election districts of said County at the General Election held on the 8th Day of November, in the year aforesaid, comprising the assembly districts; all within NEW YORK County, in the City of New York, do hereby certify as follows: That the whole number of votes cast for the office of REPRESENTATIVE IN CONGRESS, 18th DISTRICT was 72,979 of which each of the following Candidates received:—

LASSEN L. WALSH	REP.	10,721
ADAM C. POWELL	DEM.	45,308
RICHARD PRIDEAUX	LIB.	3,954

of which were scattered	0
of which were unrecorded	31,783
Total	92,970

WE CERTIFY this statement to be correct, and have caused the same to be attested by the signatures of the members of this Board, or a majority thereof, on this 1st day of ~~November~~ December, 1966

Secretary

Chairman

Canvassing Board

I hereby certify that the above tabulation, as taken from the returns filed by the Inspectors of Election, is correct.

Chief Clerk, Borough of MANHATTAN

EXHIBIT 7A

IT-208

N. Y. State Department of Taxation and Finance

NEW YORK STATE COMBINED INCOME TAX RETURN-1962

or other Taxable Year Beginning ____ 19__ Ending ____ 19__

FOR RESIDENT MARRIED PERSONS FILING A JOINT FEDERAL RETURN WHO ELECT TO FILE SEPARATE NEW YORK STATE RETURNS

#76

First names and middle initials of husband and wife: ADAM C YVETTE | Last name: POWELL

Your Social Security Number: 119 | 03 | 4979 | Occupation

Home Address: 10 [illegible] A Lane, 2 MARYTON RD | Number and street or rural route | Apt. No.

WHITE PLAINS N.Y. | City, village or post office | Postal zone number | State

Wife's Social Security Number | Occupation

A. Were both husband and wife New York State residents during the entire year? ☐ Yes ☐ No

If "No," give period of N.Y. residence: From (mo., day, yr.) ____ To: (mo., day, yr.) ____

B. County in which you live ____

		(a) JOINT AMOUNT	(b) HUSBAND	(c) WIFE
1. Total income (from line 9, Sch. A, on back of this form)		$ 45 [illegible] 10	$ 32995 52	$ 12 [illegible] —
Note: If an entry is required on lines 2 to 7, enter amount from line 1 on line 8.	Additions: 2. Interest income on state and local bonds, other than New York			
	3. Other additions (Specify)			
	4. Sum of lines 1, 2 and 3		$	$
	Subtractions: 5. Interest income on United States obligations		$	$
	6. Line 4 less line 5			
	7. Other subtractions (Specify)			
8. Line 6 less line 7 (Total New York income)			$ 33295 52	$ 12 [illegible]
9. Standard Deduction: 10% of combined husband and wife income on line 8 — to be divided between them as desired, but their total deduction may not exceed $1000			$	$
10. Total itemized deductions from Federal return		$ 14745 72	Note: If an amount is entered on line 9 above, omit entries on lines 10 through 14. New York itemized deduction in column a on line 14 may be divided as desired by husband and wife in columns b and c.	
11. Life insurance premiums		300 —		
12. Sum of lines 10 and 11		$ 15025 72		
13. Income taxes included in amount on line 10 and interest paid to carry bonds exempt from New York income tax		1276 52		
14. Line 12 less line 13 (New York itemized deduction)		$ 13525 70	$ 13525 [illegible]	$ —
15. Line 8 less line 9 or 14			$ 1 [illegible] 52	$ 12 [illegible]
16. Exemptions: (refer to Instructions)			1820 —	600
17. Line 15 less line 16 (New York taxable income)			$ 17611 52	$ 12020 —
18. Tax on amount on line 17 (from rate schedule on back of this form)			$ 1126	$ 601 50
19. Statutory credit (the printed amount must be used)			12 50	12 50
20. Line 18 less line 19 (New York tax)			$ 1113 50	$ 589 [illegible]

	HUSBAND	WIFE
21. New York tax withheld — attach Forms IT-2102	$	$
22. Payments on New York Estimated Tax	500 —	
23a. Line 21 plus line 22	$	$
b. Refer to Instructions before making entry on this line. Enter payments from line 23a in applicable column for husband and wife		$ 500 — / $
24. If your tax (line 20) is larger than your payments (line 23b), enter Balance Due. Pay full balance due with this return to "New York State Income Tax Bureau"		$ 613 50 / $ 589 [illegible]
25. If your payments (line 23b) are larger than your tax (line 20), enter Overpayment		$ / $
26. Amount of line 25 to be (a) Credited on 1963 Estimated Tax		$ / $
(b) Refunded		$ / $
(c) Applied to Unincorporated Business Tax on attached Form IT-202		$ / $

Do not write in spaces below

Husband's signature and date ____ Wife's signature and date ____

EXHIBIT 7B

IT-208 N. Y. State Department of Taxation and Finance

NEW YORK STATE COMBINED INCOME TAX RETURN-1963

or other Taxable Year Beginning ____, 19__ Ending ____, 19__

FOR RESIDENT MARRIED PERSONS FILING A JOINT FEDERAL RETURN WHO ELECT TO FILE SEPARATE NEW YORK STATE RETURNS

476

First names and middle initials of husband and wife: Adam and Yvette | Last name: Powell | Your social security number

Occupation: Minister and Congressman | Wife's social security number

Home Address: c/o Chester A. Bagley, 2 Maryton Rd. (Number and street or rural route) | Apt. No.

City, village or post office: White Plains, | State: New York | Postal ZIP code | Occupation: Secretary

A. Were both husband and wife New York State residents during the entire year? ☐ Yes ☐ No
If "No," give period of N. Y. residence: From: (mo., day, yr.) ____ To: (mo., day, yr.) ____

B. County where you live ____

		(a) JOINT AMOUNT	(b) HUSBAND	(c) WIFE
1. Total income (from line 9, Sch. A, on back of this form)		49,533 80	36,045 38	13,488 42
Note: If no entries are required on lines 2 to 7, enter amount from line 1 on line 8.	Additions: 2. Interest income on state and local bonds, other than New York			
	3. Other			
	4. Sum of lines 1, 2 and 3			
	Subtractions: 5. Interest income on United States obligations			
	6. Line 4 less line 5			
	7. Other			
8. Line 6 less line 7 (Total New York income)			36,045 38	13,488 42
9. Standard Deductions: 10% of combined income on line 8—to be divided between husband and wife as desired, but total may not exceed $1000				
10. Total itemized deductions from Federal return		21,767 81	Note: If an amount is entered on line 9 above, omit entries on lines 10 through 14. New York itemized deduction in column a on line 14 may be divided as desired by husband and wife in columns b and c.	
11. Life insurance premiums and other deductions		300 00		
12. Sum of lines 10 and 11		22,067 81		
13. Income taxes included in amount on line 10 and other subtractions		1,452 00		
14. Line 12 less line 13 (New York itemized deduction)		20,615 81	20,615 81	
15. Line 8 less line 9 or 14			15,429 57	13,488 42
16. Exemptions: (see instructions)			1,800 00	600 00
17. Line 15 less line 16 (New York taxable income)			13,629 57	12,888 42
18. Tax on amount on line 17 (from rate schedule on back of this form)			736 66	671 07
19. Statutory credit			12 50	12 50
20. Line 18 less line 19 (New York tax)			724 16	658 57

	HUSBAND	WIFE		
21. New York tax withheld – attach Forms IT-2102				
22. Payments on New York estimated tax	1,000 00			
23a. Line 21 plus line 22				
b. See instructions before making entry on this line. Enter payments from line 23a in applicable column for husband and wife			724 16	275 84
24. If your tax (line 20) is larger than your payments (line 23b), enter BALANCE DUE. Pay full balance due with this return to "New York State Income Tax Bureau"			—	382 73
25. If your payments (line 23b) are larger than your tax (line 20), enter OVERPAYMENT.				
26. Amount of line 25 to be: (a) Credited to 1964 estimated tax on Form IT-2105				
(b) Refunded				
(c) Applied to unincorporated business tax on attached Form IT-202				

Do not write in spaces below

Husband's signature and date ____ Wife's signature and date ____

Signature of preparer other than taxpayer ____ address ____ date ____

IT-208 Page 2 1963

SCHEDULE A: Income from Federal Form 1040. (Enter in Column a the items below from the line numbers as they appear on page 1 of Federal Form 1040. Omit lines 1 through 3. Make first entry from line 4. Enter in Columns b and c the items of income which would have been reportable on separate Federal returns of husband and wife.)

