IN RE ADAM CLAYTON POWELL

TUESDAY, FEBRUARY 14, 1967

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

The committee met at 10:04 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., Arch A. Moore, Jr., Charles M. Teague, Clark MacGregor, Andrew Jacobs, and Vernon W. Thomson.

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

Also present: 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.; counsel for Mr. Powell.

Chairman CELLER. The meeting will come to order, please.

Will counsel for Mr. Powell please identify themselves?

Mr. WILLIAMS. Henry Williams.

Mr. CARTER. Robert L. Carter.

Mr. KINOY. Arthur Kinoy.

Mrs. CAHN. Jean Camper Cahn.

Mr. REEVES. Frank D. Reeves.

Mr. REID. Herbert O. Reid.

Mr. KUNSTLER. William M. Kunstler.

Chairman CELLER. Is Mr. Powell present this morning?

Mrs. CAHN. Mr. Powell is not present this morning.

Chairman CELLER. Does counsel know whether Mr. Powell plans to attend this hearing or any part thereof?

Mr. CARTER. Mr. Powell does not plan to attend the hearing in its present posture.

Chairman CELLER. Before calling our first witness, counsel for the committee, Mr. Geoghegan, will read into the record a letter de-

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livered to Mr. Powell, dated February 10, 1967, and a letter to Mr. Powell's attorney, Mrs. Jean Camper Cahn, dated February 11, 1967.

Mr. GEOGHEGAN (reading):

FEBRUARY 10, 1967.

Dear Mr. Powell: We wish to advise you that Select Committee, pursuant to House Resolution 1, 90th Congress, will hold a public hearing on Tuesday, February 14, 1967, at 10 o'clock a.m. in Room 2141, Rayburn House Office Building, Washington, D.C.

You and your counsel of record are invited to be present at the hearing. During the hearing on February 8, 1967, you are advised that upon the written request of you or your counsel, Select Committee will summon any witnesses having substantial relevant testimony to the inquiry being conducted by the Committee. I remind you of this and suggest that if you or your counsel desire to take advantage of the privilege afforded, please contact Mr. William A. Geoghegan, chief counsel of the Committee, and inform him of the names of the persons you would like summoned as witnesses and the nature of the testimony to be offered.

First and second motions made during the hearing on February 8 by your counsel Arthur Kinoy, Esquire, indicated you took the position Select Committee lacks authority to inquire into matters other than whether you have a right to take the oath and be seated as a member of the 90th Congress. And that, in making such determination, Select Committee is limited to inquiry to whether you met the qualifications for membership in the House, specifically, enumerated in Article 1, Section 2, of the Constitution. These motions were denied.

The Select Committee has deferred decision on the question raised by the original motion of your counsel as to whether the qualifications for membership in the House, specifically enumerated in Article 1, Section 2, of the Constitution, age, citizenship, and inhabitancy, should be deemed exclusive. Further, we are of the opinion that the Select Committee is required by House Resolution 1, 90th Congress, to inquire not only into the question of your right to take the oath and be seated as a member of the 90th Congress, but additionally and simultaneously to inquire into the question of whether you should be punished or expelled pursuant to the powers granted by the House under Article 1, Section 5, Clause 2 of the Constitution. In other words, the Select Committee is of the opinion that at the conclusion of the present inquiry, it has authority to report back to the House recommendations with respect to your seating, expulsion or other punishment.

The public hearing scheduled for next Tuesday, February 14, 1967, the Select Committee would appreciate receiving from you or your counsel answer to the following questions:

One: With reference to the seating phase of our inquiry, do you refuse to give any testimony concerning (a) 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, and (b) alleged official misconduct on your part occurring at any time since January 3, 1961?

Two: With reference to the second phase of our inquiry, relating to the power of the House to punish or expel pursuant to Article 1, Section 5, Clause 2 of the Constitution, do you refuse to give any testimony concerning (a) status of legal proceedings in which you are a party of 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, and (b) alleged official misconduct on your part occurring at any time since January 3, 1961?

At the public hearing scheduled for next Tuesday, February 14, 1967, you are again invited to give testimony and response to interrogation concerning the matters referred to in a letter dated February 6, 1967, from Mr. William A. Davis, chief counsel of the Select Committee, to your counsel, Mrs. Jean Camper Cahn, a copy of which is enclosed.

At the conclusion of your testimony next Tuesday, or, if you decline to testify, at the conclusion of the hearing, you will be given the opportunity to make a statement relevant to the subject matter of the Select Committee's inquiry. Unless additional matters come to our attention in the interim, the Select Committee has decided to conclude hearings on Tuesday, February 14, 1967.

EMANUEL CELLER, *Chairman.*

The letter to Mrs. Cahn reads as follows, dated February 11:

DEAR MRS. CAHN: We acknowledge your letter of February 9, 1967, addressed to the undersigned.

I enclose a copy of a letter from Chairman Emanuel Celler of the Select Committee to Mr. Powell which has been delivered today to Mr. Powell's office, Rayburn House Office Building, Washington, D.C., and a copy of my letter to you dated February 6, 1967.

The enclosed copy of the letter to Mr. Powell gives notice of a public hearing scheduled by the Select Committee for Tuesday, February 14, 1967, at 10:00 a.m., Room 2141, Rayburn House Office Building. You and Mr. Powell's other counsel are of course invited to attend with him. At this time we are uncertain as to the witnesses who will testify. However, the Committee has issued subpoenas for Corrine Huff and Y. Marjorie Flores (Mrs. Adam Clayton Powell), and if they appear they will be interrogated with respect to matters referred to in paragraphs 5, 10, and 11 of "Conclusions" contained in the report of the Hays Subcommittee at pages 6 and 7.

I have asked the court reporter to furnish you with a copy of the transcript of the proceedings on Tuesday, February 7, 1967, as soon as one is available.

Sincerely,

WILLIAM A. GEOGHEGAN,
Chief Counsel.

Chairman CELLER. Has counsel any comment at this time?

Mr. CARTER. Mr. Chairman, we are prepared to make a response to the letter of February 10 as requested by you at this time. With your permission, we will read it at the present time.

Chairman CELLER. Do you want to make the response now?

Mr. CARTER. Yes, sir; may I?

Chairman CELLER. Yes, sir.

Mr. CARTER (reading):

The Member-Elect has received a letter dated February 10, 1967, from the Chairman of this Committee. That letter advises that this Committee had deferred decision on the question raised by Congressman Powell and his counsel "as to whether the qualifications for membership in the House specifically enumerated in Article I, Section 2 of the Constitution (age, citizenship, and inhabitancy) should be deemed exclusive." We appreciate clarification of the Committee's action on this question.

The Committee further advises that it regards its mandate not only to inquire into Congressman Powell's qualifications for membership in the House of Representatives, "but additionally and simultaneously to inquire into whether" punishment or expulsion should be recommended to the House pursuant to powers granted under Article I, Section 5, Clause 2 of the Constitution. The provision reads:

> "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."

In short, this Committee conceives its function and scope as broad enough for it to determine Congressman Powell's right to take the oath as a member of the 90th Congress, and to determine simultaneously whether he has engaged in conduct warranting punishment by the House or expulsion therefrom, all in the same proceeding.

In connection with what this Committee conceives to be the proper scope of its inquiry, the Committee invited Congressman Powell or his counsel to answer at this hearing the following questions:

1. As to what is described as the "seating phase" of the Committee's inquiry, whether Congressman Powell refuses to give any testimony concerning:

> (a) 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; and
>
> (b) alleged official misconduct on your part occurring at any time since January 3, 1961.

2. As to what is described as "the second phase" of the Committee's inquiry "relating to the power of the House to punish or expel pursuant to Article I, Section 5, Clause 2, of the Constitution," whether Congersman Powell refuses to give any testimony as to matters set out in (a) and (b) above.

It is our position and contention that this Committee in seeking to resolve the legal and constitutional questions raised as to the appropriate scope of its inquiry has compounded the legal and constitutional defects initially asserted in this inquiry.

The short of our position is that H.R. No. 1 authorizes inquiry solely and exclusively into Congressman Powell's qualifications for membership in the House. If we are in error in that regard, then we take the flat position that the House could not, pursuant to H.R. No. 1, or indeed pursuant to any resolution, authorize any Committee to make the kind of simultaneous inquiry which this Committee proposes to undertake. Before the power to punish a 'member', pursuant to Article I, Section 5, Clause 2 can be invoked, the determination of membership must have been concluded on the basis of qualifications for membership as set forth in Article I, Section 2, Clause 2 of the Constitution.

In summary, the reasons for our position are as follows:

1. Article I, Section 2, Clause 2 of the Constitution sets forth the sole and exclusive qualification for membership in the House of Representatives.

2. Article I, Section 5, Clause 2 of the Constitution deals expressly and exclusively with the power of the House to discipline its members—those persons who have been sworn and seated as members and for appropriate reasons are subject to punishment or expulsion. The meaning of the words is plain and unambiguous and the precedents and practice of the House compel the stated conclusion.

3. We concede, as we must, that the House has the power to proceed under each of these provisions. We reject, however, the Committee's assertion that the House, or any of its committees, can merge in one proceedings the power authorized by the two constitutional provisions. The precedent of the House support this view. One of the basic reasons for the House's having consistently taken this position is because the merger of the two functions has been recognized as a method to expand unlawfully and dangerously the qualifications for membership in the House beyond the three stated in the Constitution.

4. Proceedings under Article I Section 2, Clause 2 and proceedings under Article I, Section 5, Clause 2 involve two disparate functions which cannot be accomplished simultaneously. When the House proceeds under Article I, Section 2, Clause 2 to determine whether a member-elect possesses the requisite constitutional qualifications of age, citizenship, and inhabitancy, it is exercising an investigatory function. It is merely determining what the facts are in this regard. When the House proceeds under Article I, Section 5, Clause 2, however, its action is in the nature of a judicial function. It is making a judicial determination as the trier of the facts as to whether a member charged with some form of misbehavior is guilty and should be punished even to the extent of expulsion. The Constitution itself requires that such process must take place within the framework of the minimal protections of the due process of law, including the specification of charges, right of confrontation, right to counsel, and the right to be heard. While we believe and have asserted that some of the basic requirements of due process must be adhered to in respect to proceedings under Article I, Section 2, Clause 2, since no punishment is involved, the standards are clearly not as strict as they must be in respect to Article I, Section 5, Clause 2.

5. Article I, Section 5 does not accord to the House a general judicial function. The function it has as a judicial body is limited solely and exclusively for the purpose of preventing obstructions to the House in the exercise of its legislative powers. Accordingly, the precedents uniformly hold that the "disorderly behavior" referred to in Article I, Section 5, Clause 2 relates solely to misconduct committed against the current House.

Accordingly, as to the "seating phase" of the Committee's inquiry, it is our position, as indicated by our motions, brief and oral argument heretofore that the scope and extent of the Committee's inquiry is limited to the three qualifications set out in Article I, Section 2. Therefore, we submit that the only and exclusive issues pertinent to Congressman Powell's right to a seat in the 90th Congress are whether he is 25 years of age, a United States citizen for seven years, and an inhabitant of New York. As to any issues beyond that, we are

of the opinion that these are outside the jurisdiction of this Committee, and we have so advised the Member-Elect.

As to the "second phase" of the Committee's inquiry as delineated in the letter of February 10, it is our contention that neither the Committee nor the Congress can pursue an inquiry into its power to punish or expel a member without having first settled the threshold question of the Congressman's right to a seat.

Accordingly, we are of the opinion that any questions except those relevant to the constitutional qualifications of Member-Elect Powell are outside the jurisdiction of this Committee, and we have so advised the Member-Elect.

Moreover, it is our considered opinion that this Select Committee cannot legally and constitutionally pursue these two objectives simultaneously.

We request the opportunity to submit a brief developing these responses prior to the close of these hearings.

Chairman CELLER. Mr. Carter, we are proceeding under a broad mandate of the House as embodied in House Resolution No. 1 in the 90th Congress. We shall be very happy to receive your brief that you state that you wish to submit. We appreciate——

Mr. CARTER. Thank you.

Chairman CELLER. We appreciate the statements you have just made, Mr. Carter. They will be received in the record and we will take it under advisement.

Mr. CARTER. Thank you.

Chairman CELLER. Our witness this morning, Mr. Ronald Goldfarb, special counsel for the committee. Mr. Goldfarb, will you step forward, please?

There is a Bible, Mr. Goldfarb; will you put your right hand on it? Do you solemnly swear that the testimony you will give this matter now proceeding before this committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. GOLDFARB. Yes, sir.

Chairman CELLER. Mr. Geoghegan.

TESTIMONY OF RONALD GOLDFARB, ESQ., ASSISTANT COUNSEL TO THE SELECT COMMITTEE

Mr. GEOGHEGAN. Will you please identify yourself?

Mr. GOLDFARB. My name is Ronald Goldfarb. I am a lawyer in Washington.

Mr. GEOGHEGAN. Where do you live, Mr. Goldfarb?

Mr. GOLDFARB. Alexandria, Va.

Mr. GEOGHEGAN. Mr. Goldfarb, will you tell me briefly about your educational background?