	(a) JOINT AMOUNT		(b) HUSBAND		(c) WIFE	
4. Total wages, salaries, tips, etc., and excess of allowances over business expenses, excluding sick pay	35,809	32	22,500	00	13,309	32
5. a. Dividends						
b. Interest	90	00	90	00		
g. Rents, royalties, pensions, etc. (explain in Schedule B below)	13,634	48	13,455	38	179	10
6. g. Business income (state type) : Total receipts Gross profit						
b. Sale or exchange of property: Net long-term gain or loss from Sch. D Fed. Form 1040						
c. Farm income						
7. Total (add lines 4 through 6c)						
8. Payments by self-employed persons to retirement plans, etc.						
9. Total income (subtract line 8 from line 7)	49,533	80	36,045	38	13,488	42

(If the total of Cols. b and c is not equal to Col. a, attach explanation)

SCHEDULE B: Income from Schedule B Federal Form 1040. (Enter the items below as they appear on page 1 in separate Schedule B of Federal Form 1040. Omit Parts I and II. Make first entry from Part III.)

Part III. Pension and annuity income		
Part IV. Rent and royalty income	179	10
Part V. Other income or losses 1. partnerships		
2. estates or trusts		
3. other MLRO	13,455	38
Total of Parts III, IV and V (same as line 5c, Col. a of Schedule A above)	13,634	48

SCHEDULE C: Itemized deductions from Federal Form 1040. Complete this schedule only if itemized deduction is claimed on line 14, page 1. (Enter the items below as they appear on page 2 of Federal Form 1040.)

Contributions	1,400	00
Interest expense	70	00
Taxes	3,394	60
Medical and dental expense		
Other	16,903	21
Total deductions (as shown on page 2 of Federal Form 1040)	21,767	81

TAX RATE SCHEDULE

Compute tax for husband and wife separately on income reported on line 17 in Columns b and c, page 1.

If amount on line 17, page 1, is: not over $1,000		Enter on line 18, page 1: 2% of amount on line 17
over	but not over	of excess over
$1,000	$3,000	$20 plus 3% of $1,000
3,000	5,000	80 plus 4% of 3,000
5,000	7,000	160 plus 5% of 5,000
7,000	9,000	260 plus 6% of 7,000
9,000	11,000	380 plus 7% of 9,000
11,000	13,000	520 plus 8% of 11,000
13,000	15,000	680 plus 9% of 13,000
15,000		860 plus 10% of 15,000

REMINDER:
1. Please read the instructions received with this return.
2. Both husband and wife must sign the return.
3. Attach a remittance for the full amount of the balance due as stated on line 24 in cols. b and c, page 1.
4. Make remittance payable to New York State Income Tax Bureau.
5. Attach copy numbered "1" of each Withholding Tax Statement (Form IT-2102) received from your employers to substantiate the total amount claimed on line 21.
6. Mail return on or before the due date to the New York State District Tax Office which serves your county.

(5/63) 63094 (3137)

EXHIBIT 7C

IT-208
N. Y. State Department of Taxation and Finance

N. Y. STATE COMBINED INCOME TAX RETURN - 1964

or taxable year beginning ..... 19..... ending ..... 19.....

FOR RESIDENT MARRIED PERSONS FILING A JOINT FEDERAL RETURN WHO ELECT TO FILE SEPARATE NEW YORK STATE RETURNS

#7c

First names and initials of husband and wife: **Adam and Yvette** | Last name: **Powell**

Husband's social security number: 119 | 03 | 4979

Occupation: **Minister & Congressman**

Home Address: **c/o Chester A. Bagley 2 Mayton Rd.** (Number and street or rural route) Apt. No.

City, village or post office and State: **White Plains New York** Postal ZIP code

Wife's social security number

Occupation: **Secretary**

A. Were both husband and wife New York State residents during the entire year? ☐ Yes ☐ No
If "No," give period of N. Y. residence: From (mo., day, yr.) ..... To (mo., day, yr.) .....

B. County where you live. .....

	(a) JOINT AMOUNT	(b) HUSBAND	(c) WIFE
1. Total income (from line 11, Sch. A on back of this form)	40,994 38	27,459 75	13,534 63
Note: If no entries are required on lines 2 to 4, enter amount from line 1 on line 5. 2. Additions			
3. Sum of lines 1 and 2			
4. Subtractions			
5. Line 3 less line 4 (Total New York income)		27,459 75	13,534 63
6. Itemized deduction — Complete lines 6a to 6e.			
a. Total itemized deductions from Federal return	15,503 66		
b. Life insurance premiums and other deductions	300 00		
c. Sum of lines 6a and 6b	16,403 66		
d. Income taxes included in line 6a and other subtractions	750 00		
e. Enter line 6c less line 6d or claim Standard Deduction by entering 10% of combined income on line 5, but not more than $1000. Amount in column a may be divided as desired by husband and wife in columns b and c	15,053 66	15,053 66	
7. Line 5 less line 6e		12,406 09	13,534 63
8. Exemptions: (see instructions)		600 00	1,800 00
9. Line 7 less line 8 (New York taxable income)		11,806 09	11,734 63
10. Tax on amount on line 9 (from rate schedule on back of this form)		584 48	578 77
11. Statutory credit		12 50	12 50
12. Line 10 less line 11 (Personal income tax)		571 98	566 27
13. Unincorporated business tax from Form IT-202			
14. Sum of lines 12 and 13 (Total tax)			

	HUSBAND	WIFE
15. New York tax withheld – attach Forms IT-2102		
16. Payments on New York estimated tax		
17a. Sum of lines 15 and 16		
b. See instructions before making entry on this line. Enter payments from line 17a in applicable column for husband and wife		

18. If your payments (line 17b) are less than your tax (line 14), enter BALANCE DUE. Pay full balance due with this return to "New York State Income Tax Bureau"
19. If your payments (line 17b) are larger than your tax (line 14), enter OVERPAYMENT.
20. Amount of line 19 to be: (a) Credited to 1965 estimated tax on Form IT-2105 (b) Refunded

Do not write in spaces below

Husband's signature and date

Wife's signature and date

Signature of preparer other than taxpayer address date

EXHIBIT 71D

IT-201 N. Y. STATE INCOME TAX RESIDENT RETURN-1965

N.Y. State Department of Taxation and Finance

or taxable year beginning ..... 19..... ending ..... 19.....

#71

First name and initial: ADAM C. | Last name: POWELL

Your social security number: 109 03 6579

Occupation: CONGRESSMAN

Home Address: If joint return of husband and wife, use first names and initials of both

Number and street or rural route: [illegible] Apt. No.

City, village or post office and State: [illegible] Postal ZIP code

Spouse's number if joint return: 582 03 0109

Occupation:

If husband and wife file a joint Federal return and elect to file separate State returns, you must use Form IT-208.

A. If married, are you filing a joint Federal return? ☐ Yes ☐ No

B. Is your spouse filing a separate New York return? ☐ Yes ☐ No

If "Yes," enter name of spouse.

D. Were you a New York State resident for the entire year? ☐ Yes ☐ No

If "No," give period of N.Y. residence: From (mo., day, yr.) To (mo., day, yr.)