Mr. GOLDFARB. Well, I went to college at Syracuse University, got an A.B. degree and LL.B. degree. Then I went to Yale Law School and received a master of law degree and doctor of law degree.

Mr. GEOGHEGAN. You received your LL.B. from Syracuse University?

Mr. GOLDFARB. Yes, sir.

Mr. GEOGHEGAN. Where are you admitted to practice, Mr. Goldfarb?

Mr. GOLDFARB. I am admitted to practice in California, New York, District of Columbia, but my practice is in Washington.

Mr. GEOGHEGAN. What is your firm?

Mr. GOLDFARB. The name of my firm is Kurzman & Goldfarb.

Mr. GEOGHEGAN. Will you relate briefly your experience since you graduated from law school?

Mr. GOLDFARB. Well, I was in the Air Force for 3 years as a trial lawyer, in the Judge Advocate's Court and in the Kennedy administration I came down here and worked in the Justice Department as a special prosecutor in organized crime and rackets section of the Justice Department until 1964 and since then, I have been in private practice.

Mr. GEOGHEGAN. Mr. Goldfarb, I understand you are the author of various publications. Will you recite some of those, please, and tell us what they concern?

Mr. GOLDFARB. Well, I wrote three books: One is called "The Contempt Power," which was published in 1963. The second one was entitled "Ransom, A Critique of the American Bail System," which was published in 1965. And I did a book with Alfred Friendly, the associate editor of the Washington Post, called "Crime and Publicity," the impact of news on the administration of justice, which is due out in a few months.

Mr. GEOGHEGAN. Now, pursuant to the direction of this select committee, did you investigate and analyze the records of the New York State courts and elsewhere concerning litigation identified as James v. Powell in which the Member-elect, Mr. Adam Clayton Powell is the defendant?

Mr. GOLDFARB. Yes, I did.

Mr. GEOGHEGAN. Did you prepare an analysis, a written analysis following your investigation?

Mr. GOLDFARB. Yes, I did.

Mr. GEOGHEGAN. How is it entitled?

Mr. GOLDFARB. It is entitled "An Analysis of James v. Powell Cases."

Mr. GEOGHEGAN. Can we have this marked for the record Goldfarb exhibit 1?

(The above-entitled document follows:)

ANALYSIS OF JAMES V. POWELL CASES

FEBRUARY 13, 1967.

The cases analyzed are:

1. Defamation action in New York County Supreme Court—*James v. Powell, NTA Television, & Associated Food Store Co-operative, Inc.*—libel suit. Resulted in Final Judgment of $46,500.

2. Fraudulent Transfer of assets action, in New York County Supreme Court—*James v. Adam C. Powell, Mrs. Powell & her uncle & aunt* (Diagos).—New York Court of Appeals (highest court) has under consideration an appeal pending from judgment of damages of $155,785 ($100,000 of which represents punitive damages)—involves transfer of Puerto Rico home of Powell to uncle and aunt of Mrs. Powell.

3. Fraudulent transfer of assets case in Puerto Rico—a criminal case in Puerto Rico was also brought by Mrs. James concerning this fraudulent transfer of property there. It was begun under local procedures by plaintiff's swearing to a summons before a magistrate charging Representative Powell with a misdemeanor. When Representative Powell failed to appear, the judge ordered him to appear the next day and he agreed. But he failed to appear again and was ordered to be arrested by the local court's marshal. Then Powell surrendered and was released. He filed a motion to dismiss the complaint. There have been numerous adjournments and, so far, no final action has been taken.

4. Fraudulent transfer of assets case in Westchester County, New York—*James v. Powell & Hazel Scott*—This is a civil action alleging a fraudulent transfer of property jointly owned by Representative Powell and his former wife, Hazel Scott, to Miss Scott as sole owner in order to avoid the original libel judgment. The case is in limbo. Representative Powell moved to dismiss the complaint. The court denied this and held damages could be assessed only against Miss Scott, the present owner of the property. Powell was ordered to appear when ordered, and no further order was ever made.

5. Criminal charge in New York brought by Mrs. James as complainant, charging fraudulent transfer to Mrs. Powell under section 1170 of Penal Law with respect to $900 due from a literary agent. Charge dropped in 1964 for Grand Jury action under the Penal Law. Grand Jury voted no true bill on May 16, 1966.

The contempt orders outstanding are related only to actions 1 & 2.

A. THE LIBEL CASE

In the latter part of February 1960, Representative Adam Clayton Powell, Jr. spoke on the floor of Congress, and in the course of this address, clothed with Congressional immunity, accused Esther James of being a "bag woman" for the New York City Police Department.

On March 6, 1960, Representative Powell appeared on "Between the Lines," a weekly afternoon television program which was viewed over NTA Television Station in the New York City metropolitan area and elsewhere in the United States and Canada. The program was sponsored by Associated Food Stores Cooperative, Inc. In the course of being interviewed by the moderator, Lester L. Wolff, Representative Powell repeated his accusation that Esther James was a bag woman for the Police Department in Washington Heights, New York, and that she was being protected by the police.

Mrs. James sued Representative Powell for libel based on his television statements. Powell was served with a summons and complaint on October 28, 1960. He served his answer on December 10, 1960, and amended that on December 27, 1960, and again on January 15, 1962. Eventually, on May 23, 1961, both parties stipulated that NTA Television and Associated Food Stores Cooperative could be dropped out of the suit and this stipulation was filed on June 2, 1961.

After a jury trial in the Supreme Court, County and State of New York, a judgment was entered in favor of the plaintiff for the sum of $211,739.35 (the suit was for one million dollars). The case was tried on March 29, and from April 1 to April 4, 1963, before Judge Thomas A. Aurello and a jury. The verdict awarded the plaintiff $11,500 compensatory damages, and $200,000 punitive damages.

This judgment was filed and recorded on April 5, 1963, and thereafter on about June 5, 1963, an attempted execution of the judgment was returned unsatisfied by the Sheriff.

Plaintiff's attorney then proceeded by obtaining an order to show cause (an application to a judge *ex parte* for an order requiring other party to appear and show cause as to why certain relief should not be granted,) as to why the Court should not order Representative Powell arrested for not paying the libel judgment of $211,739.35 on the return date of the order to show cause. The application was denied and execution was ordered issued again. Plaintiff then made other unsuccessful attempts to obtain satisfaction of the judgment by court order.