C. County of residence

1. Total income (line 9 of Federal Form 1040)		61381	76
If more are no entries on lines 2 to 4, enter amount from line 1 on line 5.	2. Additions		
	3. Sum of lines 1 and 2		
	4. Subtractions (CLERK'S SALARY AND U.N. MISS. RESIDENT)	19644	33
5. Line 3 less line 4 (Total New York income)		40737	43
6. Standard Deduction OR Itemized Deductions — Enter 10% of line 5 on line 6e, but not more than $1000. If husband and wife file separate returns, the total of these entries for both may not exceed $1000.			
a. Total itemized deductions from Federal return	15014 -		
b. Life insurance premiums and other deductions	300 -		
c. Sum of lines 6a and 6b	15312		
d. Income taxes included in line 6a and other subtractions	1638 -		
e. Line 6c less line 6d or Standard Deduction		16674	-
7. Line 5 less line 6e		24063	43
8. Exemptions from Federal return		2400	-
9. Line 7 less line 8 (New York taxable income)		21663	43
10. Tax on amount on line 9 (from rate schedule on back)		1526	38
11. Statutory credit – check box and enter amount claimed: ☐ $10.00 Single ☐ $25.00 Head of Household or Surviving spouse with dependent child ☐ $12.50 Married – filing separate returns ☒ $25.00 Married – filing joint return		25	- 1
12. Line 10 less line 11		1501	37
13. Unincorporated business tax from Form IT-202			
14. Sum of lines 12 and 13			

	HUSBAND	WIFE	TOTAL
15. New York tax withheld – attach Forms IT-2102	250 -		
16. Payments on New York estimated tax			
17. Sum of lines 15 and 16			250 -
18. If line 14 is larger than line 17, enter Balance Due. Remit in full with this return to New York State Income Tax Bureau			1251 37
19. If line 17 is larger than line 14, enter Overpayment			
20. Amount of line 19 to be: (a) Credited to 1966 estimated tax on Form IT-2105			
(b) Refunded			

Do not write in spaces below

Sign here ▸ If joint return, both husband and wife must sign — date

Signature of preparer other than taxpayer — address — date

EXHIBIT 8

Form 1N-NYC-5-400M-727109(66) 114

#8

Instruction Sheet—Page 1

THE CITY OF NEW YORK—DEPARTMENT OF FINANCE

DECLARATION OF ESTIMATED PERSONAL INCOME TAX (RESIDENTS), UNINCORPORATED BUSINESS INCOME TAX (INDIVIDUALS), AND EARNINGS TAX ON NONRESIDENTS (SELF-EMPLOYED)

To be Filed on Form NYC-5 Pursuant to Laws as Embodied in Chapter 46, Titles T, S and U, of the Administrative Code.

Read the instructions carefully and retain this sheet for future reference.

Assistance in the preparation of the Declaration will be rendered at the borough offices of the Bureau of City Collections and at the Office of Special Taxes, 139 Centre Street, New York, N. Y. 10013.

For information with respect to the above Laws, apply to the Department of Finance, Correspondence and Information Division, Legal Bureau, 139 Centre Street, New York, N. Y. 10013.

The Declaration must be complete in all details.
Prepare the Declaration in duplicate and retain the duplicate copy for your files.

All schedules and working papers used in connection with the preparation of the Declaration must be retained and made available for inspection upon demand by the Director of Finance.

TAXPAYER'S COPY

FORM NYC-5 CITY OF NEW YORK—DEPARTMENT OF FINANCE

DECLARATION OF ESTIMATED: PERSONAL INCOME TAX (RESIDENTS), UNINCORPORATED BUSINESS INCOME TAX (INDIVIDUALS), AND EARNINGS TAX ON NON-RESIDENTS (SELF-EMPLOYED)

FOR CALENDAR YEAR 1966 OR FISCAL YEAR ENDING ..... 19 66 .....

1966

ACCOUNT NUMBER

ITEM NO.		
1. ESTIMATED TAX (SEE INSTRUCTIONS)	$ 100	—
2. COMPUTATION OF INSTALLMENT: CHECK PROPER BOX AND ENTER AMOUNT INDICATED: IF THIS DECLARATION IS DUE ON SEPTEMBER 15, 1966, ENTER 1/2 OF ITEM 1	$ 50	—
☐ JANUARY 15, 1967, ENTER ENTIRE AMOUNT OF ITEM 1	$ 100	—
3. LESS: CREDIT FOR NEW YORK CITY GROSS RECEIPTS TAX (SEE INSTRUCTIONS)	$	
4. AMOUNT PAID WITH THIS DECLARATION	$ 50	—

YOUR SOCIAL SECURITY NUMBER

SPOUSE'S NUMBER, IF JOINT DECLARATION

IF THIS IS A JOINT DECLARATION CHECK BOX ☐

MAKE CHECK OR MONEY ORDER PAYABLE TO THE ORDER OF THE CITY COLLECTOR

MAIL DECLARATION AND REMITTANCE TO DEPARTMENT OF FINANCE P.O. BOX 3700, CHURCH ST. STA. NEW YORK, N.Y. 10008

ADAM C. POWELL
C/O CHESTER A. RAGLEY
2 MARYTON RD.
WHITE PLAINS, N.Y.

SIGNATURE OF TAXPAYER

SIGNATURE OF SPOUSE, IF JOINT DECLARATION

10/3/66
DATE

KEEP THIS COPY FOR YOUR RECORDS

Location of Borough Offices of the Bureau of City Collections

MANHATTAN	139 Centre St., New York, N. Y. 10013
THE BRONX	Tremont and Arthur Aves., Bronx, N. Y. 10457
BROOKLYN	Room 1, Municipal Bldg., Brooklyn, N. Y. 11201
QUEENS	Borough Hall, Kew Gardens, N. Y. 11424
RICHMOND	Room 200, 350 St. Marks Place, St. George, S. I., N. Y. 10301

HERBERT O. REID,
Washington, D.C.
HENRY R. WILLIAMS,
New York, N.Y.
Attorneys for Congressman-elect Adam Clayton Powell, Jr.

EXHIBITS SUBMITTED ON BEHALF OF MEMBER-ELECT ADAM CLAYTON POWELL, JR.

EXHIBIT 9a

TESTIMONY, JULY 25, 1966, BEFORE HON. JOSEPH J. CONROY, SPECIAL REFEREE, SUPREME CT., STATE OF NEW YORK, COUNTY OF NEW YORK, IN ESTHER JAMES, PLAINTIFF, V. ADAM CLAYTON POWELL, JR., ET AL., INDEX NO. 11333/1960

(Pages 3–4:)

The REFEREE. I say the issue before me, the sole issue before me is the service of the original subpoena dated December 15, 1965.

Mr. WILLIAMS. I would say, Mr. Referee, that another issue before you is whether or not the Congressman ever received it.

The REFEREE. Well, that is service. I don't care whether he received it, if it was properly served; it was served by substituted service. I don't know whether he would receive it, but that is not material. The question is what did they do and did they serve it. The way the law states you can serve it——

Mr. WILLIAMS. Mr. Referee, I am suggesting to you that when the Court eliminated or didn't put in the order that there was a question of whether or not it was ever received, I am suggesting that there is a mistake, because this is a motion for contempt.

TESTIMONY OF RAYMOND RUBIN, ATTORNEY FOR MRS. ESTHER JAMES

(From pages 6–7:)

Question. What is Adam Clayton Powell's address of residence?

Answer. 120 West 138th Street, New York, New York.

Question. What is the source of your information as to his residence?

Answer. Several-fold.

Question. What are they?

Answer. One, the testimony of Adam Clayton Powell, Jr. personally given before Mr. Justice Frank in my presence on Tuesday, July 19th, 1966, that he resided at 120 West 138th Street, New York, New York.

Second, I have personally been to the building at 120 West 138th Street, New York, New York, and have seen his name in the doorbell for Apartment 5-D, I believe it is.

Third, he has given that address as his official address for congressional purposes.

That's all. Any questions?

TESTIMONY OF J. LEONARD TAUBER

(From page 9:)

Q. Sir, after receiving the copies of the subpoena which is Plaintiff's Exhibit 1, what, if anything, did you do?

A. I went up to Mr. Powell's residence and tried to effect personal service.

Q. Where did you go?

A. 120 West 138th Street.

Q. Will you describe the type of building that is.

A. It's about, I'd say, a 50 or 60 family house.

Q. Apartment house?

A. Yes, apartment house.

Q. Had you been there before?

A. I have been there several times before.

Q. And had you effected service before on him?

A. Yes, I have.

* * * * * * *

(Page 15:)
Q. All right. Now, after you served this paper——
How did you serve it, by the way? What did you do?
A. I affixed it to Mr. Powell's door, and I mailed a copy to Mr. Powell.
Q. How did you know it was Mr. Powell's door?
A. Mr. Powell's name is on the—downstairs in the lobby of the hall, the name appears with another name; it says Apartment 5–D, and I went up to Apartment 5–D and I affixed the paper on the door.

* * * * * * *

(Page 17:)
Q. Now, on what floor is this apartment?
A. I presume it would be on the fifth floor. He lived in Apartment 5–D.
Q. I am not asking you for your presumption.
A. I would say the fifth floor.

TESTIMONY OF ADAM CLAYTON POWELL, JR.

(From pages 36, 37, 38:)
The WITNESS. I reside in New York at 120 West 138th Street, Apartment 5–D, and when I am in Washington, my address is the Rayburn Office Building, Suite 2161, House of Representatives, United States Congress.

Direct examination by Mr. RUBIN:

Q. Mr. Powell——
Mr. WILLIAMS. Mr. Referee, I would like to get my objection——
The REFEREE. What is your objection?
Mr. WILLIAMS. —on the record.
My objection is, Mr. Referee, that by calling Mr. Powell at this time you are interfering with the procedure which I have determined for the presentation of my side of the case.
The REFEREE. I believe we are on the plaintiff's side of the case. He wants to prove it. He can call anybody as a witness.
Mr. WILLIAMS. All right.
The REFEREE. The person is here presently, and he is calling him as a witness.
Mr. WILLIAMS. All right.
Q. Sir, how long have you resided at 120 West 138th Street?
Mr. WILLIAMS. I object. Not relevant.
The REFEREE. Overruled.
Mr. WILLIAMS. I strenuously object, Mr. Referee. We are here about——
The REFEREE. I will leave it to the time, as long as he can go back to December 15, 1965.
Mr. WILLIAMS. All right.
The REFEREE. At least to that.
Mr. WILLIAMS. All right.
The WITNESS. At least to that, your Honor.
Q. And is it Apartment 5–D?
A. 5–D.
Q. Who else resides in that apartment?
A. Mr. and Mrs. Odell Clark.
Q. Is your name on the doorbell at that address?
A. Yes, sir.
Q. And upstairs on the fifth floor is the door to your apartment near the elevator?
A. Yes, sir.
Q. And is it on the right of the elevator?
A. Yes, sir. A little bit to the right. As you step off it's in front, really.

TESTIMONY OF ROBBIE L. CLARK

(From pages 48, 49:)

Direct examination by Mr. WILLIAMS:

Q. Mrs. Clark, where do you reside?
A. I reside at 120 West 138th Street.
Q. In what apartment?
A. 5–D.

Q. For how long have you resided there?
A. I resided there 25 years.
Q. Who else resides there with you?
A. Congressman Powell and my husband.
Q. During the month of December, 1965, were you residing there?

(From page 49:)
A. I was on vacation.
Q. No. Did you live there?
A. In '65? Sure.
Q. In December of '65, did you live there?
A. I lived there.
Q. Your husband also lived there?
A. When he's in the city.
Q. Yes. And Congressman Powell?
A. Yes.
Q. Is he living there?
A. That's right, when he's in the city.

* * * * * * *

(From pages 54, 55:)
Q. You don't know if either one of them gave keys to that apartment to other people, do you?
A. That I don't know.
Q. Did you ever give the key to your apartment to anyone?
A. No.
Q. You have the only key to the apartment?
A. Congressman Powell, my husband and I.

* * * * * * *

Q. Have you in the past opened a mail box and found mail addressed to Adam Clayton Powell in the letter box?
A. In the past?
Q. Yes.
A. I have before.

EXHIBIT 9B

TESTIMONY, AUGUST 9 AND 12, 1966, BEFORE HON. IRVING H. SAYPOL, JUSTICE, SUPREME COURT, STATE OF NEW YORK, COUNTY OF NEW YORK, IN ESTHER JAMES v. ADAM CLAYTON POWELL, JR., ET AL., INDEX NO. 11333/1960

TESTIMONY OF J. LEONARD TAUBER

(From pages 19, 20:)
Q. What did you do particularly in your attempt to serve him personally?
A. I went to the defendant's residence——
Q. Where?
A. 120 West 138th Street.
Q. Do you know the apartment number?
A. Yes, apartment 5–D.
Q. By the way, is that in the Borough of Manhattan, City and County of New York?
A. Yes, it is.
The COURT. Let us stop for a minute. Is it conceded that that was the defendant's residence at the time?
Mr. WILLIAMS. 120 West 138 Street.
The COURT. Whether the address—Mr. Witness, what was the address?
The WITNESS. 120 West 138th Street.
The COURT. 120 West 138th Street, I understand.
Mr. WILLIAMS. It is conceded, your Honor.
The COURT. Very well.
Q. What apartment number did you go to?
A. 5-D.

* * * * * * *

(From pages 37, 38:)
The COURT. I see. And the question of service in respect to the other two proceedings has been tried out before a Referee of this court, Mr. Williams?

Mr. WILLIAMS. Yes, your honor.
Mr. RUBIN. There was one.
The COURT. What did he find, Mr. Williams?
Mr. WILLIAMS. The Referee made a finding—
The COURT. Did he sustain the service or overrule it?
Mr. WILLIAMS. The Referee sustained service.

* * * * * * *

(From pages 45, 46.)
The COURT. How many times have you effected service at this place?
The WITNESS. I would say at least a dozen times.
The COURT. Starting when?
The WITNESS. Going back three years ago or so, something, maybe more, I don't know. At least three years ago.

TESTIMONY OF O'DELL CLARK

(From page 109:)
Q. Mr. Clark, where do you reside?
A. 120 West 138th Street.
Q. In what apartment?
A. 5–D.
Q. Who resides there with you?
A. My wife and Congressman Powell.
(Page 110–111:)
The COURT. Where do you say you live Mr. Clark?
The WITNESS. 129 West 138th Street.
The COURT. Where is that, between what avenues?
The WITNESS. Seventh and Lenox Avenue.
The COURT. What kind of a building is it?
The WITNESS. An apartment building.
The COURT. What kind of an apartment, how many stories?
The WITNESS. Six.
The COURT. What is your apartment?
The WITNESS. 5–D, like in "don't forget."
The COURT. 5–B?
The WITNESS. D.
The COURT. Excuse me, 5–D. Describe the apartment. How many rooms?
The WITNESS. Three rooms.
Q. Is it an elevator building?
A. Yes.
Q. Who lives there besides you?
The WITNESS. My wife and Congressman Powell.
The COURT. That is, Mr. Clark and Mrs. Clark, and Mr. Powell?
The WITNESS. Right; yes, sir.
(Page 111–112:)
The COURT. Who pays the rent there?
The WITNESS. I do. You mean for the Powells?
The COURT. For the apartment.
The WITNESS. I do.
The COURT. Where do you get the money? Is it your money or his money?
The WITNESS. My money. He pays for his.
The COURT. Tell me, what is the rent? How much do you pay and how much does he pay?
The WITNESS. $65—$66. We just got a raise. $66. it is now. He pays $50.
The COURT. He pays how much?
The WITNESS. $50.

* * * * * * *

(Page 112:)
The COURT. What do you do with the $50 he gives you, put it in your bank account?
The WITNESS. Yes.
The COURT. Where is your bank?
The WITNESS. Amalgamated.
The COURT. Where is that?
The WITNESS. 15 Union Square.

The COURT. In whose name?
The WITNESS. My name.
(PP. 130, 131:)
The COURT. Did he have a key for the apartment?
The WITNESS. Yes, he had.
The COURT. While you were away, how do you know whether or not it was used?
The WITNESS. About two or three times I was in touch with him.
The COURT. No, no. Were you there yourself?
The WITNESS. No, I was not.
The COURT. All right.

* * * * * * *

(Pages 144, 145:)
The COURT. Has Mr. Powell ever slept there?
The WITNESS. Yes, he has.
The COURT. When did he sleep there last?
The WITNESS. Oh, I would say prior- -sometime in the summer of '65.
The COURT. You mean about a year ago?
The WITNESS. Yes.
The COURT. Not this summer?
The WITNESS. Not this summer.
The COURT. What was the occasion when he slept there a year ago?
The WITNESS. He came in to preach, I think it was, and he stayed over; instead of going back to Washington that same night, he stayed till the next morning because he was too tired.
The COURT. Was that the only time he stayed over?
The WITNESS. Maybe once or twice other times. This is one specific time that I can remember.
The COURT. Oh, you mean there were unspecified times when he may have slept there that you don't recall?
The WITNESS. That I may not remember the specific times.
(Pages 145, 146:)
The COURT. And where did Mr. Powell sleep when he slept there a year ago?
The WITNESS. On the couch.
The COURT. Where is this couch?
The WITNESS. In the living room.
The COURT. He is a couch sleeper, you say?
THE WITNESS. Yes.