The following then took place, as described in 43 Misc. 2d 314, (1964) [Exhibit No 1]:

"It appears that a subpoena duces tecum returnable September 20, 1963 was served by substituted service upon defendant after four attempts at personal service. Upon defendant's failure to honor said subpoena, plaintiff moved to punish him for contempt. In that proceeding the service was traversed and the matter was referred to a Special Referee to hear and report with recommendations. By order of Mr. Justice Markewich, [on December 27] the said Special Referee's report finding proof of due service was confirmed. The traverse was overruled and the examination was ordered for the fifth day next succeeding service of a copy of the said order with notice of entry, which order provided *inter alia* that defendant could purge himself of his contempt by paying the entire judgment or by appearing for examination on a new scheduled date. The order of Mr. Justice Markewich was appealed and the appeal suspended on stipulation

of the parties, dated December 31, 1963, signed by defendant in person and by the attorneys for both parties, until the disposition in the Appellate Division, of an appeal from the judgment itself. The stipulation provided, among other things, that within 15 days after service of a copy of the order affirming or *conditionally affirming* such judgment, defendant would appear for such examination at a time and date to be agreed upon by both counsel and, in the absence of agreement, to be fixed by Special Term." (43 Misc. 2d 314 at 315.) [Exhibit No. 2.]

The Appellate Division affirmed the judgment below on the condition that the plaintiff agree to a reduction in damages to $11,500 compensatory and $35,000 punitive. 246 NYS 2d 998, 2/6/64. [Exhibit No. 3.]

The attorneys failed to agree on the time and date of the examination provided for in the stipulation and the matter was brought to Special Term where Mr. Justice Backer, on March 27, 1964, finally set the examination for May 1, 1964 at Special Term, Part II, at 10:00 a.m., unless otherwise stipulated by the parties.

Defendant thereafter applied for a stay of the examination on April 27, 1964 and this application was denied on April 29, 1964 by Mme. Justice Amsterdam.

The defendant failed to appear for examination on May 1, 1964.

Plaintiff then applied for an order of arrest and commitment of Mr. Powell as judgment-debtor, based on a contempt order of the court arising from the willful refusal or unwillingness of defendant to submit to examination in proceedings to enforce a money judgment. Chimera J. decided to grant the order of arrest of the defendant based on Judge Markewich's contempt order of December 27, 1963. His language pointed out that a number of the acts took place when Congress was not in session and cited Mr. Powell as "so flagrantly contemptuous of the authority and dignity of this court as to promote a tragic disrespect for the judicial process as a whole." (43 Misc. 2d 314 at 320). In this opinion, Judge Chimera also stated that Rep. Powell claimed that an examination would have compelled him to give evidence which might tend to incriminate him. (at 319). The opinion provided that the order of arrest should contain a stay until the then current session of the House of Representatives was in recess. The order of arrest and commitment was then issued on June 1, 1964 and is currently outstanding.

On July 10, 1964 the Court of Appeals of New York affirmed the Appellate Division decision of February 6, 1964. 14 NY 2d 881. [Exhibit No. 4.]

The United States Supreme Court denied certiorari and no further appeals are possible. 379 US 966 (1965). [Exhibit No. 5.]

B. NEW YORK COUNTY FRAUDULENT TRANSFER OF ASSETS CASE

Mrs. James brought a second action in the New York Supreme Court on April 2, 1964 against Representative Powell, his wife Yvette, and her aunt and uncle, at common law and under Article 10 of the New York Debtors and Creditors Law. She alleged that in April 1963, the Powells owned a piece of real property in Puerto Rico worth approximately $85,000 and that on about April 17, 1963 (after the libel judgment was recorded) they deeded the property to two people (Gonzalo Diago and Carmen M. B. Diago who were also named as defendants) under a questionable conveyance made to frustrate the satisfaction of Mrs. James' libel verdict. It was alleged that the transfer was made without any consideration and only to prevent enforcement and collection of the judgment. For this, $250,000 damages was originally claimed. There were two causes of action—one against the Powells for damages for conspiracy and for fraudulent transfer and the other a judgment creditor's action against all four for conspiracy to defraud Mrs. James in the satisfaction of her previously adjudicated judgment.

In this case, Mr. and Mrs. Powell both did not file answers. Accordingly, a motion for judgment was granted, on January 22, 1965. The case was severed against Mrs. Powell's uncle and aunt in Puerto Rico, and a jury inquest on the sole issue of damages was set for trial.

Trial was held on February 11, 1965, and the jury awarded damages to Mrs. James of $350,000. The trial judge (Backer, J.) reduced the verdict to $210,000.

The defendants thereupon renewed a motion made on the eve of inquest to vacate service on the grounds they had moved from 130 West 138th St. to 2386 Seventh Avenue.

On March 31, 1965 their motion was granted by Loreto, J. to the extent that the earlier verdict was to be set aside if the defendants would agree to appear and answer.

On April 5, 1965 the Powells agreed to appear and answer.

The Loreto decision was upheld in the Appellate Division on June 12, 1965. 24 App. Div. 2d 428 (1965). [Exhibit No. 6.]

The plaintiff then served a notice of examination before trial on the Powell's attorney. The Powells did not appear on the return date and he moved by order to show cause why the Powells should not be punished for contempt of process, ordered to appear for examination before trial, and for an order that their answers be stricken.

On July 1, 1965, the requested order to punish for contempt was denied, and on July 31, 1965, the requested order to strike their answers was denied.

The Powells then moved to dismiss the complaint, which the New York Supreme Court denied, upholding the first cause of action. (September 30, 1965). Flynn, J. on January 18, 1966 the Appellate Division affirmed, holding that the relief was sought not under the statute but under the common law. At common law, whoever by improper means interferred with the execution of a judgment was liable for the damage he caused to the judgment creditor. 25 App. Div. 2d 1, 266 NYS 2d (1966). [Exhibit No. 7.]

The Court of Appeals dismissed Representative Powell's appeal on the ground that the Supreme Court's order was not final. 17 N.Y. 2d 812, 271 NYS 2d 265 (1966). [Exhibit No. 8.]

After Judge Flynn's order of September 30, 1965, the plaintiff then moved by way of an order to show cause why the court should not order a date for the Powells' examination before trial. This was granted as to Representative Powell, and on October 27, 1965, Judge Brust ordered him to appear for examination on November 1, 1965. Representative Powell's attorney applied to the Appellate Division for a stay and, in accordance with a stipulation signed by both attorneys and Representative Powell, the New York Supreme Court ordered the date adjourned by consent to November 24, 1965, the day before Thanksgiving. [Exhibit No. 9.]

Powell failed to appear on November 24, 1965 and plaintiff moved to punish him for contempt and to strike the Powells' answers.

On December 10, 1965 the court (Streit, J.) granted the motion to strike the answers but denied the motion to hold him in contempt. He also ordered an inquest as to the amount of damages.