* * * * * * *

(Page 157:)
Q. Mr. Odell Clark, in connection with your duties as a chief investigator of this committee, are you away from the city and the state at times for very long periods of time?
A. Yes.
Q. And while you are away from the state on your investigations, do you have knowledge of where Mr. Powell will be on any particular night?
A. No.
Q. For how long do you go away when you go away sometimes?
A. Well, the longest time was about a month when I was assigned by the committee down in the Watts situation.
Q. While you were away for a month like that, would you know who was at your house, your apartment; would you know?
A. No.

DECISION

(Page 165:)
The COURT. The decision on the motion to punish the defendant for contempt having been recalled and vacated, and, on consent of the defendant, a hearing has been held on the issues raised by the defendant regarding the validity of the service of the order to show cause in the instant motion.
The Court now finds that the misstated date of the judgment in the subpoena was not prejudicial error. As a matter of credibility and on the evidence of the filing of proof of service of the order to show cause, the service is proven and the objection to the jurisdiction is overruled. (Cf., Note, Service in Civil Contempt Proceedings, 38 St. John's L.R., 341).

EXHIBIT 10

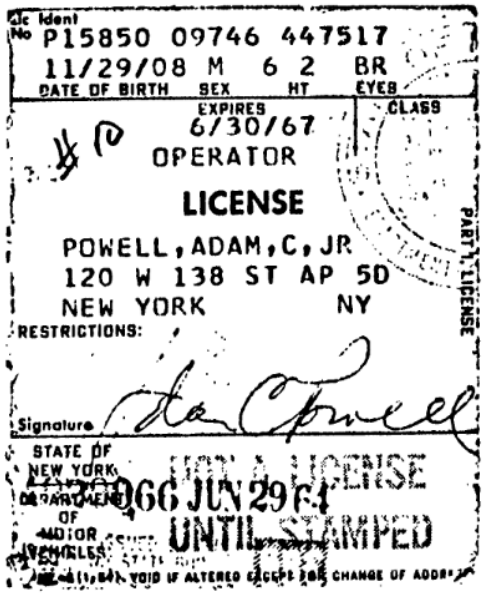
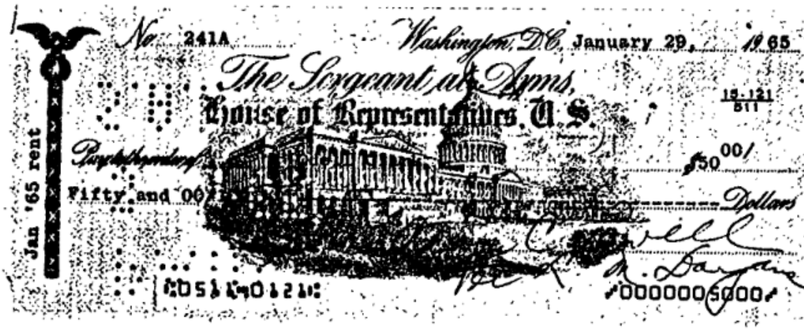
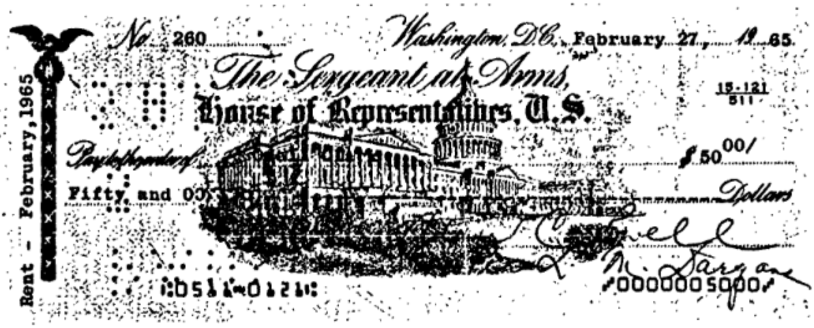


EXHIBIT 11A


No. 241A
Washington, D.C. January 29, 1965
The Sergeant at Arms,
House of Representatives, U.S.
15-121
511
$50 00/
Fifty and 00
Dollars
Jan '65 rent
⑆0511⑉0121⑆
⑈0000005000⑈


No. 260
Washington, D.C. February 27, 1965
The Sergeant at Arms,
House of Representatives, U.S.
15-121
511
$50 00/
Fifty and 00
Dollars
Rent - February, 1965
⑆0511⑉0121⑆
⑈0000005000⑈

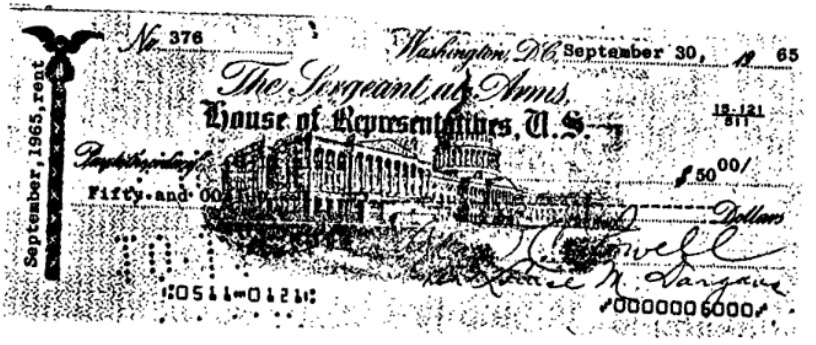

No. 281
Washington, D.C. March 31, 1965
The Sergeant at Arms,
House of Representatives, U.S.
15-121
511
$50 00/
Fifty and 00/
Dollars
March, 1965, rent
⑆0511⑉0121⑆
⑈0000005000⑈


No 292
Washington, D.C. April 30, 1965
The Sergeant at Arms,
House of Representatives, U.S.
$50.00
Fifty and 00/
Dollars
April, 1965, rent
000000 5000


No 317
Washington, D.C. May 31, 1965
The Sergeant at Arms,
House of Representatives, U.S.
$50.00
Fifty and 00/
Dollars
May '65 rent
000000 5000


No 336
Washington, D.C. June 30, 1965
The Sergeant at Arms,
House of Representatives, U.S.
$50.00
Fifty and 00/
Dollars
June, 1965, rent
000000 5000


No. 393
Washington, D.C. October 29, 19 65
The Sergeant at Arms,
House of Representatives, U.S.
Pay to the order of
Fifty and 00/100
$ 50.00
Dollars
October, '65 rent
:0511-0121:
000000 5000


No. 376
Washington, D.C. September 30, 19 65
The Sergeant at Arms,
House of Representatives, U.S.
Pay to the order of
Fifty and 00/100
$ 50.00
Dollars
September, 1965, rent
:0511-0121:
000000 6000


No. 355
Washington, D.C. July 31, 19 65
The Sergeant at Arms,
House of Representatives, U.S.
Pay to the order of
Fifty and 00/100
$ 50.00
Dollars
July rent
:0511-0121:
000000 5000


No. 402 Washington, D.C. January 3, 1966

The Sergeant at Arms, House of Representatives, U.S. 15-121/511

$50.00/100

Fifty and 00/100 Dollars

December, 1966, rent

/0000005000/


No. 420 Washington, D.C. February 1, 1966

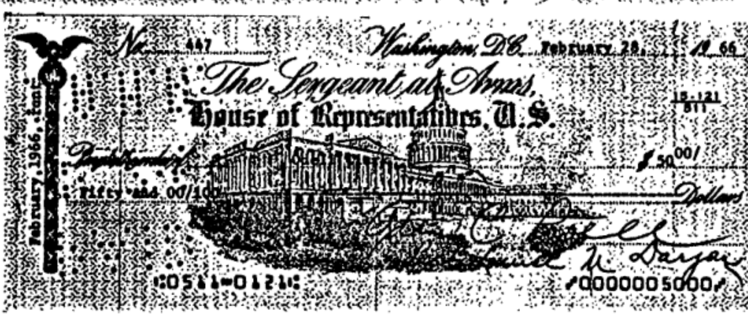
The Sergeant at Arms, House of Representatives, U.S. 15-121/511