At the inquest held on December 14, 1965, Judge Wahl granted plaintiff $75,000 compensatory damages for damages in libel suit, plus attorney's fees and costs incurred in being forced to bring the fraudulent transfer action, as well as $500,000 punitive damages for wilfulness in the act of transfer.

On appeal, the Appellate Division held that the compensatory damages were limited by the unpaid judgment from the libel case, $33,250.76, plus outlays by the plaintiff and her counsel including legal fees totaling $22,535.00, and assessed punitive damages of $100,000 for a total of $155,785.76, plus interest. *James* v. *Powell*, 26 Appellate Division 23 535, 270 N.Y.S. 2d 789 (1966). [Exhibit No. 10.]

An appeal by the Powells of this decision is currently pending in the New York Court of Appeals, including the issues raised by the Powells' earlier motion to dismiss, which had been considered premature.

Meanwhile, the plaintiff attempted to obtain satisfaction of its judgment obtained on December 14, 1965. A notice to appear for examination as to financial ability to pay the judgment was served by substituted service on or about December 15. Mr. Powell did not appear on the return date.

The plaintiff moved to punish Mr. Powell for contempt returnable January 7, 1966. Powell's attorneys filed papers, claiming Congressional immunity and lack of proper service. Reply affidavits filed by plaintiff, cited failure of Mr. Powell to respond to 3 subpoenas and 2 court orders and stressed the criminal sanctions of Sections 750 and 751 of the Judiciary law. [Exhibit No. 11.]

First, the court denied plaintiff's motion but the plaintiff applied for reargument. There was a hearing first by a referee and later by the court on August 12, 1966.[1] On August 28, the Judge (Saypol, J.) granted the order to show cause, held criminal contempt could have occurred, and set the issue of wilfulness down for jury trial. [Exhibit No. 12.]

Representative Powell then moved for a stay of Judge Levy's contempt proceedings. This was denied on September 9, 1966. Further applications to the New York Court of Appeals and the U.S. Supreme Court were denied.

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[1] At this hearing, Odell Clark stated Powell had not spent the night at 130 West 138th St. since the summer of 1965.

Representative Powell also moved that the court had no jurisdiction over the person of defendant and the subject matter of the proceeding. This motion was denied on October 27, 1966.[2]

The jury found wilfulness in Mr. Powell's failure to honor 3 subpoenas to appear for examination on the following days: September 20, 1965(L); November 27, 1964(L); and December 16, 1965(L), and for failure to honor the court orders by failure to appear for examination on May 1, 1964(L); and on November 24, 1965(F), both being dates stipulated to by him personally. (L)—Libel case; (F)—Fraud case.

On November 4, 1966, at the time for sentencing on the jury verdict, the court (M. Levy, J.) decided that failure to honor a subpoena was a civil contempt, but, with respect to the 2 counts involving court orders, found him guilty of criminal contempt and sentenced Mr. Powell in absentia for criminal contempt of court to 30 days in jail and $250 fine on each count to run concurrently. [Exhibit No. 14.]

The order of judgment was settled after the date of election on November 17, 1966. It directed Mr. Powell to surrender for service of sentence on November 23, 1966. Mr. Powell, having failed to surrender, an order of arrest and commitment was issued on November 28, 1966 (Markewich, J.). [Exhibit No. 15.]

Mr. Powell has moved to vacate this order of Judge Markewich of arrest and commitment.

Appeal of Judge Levy's order is pending before the Appellate Division (Scheduled Argument February 17, 1967).

Mr. Powell also moved for stay of this order of Judge Markewich by application to the Supreme Court on constitutional grounds. The application was denied. —— U.S. —— (January 18, 1967). This information appeared in the U.S. Supreme Court files.

C. TWO OTHER INSTANCES OF CONTEMPT ORDERS

During the year, this motion for contempt was being considered by the courts, the plaintiff continued to serve subpoenas on Mr. Powell by substituted service. Mr. Powell continued to disregard them.

Accordingly, plaintiff moved that the court adjudge Mr. Powell in contempt. This motion was denied by Judge Fine on September 9, 1966.

The plaintiff appealed and, on appeal, the Appellate Division reversed the trial court and modified the trial court's order to hold Mr. Powell guilty of civil contempt and to punish him by a fine of $250 and jail sentence of 30 days.

The Appellate Division further directed him to appear for examination on November 3, 1966, or upon application to court, on some later date; and ordered that, if he complied with the examination, he would be excused from imprisonment. 274 NYS 2d 192 (October 25, 1966). [Exhibit No. 16.]

Attorneys for Mr. Powell then appealed this decision to the Court of Appeals and stipulated, with plaintiff's attorney, that, if the Appellate Division opinion was upheld, he would appear for examination on December 9, 1966. [Exhibit No. 17.]

The Court of Appeals upheld the Appellate Division and directed Mr. Powell to appear for examination on December 9, 1966. [Exhibit No. 18.]

Mr. Powell did not appear on December 9, 1966, whereupon he was adjudged guilty of civil contempt for disobeying the order to appear. (Judge Streit.)

An order of arrest and commitment was issued December 14, 1966.

The two aforementioned orders are filed with the records of the libel and fraud cases in the New York Court of Appeals in Albany, New York.

Plaintiff continued to attempt execution in the fraudulent transfer action.

On a subpoena to produce financial records, returnable December 15, 1965 (L)[3] which was disregarded, plaintiff moved for a contempt order. On October 3, Judge Frank held Powell in civil contempt and ordered him to appear three days after a copy of the order was served on his attorney. [Exhibit No. 19.]

Mr. Powell failed to appear.

On October 14, 1966, Judge Waltemade issued an order of arrest and commitment for Powell's failure to appear as ordered. [Exhibit No. 20.] Mrs. James' attorney is continuing to apply for contempt orders, both civil and criminal.

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[2] The plaintiff's attorney interest in the publicity attendant to the proceedings has required a protective order from the court. 273 NYS 2d 730 (1966). [Exhibit No. 13.]

[3] Libel case.

Status

(a) Arrest status

In sum, there are at least four outstanding arrest orders, two arising out of criminal contempt orders, and two arising out of civil contempt citations.

(b) Damages status

On August 2, 1965, Mrs. James' attorney applied for and obtained an order of the Supreme Court of New York, to a bank which held funds for two committees, the Harlem Justice for Powell Committee and the Powell Fund Committee, and two checks were delivered to Mrs. James in partial payment for her outstanding judgments. A total of $19,115.54 was paid by these friends of Powell. The amount was paid pursuant to a Supreme Court order of July 1965, and thus reduced the outstanding judgment to something over $30,000.