$50.00/100

Fifty and 00/1 Dollars

January, 1966, rent

⑆0511⑈0121⑆ /0000005000/


No. 447 Washington, D.C. February 28, 1966

The Sergeant at Arms, House of Representatives, U.S. 15-121/511

$50.00/100

Fifty and 00/100 Dollars

February, 1966, rent

⑆0511⑈0121⑆ /0000005000/


No. 458 Washington, D.C. March 31, 1966

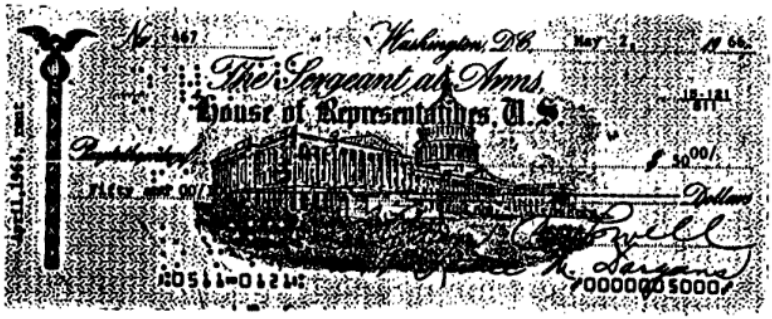
The Sergeant at Arms, House of Representatives, U.S. 15-121/511

$50.00/100

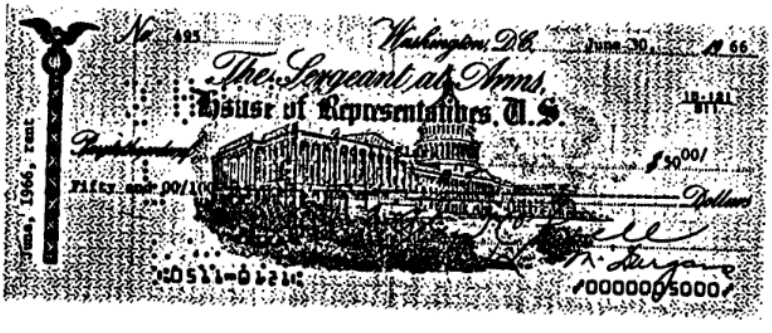
Fifty and 00/100 Dollars

March, 1966, rent

⑆0511⑈0121⑆ /0000005000/


Washington, D.C.
The Sergeant at Arms,
House of Representatives, U.S.
Fifty and 00/100
Dollars
$50.00
:0511-0121:
00000005000


Washington, D.C.
The Sergeant at Arms,
House of Representatives, U.S.
Fifty and 00
Dollars
$50.00
:0511-0121:
00000005000


Washington, D.C.
The Sergeant at Arms,
House of Representatives, U.S.
Fifty and 00/100
Dollars
$50.00
:0511-0121:
00000005000

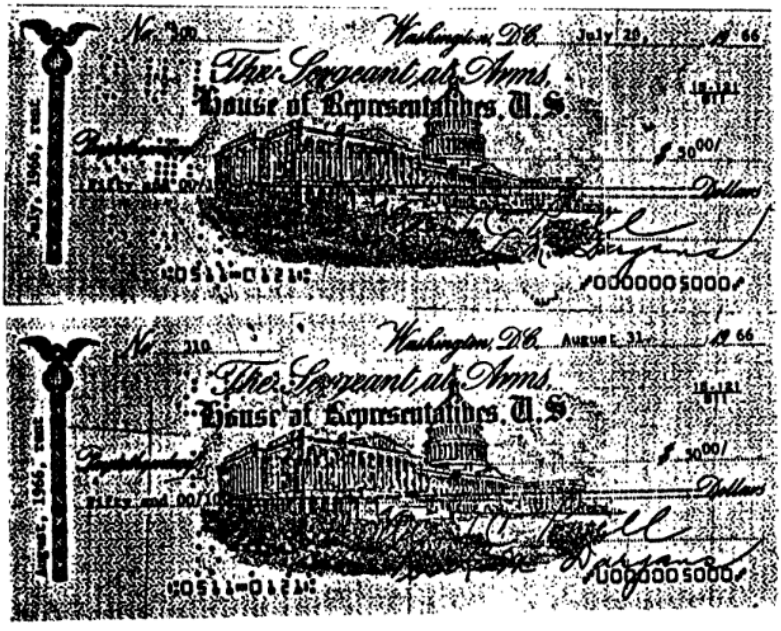
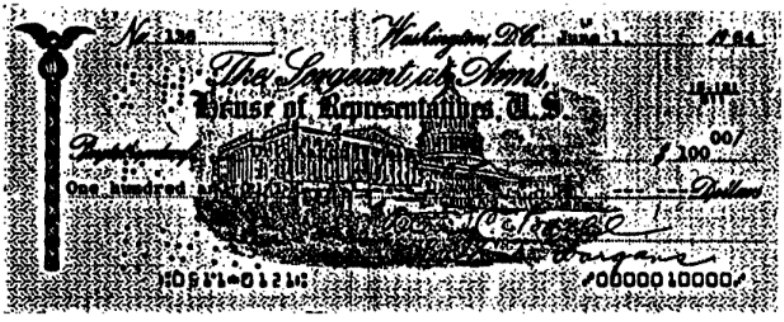

Washington, D.C. July 29, 66
The Sergeant at Arms
House of Representatives, U.S.
$ 30.00
Dollars
Washington, D.C. August 31, 66
The Sergeant at Arms
House of Representatives, U.S.
$ 30.00
Dollars

EXHIBIT 11B

CANCELLED CHECKS FOR PAYMENT OF RENT FOR APARTMENT AT 2368 SEVENTH AVE., NEW YORK, N.Y.




No. 170
Washington, D.C. July 31, 19 64
The Sergeant at Arms,
House of Representatives, U.S.
18-121
511
Pay to the order of
$ 100 00/
One hundred
Dollars
August rent
:0511-0121:
/00000 10000/


No. 179
Washington, D.C. August 31, 19 64
The Sergeant at Arms,
House of Representatives, U.S.
18-121
511
Pay to the order of
$ 100 00/
One hundred
Dollars
September rent
:0511-0121:
/00000 10000/


No. 198
Washington, D.C. September 30, 19 64
The Sergeant at Arms,
House of Representatives, U.S.
18-121
511
Pay to the order of
$ 100 00/
One Hundred
Dollars
October, 1964, rent
:0511-0121:
/00000 10000/

EXHIBIT 11C

CANCELLED CHECKS FOR PAYMENT OF NEW YORK STATE INCOME TAX

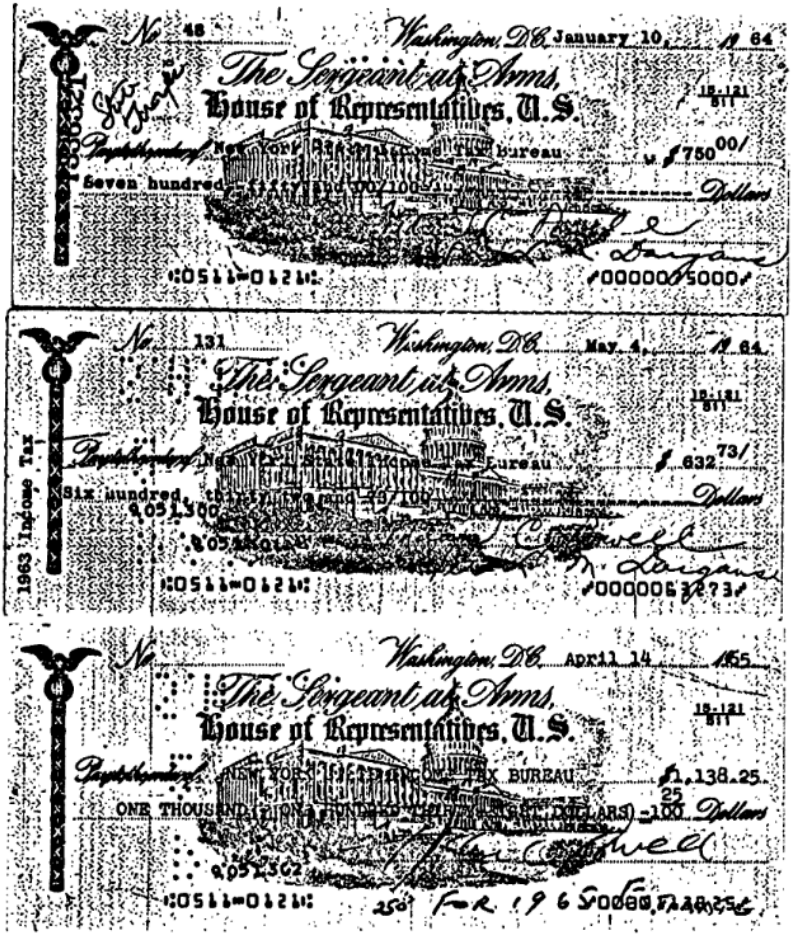


EXHIBIT 11D

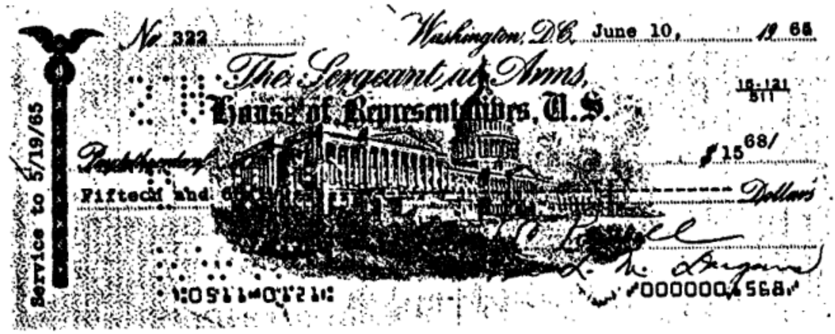

No 191
Washington, D.C. September 11, 19 64
The Sergeant at Arms,
House of Representatives, U.S.
15-121
511
Pay to the order of
$39 11/
Thirty nine
Dollars
Service to 7/20/64
:0611-0121:
'000000391'


No 162
Washington, D.C. July 24, 19 64
The Sergeant at Arms,
House of Representatives, U.S.
15-121
511
Pay to the order of
Treasury of New York $13 81/
Thirteen and
Dollars
Service to 1/20/64
:0511-0121:
'000000138'


No. 200
Washington, D.C. October 2, 1964
The Sergeant at Arms,
House of Representatives, U.S.
Pay to the order of
Thirteen and
$ 13.32
Dollars
Service to 9/17/64
:0511-0121:
0000001332


No.
Washington, D.C. December 14, 1964
The Sergeant at Arms,
House of Representatives, U.S.
Pay to the order of
Nine and 68/
$ 9.68
Dollars
:0511-0121:
0000000968


No. 243
Washington, D.C. February 3, 1965
The Sergeant at Arms,
House of Representatives, U.S.
Pay to the order of
New York, Inc.
$ 7.12
Seven and
Dollars
Service to 1/19/65
:0511-0121:
0000000712


Service to 5/19/65

No. 322 Washington, D.C. June 10, 1965

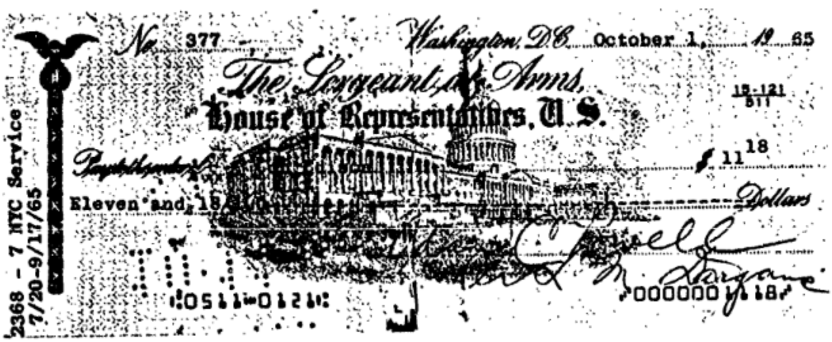
The Sergeant at Arms, House of Representatives, U.S.

15-121
511

Pay to the order of $15.68/

Fiftee[illegible] and [illegible] Dollars

⑆0511⑆0121⑆ ⑈0000001568⑈


2368 - 7 NYC Service
7/20-9/17/65

No. 377 Washington, D.C. October 1, 1965

The Sergeant at Arms, House of Representatives, U.S.

15-121
511

Pay to the order of $11.18

Eleven and 18/[illegible] Dollars

⑆0511⑆0121⑆ ⑈0000001118⑈


No. Washington, D.C. December 20 1965

The Sergeant at Arms, House of Representatives, U.S.

15-121
511

Pay to the order of $9.44

[illegible] Dollars

⑆0511⑆0121⑆ ⑈0000800944⑈

No. 431 Washington, D.C. February 21, 19 66

The Sergeant at Arms,
House of Representatives, U.S.

15-121/511

Pay to the order of $7.82/

Seven ... Dollars

Service to 1/9/66

:0511-0121: 0000000782

No. 462 Washington, D.C. April 1, 19 66

The Sergeant at Arms,
House of Representatives, U.S.

15-121/511

Pay to the order of $7.52/

Seven and 52/1... Dollars

Service to 3/22/66

:0511-0121: 0000000752

No. 481 Washington, D.C. June 3, 19 66

The Sergeant at Arms,
House of Representatives, U.S.

15-121/511

Pay to the order of $7.11/

Seven and 11/... Dollars

Service to 5/19/66

:0511-0121: 0000000711

EXHIBIT 12

[From *Congressional Directory*, 2d Sess., Jan. 1966, 89th Cong., p. 111]

EIGHTEENTH DISTRICT.—NEW YORK COUNTY: That part beginning at a point where West 155th Street Extended easterly intersects the waters of the Harlem River, thence westerly along West 155th Street Extended and West 155th Street to Edgecombe Avenue, to St. Nicholas Place, to West 150th Street, to Amsterdam Avenue, thence southerly along Amsterdam Avenue to West 122d Street, to Morningside Drive, to Cathedral Parkway, thence easterly along Cathedral Parkway and West 110th Street to Fifth Avenue, thence southerly along 5th Avenue to East 96th Street, to Madison Avenue, to East 97th Street, to Park Avenue, to East 96th Street, to Lexington Avenue, to East 91st Street, to Third Avenue, to East 89th Street, to East End Avenue, thence northerly along East End Avenue and East End Avenue Extended to the waters of the Harlem River and through the waters of the Harlem River, Hell Gate, East River, Harlem River, to the place of beginning, including Randall's Island, Ward's Island, and Mill Rock. Population (1960), 431,330.

ADAM C. POWELL, Democrat, of New York City; born in New Haven, Conn., November 29, 1908; education: B. A. degree, Colgate University, 1930, M. A. degree, Columbia University, 1932; D. D. degree, Shaw University, 1934; 1947, LL. D., Virginia Union University; minister of the Abyssinian Baptist Church; councilman of the city of New York, 1941; vice president of World Association of Parliamentarians for World Government; reelected in 1953, 1954, and 1956; decorated by His Imperial Majesty, Haile Selassie, Knight Commander, Golden Cross of the Order of Ethiopia in 1954; attended 1955 Asian-African Conference, Bandung, Indonesia, as an unofficial observer; author, Marching Blacks, Dial Press, 1945; married M. Yvette Diago, December 15, 1960; son, Adam Clayton Powell 3d, born July 17, 1946; son born on May 27, 1962, Adam Clayton Powell-Diago; elected to the 79th Congress, November 7, 1944; reelected to the 80th, 81st, 82d, 83d, 84th, 85th, 86th, 87th, 88th, and 89th Congresses.

EXHIBIT 13

[From *Congressional Pictorial Directory*, 90th Cong.]