On January 31, 1967, Jubilee Industries, Inc., a record company, paid Mrs. James $32,460 voluntarily in reduction of the then outstanding libel judgment.

According to Raymond Rubin, counsel for Mrs. James, the following amounts emanating from the two judgments are still outstanding:

$3,483.76—balance of the original libel judgment with interest as of January 19, 1967;

$23.25—Judgment costs with interest due since May 15, 1964;

$168.00—Judgment costs with interest due since January 20, 1965;

$45.60—Judgment costs from federal court matter brought to stay the libel judgment;

$150.93—Intermediate court costs for miscellaneous judgments due since June 17, 1966;

$233.64—Intermediate court costs for miscellaneous judgments due since June 17, 1966;

$197.13—Intermediate court costs for miscellaneous judgments due since June 23, 1966.

Aside from these items, the amount of the judgment ($155,785.76) in the fraudulent transfer of assets is now under consideration in the Court of Appeals.

MISCELLANEOUS OTHER ACTIONS DEEMED NOT RELEVANT TO THE INQUIRY

Other miscellaneous actions have been brought during this time. In one, Mrs. James moved to institute a quo warranto proceeding to determine the right of Representative Powell to hold his House seat, urging that he was not a resident of New York between October 3, 1964 and December 31, 1964.

The court held against her, stating that, according to Article I, of the Constitution, each house of Congress is the sole judge of the qualifications of its own members. Therefore, the courts have no jurisdiction to pass on the qualifications of any Congressman. *Application of Esther James*, 241 F. Supp: 858 (S.D.N.Y. 1965). [Exhibit No. 21.] Of course, the question of Representative Powell's being an inhabitant of New York is a proper one for the House to consider in its present deliberation over his qualifications to be seated.

Another recent action was brought in the Federal Courts in New York arising out of present Powell controversy. In this suit, only weeks ago, constituents of Rep. Powell brought an action in the Federal Courts in the Southern District of New York to enjoin the Federal Government from collecting their taxes on the ground that they were not being represented. A check with the Clerk of that Court disclosed that the recent case involving this tax claim was filed by the Rev. A. Kendall Smith, et al. and was brought against President Johnson and all the members of the House of Representatives. (Docket No. 67, Civil 185). It was filed on January 16, 1967. The application for an order to show cause was denied on January 21 by Judge Edelstein.

PENDING CONTEMPT ORDERS AND ARREST ORDERS

In sum, there are records of four outstanding arrest orders pending against Representative Powell, one arising out of a criminal contempt order, and three arising out of civil contempt citations. Item 1 is an arrest order emanating from a civil contempt citation. Item 2B is a civil contempt arrest order emanating from the civil contempt described in item 2A. Item 3B is a civil contempt arrest order emanating from the civil contempt citation described in item 3A. And item 4B is a criminal contempt arrest order emanating from a criminal contempt order described in item 4A.

1. Civil Contempt Arrest Order—May 8, 1964

A. Supreme Court Justice Chimera ordered the arrest because of Powell's failure to appear May 1, 1964, in accordance with a March 27, 1964, order of Judge Backer. Although the decision was written on May 8, the actual arrest order was issued on June 1, 1964. It is still in effect.

B. The order arose out of the libel judgment.

C. According to Chief Clerk Gamzel of the Appellate Division, 1st Dept., court records show that this order has not been appealed, and the time during which the order may be appealed (thirty days) has expired. As no further appeals are now available from the libel judgment, the arrest order cannot be disturbed by an appeal from the judgment itself. The 30 day appeal period for all orders is provided for by the N.Y. Civil Practice Act, Sec. 5513, and by Appellate Division Rule 5, subdivision 4.

2. Civil Contempt—October 25, 1966

A. The Appellate Division held Representative Powell guilty of civil contempt for willful violation of a July 23, 1966, subpoena to appear and produce financial records. On December 1, 1966, this decision was affirmed by the New York Court of Appeals.

B. *Civil Contempt and Arrest Order*—December 14, 1966: Justice Streit ordered Representative Powell's imprisonment for civil contempt for failure to appear December 9 as ordered by New York Court of Appeals to "purge" himself of the October 25 civil contempt citation of the Appellate Division. He was ordered committed for thirty days. There has been no appellate determination of this order. The case is now before the New York Court of Appeals, but order does not appear to be on appeal.

C. These orders arose out of the fraud judgment.

D. According to Mr. Gamzel court records show that these orders have not been appealed, and the time during which the orders may be appealed (thirty days) has expired. The Court of Appeals, in disposing of the fraud judgment, has discretion to vacate or leave untouched the orders.

3. Civil contempt—October 3, 1966

A. Justice Frank held Representative Powell guilty of civil contempt for disobeying a December 15, 1965 subpoena of Mrs. James to appear and produce financial records. The court ordered him to appear in three days to "purge" himself.

B. *Arrest Order*—October 14, 1966: Supreme Court Justice Waltemade ordered Representative Powell's arrest for disobeying the above order of October 3. There has been no appellate determination of this order. This case is now before the New York Court of Appeals, but the order does not appear to be on appeal.

C. These orders arose out of the fraud judgment.

D. According to Mr. Gamzel again, court records show that these orders have not been appealed, and the time during which the orders may be appealed (thirty days) has expired. The Court of Appeals, in disposing of the fraud judgment, has discretion to vacate or leave untouched the orders.

4. Criminal contempt—November 17, 1966

A. Justice Levy held Powell guilty of criminal contempt for disobeying prior court orders of March 27, 1964 (by Justice Backer to appear and produce records), and October 27, 1965 (by Justice Brust to appear and produce records). Representative Powell was ordered by Justice Levy to appear on November 23, 1966 and produce records. He failed to appear and produce records.

B. *Arrest Order*—November 28, 1966: Justice Markewich ordered Powell's arrest for violating Levy's order and not appearing on November 23, 1966. There has been no appellate determination of these orders. Representative Powell was sentenced to thirty days and a $250 fine for violation of each of the two above orders. Justice Harlan of the U.S. Supreme Court denied application for a stay of enforcement of this arrest order on January 18, 1967. This case is now before the New York Court of Appeals with the libel and fraudulent transfer cases.

C. These orders arose out of both the libel and fraud judgments. The Backer order was based on the libel judgment and the Brust order on the fraud judgment.

D. The orders are now being appealed and are before the Appellate Division.

Mr. GOEGHEGAN. Will you explain how you prepared this analysis and sources which you referred to, the people that you were able to talk to?

Mr. GOLDFARB. I went to New York and confined myself essentially to official records.

I examined records of the appellate division from the Library of the Association of the Bar of the City of New York, and I consulted with the clerk of the New York Court of Appeals, Mr. Cannon. I went through those records which were public and which were pending.