NEW YORK

Hugh L. Carey
of Brooklyn (15th Dist.)
Democrat—4th term

John M. Murphy
of Staten Island (16th Dist.)
Democrat—3d term

NEW YORK

Leonard Farbstein
of New York City (19th Dist.)
Democrat—6th term

William F. Ryan
of New York City (20th Dist.)
Democrat-Liberal—4th term

Theodore R. Kupferman
of New York City (17th Dist.)
Republican—2d term

Adam C. Powell
of New York City (18th Dist.)
Democrat—12th term

James H. Scheuer
of New York City (21st Dist.)
Democrat—2d term

Jacob H. Gilbert
of New York City (22d Dist.)
Democrat—5th term

EXHIBIT 14

SUBSTITUTED SERVICE STATUTES SECTION 308—CIVIL PRACTICE LAW AND RULES, STATE OF NEW YORK

§ 308. Personal service upon a natural person

Personal service upon a natural person shall be made:

1. by delivering the summons within the state to the person to be served; or
2. except in matrimonial actions, by delivering the summons within the state to the agent for service designated under rule 318 of the person to be served; or
3. where service under paragraph one cannot be made with due diligence, by mailing the summons to the person to be served at his last known residence and either affixing the summons to the door of his place of business, dwelling house or usual place of abode within the state or delivering the summons within the state to a person of suitable age and discretion at the place of business, dwelling house or usual place of abode of the person to be served and proof of such service shall be filed with the clerk of the court designated in the summons and service is complete ten days thereafter; or

* * * * * * *

EXHIBIT 15

ELECTION LAW SECTIONS 117(1); 151; 153(a), SECTION 1 NEW YORK STATE

§ 117. Application for ballots by absentee voters, in cases of unavoidable absence and vacation, generally

1. A qualified voter, who, on the occurrence of any general election, may be—
   a. unavoidably absent from his residence because he is an inmate of a veterans' bureau hospital, or
   b. unavoidably absent from the county of his residence, or, if a resident of the city of New York from said city, because his duties, occupation or business require him to be elsewhere on the day of election, or
   c. absent from the county of his residence, or, if a resident of the city of New York from said city, because he is on vacation elsewhere on the day of election,

may vote as an absentee voter under this chapter.

§ 151. Gaining or losing a residence

For the purpose of registering and voting no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States, nor while engaged in the navigation of the waters of this state, or of the United States, or of the high seas; nor while a student of any seminary of learning; nor while kept at any welfare institution, asylum or other institution wholly or partly supported at public expense or by charity; nor while confined in any public prison. Any person applying for registration who claims to belong to any class of persons mentioned in this section shall file with the board taking his registration a written statement showing where he actually resides and where he claims to be legally domiciled, his business or occupation, his business address, and to which class he claims to belong. Such statements shall be noted in the register opposite the name of the person so registered or, where permanent personal registration is in effect, the words "Statement of temporary absence filed" shall be entered in the "remarks" space on the face of his permanent registration records. The statement shall be attached to the register or, where permanent personal registration is in effect, the registration serial number of the voter shall be placed on such statement and such statement shall be returned with the registration records to the board of elections. L. 1949, c. 100; amended L. 1949, c. 574, § 13; L. 1954, c. 531, § 6, eff. April 7, 1954.

§ 153-a. Absentee registration by voters who are ill or physically disabled, or whose duties, occupation or business require them to be outside the state of New York

1. A voter residing in an election district in which the registration is required to be personal or in an election district in a county in which permanent personal

registration is in effect, and who is unable to appear personally for registration because he is confined at home or in a hospital or institution, other than a mental institution because of illness or physical disability or because of his duties, occupation or business require him to be outside the state of New York on such days, may be registered in the manner provided by this section. A voter residing in an election district in which personal registration is not required may file an application for absentee registration in accordance with the provisions of this section and also may be registered in the manner otherwise provided by law.

EXHIBIT 16

BOARD OF ELECTIONS
IN
THE CITY OF NEW YORK
80 VARICK STREET
NEW YORK 13, N. Y.

MAURICE J. O'ROURKE
COMMISSIONER

February 16, 1967

William Kuntsler, Esq.
511 Fifth Avenue
New York City

Dear Mr. Kuntsler,

Enclosed please find copy of "Affidavit and Application to the Board of Elections for Absentee Voter's Ballot", duly executed by Adam C. Powell, 120 West 138th Street, New York City. The original affidavit is on file with the New York City Board of Elections.

Congressman Powell, pursuant to Section 151 of the Election Law, was entitled to such affidavit and application. Our records indicate that in 1966 Congressman Powell filed this application for the General Election, received an absentee ballot pursuant thereto, and cast such absentee ballot in the General Election of 1966.

The enclosed copy has been certified by me to be a true copy thereof.

Very truly yours,

MAURICE J. O'ROURKE
Commissioner

MJO:bd

enc

Line AV-1—45—T.P.

THIS APPLICATION MUST BE FILED NOT LATER THAN
7 DAYS BEFORE THE GENERAL ELECTION

AFFIDAVIT AND APPLICATION TO THE BOARD OF ELECTIONS FOR ABSENTEE VOTER'S BALLOT

To the Central Registration Board, or Board of Elections in the City of New York:

State of New York, (struck out) Washington, D. C. } ss.: ....12........E.D.
County of.............. } ........A.D.

........ADAM C. POWELL........ ....C131502........
(Print Name) (Serial Number)

being duly sworn, deposes and says: I reside at....120 West 138 Street........

........, County of....New York........City of New York.

I am a qualified voter of the........12th........Election District, ...Assembly District, which is the election district in which I reside and the one in which I have been duly registered, centrally or locally, or by a Veteran's Registration Board. At the preceding General Election I voted in the ....12th........Election District ....12th........Assembly District ....N.Y....Town, ...N.Y......County, ..N.Y.........State.

I expect in good faith to be unavoidably absent from the City of my residence on the day of the next general election for one of the following reasons (applicant must specify the reason by answer to either (a) or (b) or (c)):

(a) Because I am, and will be on the day of such election an inmate of a soldiers' and sailors' home, or of a United States veterans' bureau hospital known as..

........................and which is located at ....
and I submit herewith the certificate of the presiding officer or Secretary of the Board of Trustees, or other governing body, of such home or hospital.

(b) Because my duties, occupation or business require me to be elsewhere on such day. A full description of my business, occupation or duties requiring such absence and the special circumstances by which such absence is required, are as follows: ....

....

....

....

(c) Because I will be on vacation elsewhere on such day. My vacation will begin on............
...approx. Oct. 23, 1955.... and end on...unknown..

During my vacation I will be at...not yet determined.................................

....

Name of my Employer......U. S. House of Representatives..........................

Address of my Employer....Washington, D. C...

If Self-Employed, Name of Firm...

Address of Firm..

I apply in good faith for an Absentee Voter's ballot, and request that it be mailed to me at
........................2161 Rayburn House Office Building........................
........................Washington, D. C...
(Print full and correct mailing address)

Sworn to before me this
..13th..day of..Oct......, 195 .. ..[signature]........
(Applicant's Signature)
........[signature]........
Notary Public or Commissioner of Deeds
Member Board of Central Registration.

NOTICE TO APPLICANT

THE MAKING OF THIS APPLICATION DOES NOT MEAN THAT YOU ARE ... ABSENTEE VOTER'S BALLOT APPLIED FOR, SINCE THE ELECTION LAW PROV... ELECTIONS SHALL DETERMINE WHETHER OR NOT THE APPLICATION MEETS ... IF YOUR APPLICATION IS ... YOU WILL NOT RECEIVE THE ... [illegible]

I hereby certify this to be a true copy.
[signature]
Commissioner
February 10, 1967

BEST AVAILABLE COPY

Chairman CELLER. Mrs. Cahn?

Mrs. CAHN. Mr. Chairman, before you close these proceedings, it was my understanding from the letter that Mr. Geoghegan read, and my conferences with him, that Mr. Powell would have the chance to make a statement at the end of his testimony. We request at this time that he be given the opportunity to make that statement.

Chairman CELLER. That he will not be permitted to do now.

I had made this statement:

The committee wishes to inform Representative-elect that he will be afforded the opportunty to make a statement to the Committee at the close of his interrogation on all matters contained in the letter of invitation to him to testify.

I would suggest that you bide your time and renew your application subsequently.

Mr. REEVES. Do I understand, Mr. Chairman, that you are withdrawing the privilege to make the statement at the close of his interrogation?

Chairman CELLER. I didn't withdraw. I said I suggest the application be made subsequently. The request to make the statement now is denied.

The committee will now adjourn, subject to the call of the Chair.

(Whereupon, at 12:35 p.m., the special committee was recessed, subject to the call of the Chair.)