I read the installment of press coverage of all of these cases which was compiled by the Library of Congress, and read all of the opinions of the New York courts dealing with two litigations in contempt proceedings that arose out of them.

I might add that I was not able to find one repository of all of the information published about these cases, so I had to piece it together from those various sources.

Mr. GOEGHEGAN. Would you give a brief summary of this report, please?

Mr. GOLDFARB. Well, the case really began in February 1960, when Representative Powell spoke on the floor of Congress and in the course of an address, accused a woman by the name of Esther James of being a bagwoman for the New York City Police Department.

On March 6, 1960, he repeated this, this same accusation to television program called "Between the Lines" which is a weekly program in New York City.

After he did this, Mrs. James sued Representative Powell for libel, based on these statements. They changed the formal documents, summons, complaint and whatnot and there was a jury trial in the Supreme Court of New York and judgment was entered in the favor of Mrs. James for $211,739.35. The suit was for $1 million.

The case was tried in March and April of 1963 before Judge Thomas Aurelio and there was a jury. The verdict was composed of $11,500 for compensatory damages, and $200,000 for punitive damages.

The judgment was filed and recorded and there was an attempt to collect on the judgement and that was returned by the sheriff unsatisfied. So the plaintiff's attorney then proceeded by getting an order to show cause why the court should not order Representative Powell arrested for not paying the libel judgment on the return date of the order to show cause.

The application was denied and execution was ordered issued again. Plaintiff made other attempts to satisfy the judgment. And eventually the Appellate Division of New York, which is the intermediate appellate court in New York, between the Court of Appeals, which is the highest court of appeals, and the trial court, which is the Supreme Court, affirmed the judgment on the condition that the plaintiff agreed to reduce the damages to $11,500 compensatory damages and $35,000 punitive damages. That information comes from the report in 246 N.Y. S. 2d 938.

Chairman CELLER. $46,000?

Mr. GOLDFARB. That was knocked down further, Right.

Chairman CELLER. $46,000.

Mr. GOLDFARB. The attorneys failed to agree for time and date for examination and finally Justice Baker in March of 1964, set an examination for May 1, 1964, unless otherwise stipulated.

The defendent failed to appear and the plaintiff applied for an order of arrest and commitment as a judgment debtor and based this on contempt order of court arising out of willful refusal or unwillingness of defendent to submit to examination in the proceedings to enforce the money judgment.

The Judge Chimera, decided to grant the order of arrest, based on Judge Markewich's contempt order of December 27, 1963.

The opinion provided that the order for arrest should contain a stay until the current session of the House of Representatives was in recess. The order of arrest and commitment was issued on June 1, 1964. It is outstanding.

In July 1964, the New York Court of Appeals confirmed the appellate Division decision in the libel judgment and the supreme court denied certiorari in 1965.

The citation for that, no opinion, 379 U.S. 966. The case then was carried off into a second case. Mrs. James brought a second action in the New York Supreme Court, which again is the trial court, in April of 1964 against Representative Powell and his wife, and an aunt and uncle, alleging that in 1963, after the judgment, the Powell's having owned a piece of real property in Puerto Rico, alleged to be worth $85,000, sold it after the judgment was recorded, to two people who are also named in this case as defendents.

Chairman CELLER. That was not the case based upon the alleged charge of transfer of property to avoid the payment?

Mr. GOLDFARB. Yes, sir, called fraudulent transfer of assets, I believe, in New York. They alleged in the suit that the transfer occurred after judgment was entered and it was done to defeat the judgment in the libel case.

And they asked the court for $1 million damages. There were two, in this case, there were two cases of action. One was against the Powell's for damages for conspiracy and fraudulent transfer and the other was a judgment credit or action against all four for conspiracy to defraud Mrs. James.

Powell did not file an answer and a motion for judgment was granted in January 1965. The case was severed and left out the aunt and uncle in Puerto Rico and a jury inquest was set just to decide the issue of damages.

The trial was held in February, 1965, and the jury awarded Mrs. James in this case, of $350,000.

The trial judge, Judge Backer, reduced the verdict to $210,000. Then the defendant renewed his motion to vacate the service on the grounds that there was some technical error in the service of process against him, I believe service at his address of 130 West 138th Street, and he then lived at 2386 Seventh Avenue, or vice versa, whichever it was, no longer, and in March of 1965, this motion was granted by Judge Loreto and the earlier verdict, that is in the fraudulent case, was set aside if the defendants would agree to appear and answer.

On April 5, 1965, the Powells did agree to appear to answer and according to the docket in this case, they stipulated to that effect.

This Loreto decision was upheld by the appellate division.

Complainant served notice of examination before trial then on Powell's attorney and Powell did not appear on the return date so the plaintiff moved for an order to show cause why Representative Powell shouldn't be punished for contempt for failure to appear for examination before trial.

He also asked that their answer in this case be stricken. In July 1965, the request for punishment for contempt was denied by the court and the requested order to strike the answer was also denied.

Representative Powell then moved to dismiss this complaint and the Supreme Court denied it and upheld the first cause of action. The Appellate Division upheld it on the theory that it was a valid cause of action.

The Court of Appeals in New York dismissed Powell's appeal on the grounds that the Supreme Court order was not final.

Then the plaintiff moved by way of an order to show cause why the court should not order a date for Representative Powell's examination before trial. This was granted in October of 1965. Judge Brust of the supreme court, ordered him to appear on November 1, 1965. His attorney, that is Representative Powell's attorney, applied to the Appellate Division, which is the intermediate appellate court for a stay and in accordance with the stipulation, signed by him and both attorneys.

The New York Supreme Court ordered that the date would be adjourned until November 24 which was the day before Thanksgiving.

Mr. PATTERSON. Was that stipulation signed by Powell as well as his attorneys?

Mr. GOLDFARB. According to the records I have, it was signed by both the attorneys and by Representative Powell.

Powell failed to appear though on the 24th and plaintiff moved to punish him for contempt and to strike his answer. The judge in this case was Judge Streit, and on December 10, 1965, he granted the motion to strike the answer but he denied the motion to find Powell guilty of contempt in this particular case.

And he ordered an inquest which is a trial just on the issue of damages. At the inquest, which was in December 1965, Judge Wahl granted the plaintiff $75,000 compensatory damages in the libel suit plus attorneys fees and costs incurred for being forced to bring the fradulent transfer action as well as $500,000 punitive damages for willfulness in the transfer.

The Appellate Division held that these damages were excessive and that they should be limited by the judgment remaining unpaid in the original libel action, which was at that point $33,250.67 plus certain costs and legal fees that totaled over $22,000.

An appeal by Representative Powell of this decision is pending in the New York Court of Appeals.

Mr. MOORE. I would like to interrupt the witness to ask after the Appellate Division reduced the damages which Judge Wahl had assessed as being excessive, did it not also confine or assess punitive damages in the amount of $100,000?

Mr. GOLDFARB. It did, the citation for that incident is 26 Appellate Division, Second, 535, 1966.

Mr. MOORE. Taking the outstanding amount, consideration of——

Mr. GOLDFARB. Something over $157,000.

Mr. MOORE. Thank you.

Mr. GOLDFARB. That is pending now in the New York Court of Appeals and the best information I have on that is that there may be a decision this month in that case.

In the meantime the plaintiff still attempted to obtain satisfaction of the judgment of December 1965, and there were other notices to appear; finally the plaintiff moved again to punish Mr. Powell for contempt and this motion was in January of 1966.

Powell responded to this and the court denied the motion but the plaintiff asked for reargument again and the motion was granted.

Powell moved to stay the contempt proceeding and this was denied in September of 1966 and further applications were denied by the high court in New York, which is the court of appeals and U.S. Supreme Court.

Mr. GEOGHEGAN. Mr. Moore, Mr. Chairman, may I ask this question of the witness? At the time the plaintiff moved to punish Mr. Powell for the contempt which was returnable on January 7, if I understand this case, Mr. Powell's attorneys filed papers at that time claiming congressional immunity and lack of proper service. Is that not what took place?

Mr. GOLDFARB. Yes, sir.

Mr. MOORE. Will the witness tell us at the time those papers were filed, was the Congress in session at that time?

Mr. GOLDFARB. Let's see, that would have been, is that the hearing of August 1966?

Mr. MOORE. No, it would be previous to the contempt citation of January, which was returnable January 7, 1966?

Mr. GOLDFARB. I don't know, Mr. Moore, I think that is a matter of record.

Mr. MOORE. I wanted——

Mr. GOLDFARB. I have a list someplace of the dates that Congress was in session, but I don't recall them all.

Mr. MOORE. Not reflected in, any of the records which you reviewed as far as the State of New York is concerned?

Mr. GOLDFARB. No, I simply went to the Congressional Record and made a list of the dates that Congress was in session, but I don't recall them.

Mr. MOORE. Thank you. Anyway, the jury found willfulness in the case of Powell's failure to honor the three subpenas to appear for examination, one in September 1965 in the libel case; one on November 27, 1964, in the libel case; and one on December 16, 1965, in the libel case for failure to obey the court's orders to appear for examination of May 1, 1964, in the libel case; on November 24, 1965, in the fraud case.

In both instances, he had stipulated to appear.

On November 4, 1966, the court at this time, it was Judge Matthew Levy, ruled that the failure to honor the subpena was a civil contempt but with respect to the two counts involving court orders he found him guilty of criminal contempt and sentenced Mr. Powell to 30 days in jail, $250 fine on each count, and I am not certain about this, but I think they were to run concurrently and not consecutively.

Chairman CELLER. I think that is right, but wasn't the Levy decision to the effect that he was guilty of two criminal contempts and three civil contempts?

Mr. GOLDFARB. The Levy decision was later converted by Judge Markewich into a norder of arrest and commitment for criminal contempt.

Levy held Powell guilty of criminal contempt for disobeying prior court orders of the 27th of March 1964 and the 27th of October 1965, of which the prior order was by Judge Backer and the other by Judge Brust.

Chairman CELLER. There were two criminal contempts apparently?

Mr. GOLDFARB. Right.

Chairman CELLER. And three civil contempts?

Mr. GOLDFARB. My understanding——

Chairman CELLER. The reason for the distinction, correct me if I am in error, was that the criminal contempt grew out of the failure of Congressman-elect Powell to appear in court pursuant of an order of the court's or the judge, whereas the civil contempts was the failure to answer subpenas. Am I correct in that?

Mr. GOLDFARB. I think so, but I think that my understanding is that in the Levy case, it was just criminal contempts, but we have the records and the opinions available for the committee and I don't have them before me. It could be double checked.

Mr. MOORE. Mr. Chairman, if I may pursue a point at this stage of the testimony, Mr. Goldfarb, do I understand the question of willfulness that is the question of Mr. Powell's refusal to respond was submitted to a jury? It was not a determination by an individual judge, but that a jury in New York did determine that Mr. Powell's refusal to appear carried a degree of willfulness and they so found?

Mr. GOLDFARB. Right. The way the contempt proceeding runs, ordinarily a contempt proceeding is a summary one, but the issue of willfulness is a question of fact so a jury was brought in to rule solely on that issue and then the judge summarily determines contempt.

Mr. MOORE. And willfulness in this instance was confirmed by a jury in the State of New York?

Mr. GOLDFARB. Yes, sir; according to the opinions I read, there was a finding by a jury.

The order of Judge Levy, the earlier order is being appealed and I understand that is before the Appellate Division now and I understand Markewich's order of arrest is also.

There has been a motion to vacate it, but that later on, Mr. Powell, this was in January 1967, moved for a stay of the Markewich order, which is the one we were just talking about, by application to the Supreme Court and my understanding is that this application was denied.

I have no record of it, but I checked it with the clerk of the court of appeals and there is apparently an order denying that.

There was another motion before Judge Fine in September 1966, that the court found Mr. Powell not in contempt for failure to obey certain summons. The Appellate Division reversed the trial court, modified the order holding Mr. Powell guilty of civil contempt, and fined him $250 and sentenced him to 30 days.

The plaintiff also continued to execute on the fraudulent transfer action and there was a subpena to get financial records returnable in December 1965. And this was disregarded.

Plaintiff again moved for contempt order and Judge Frank held Representative Powell in civil contempt.

Then on October 14, Judge Waltemade issued an order of arrest and commitment for Representative Powell's failure to appear as ordered.

These are all pending

My best sum up of this is that the libel case is completed and has been upheld and almost all of that judgment has now been paid.

In August 1965, there was an order issued by the Supreme Court of New York to a bank which held funds of two committees. One is Harlem Justice for Powell Committee and the other was Powell Fund Committee, and over $19,000 was attached and applied to the libel judgment.

And then in January 31, 1967, voluntarily, Jubilee Record Co. paid Mrs. James something over $32,000 in reduction of the outstanding libel judgment.

The fraudulent transfer case is pending before the Court of Appeals and apparently a ruling is expected this month, but it has combined the libel judgment with the fraudulent transfer judgment; that is, the pending judgment for $157,000.

My understanding is that would be reduced to the extent that that part of the libel judgment, which was included in that figure, has been paid off.

And I asked the clerk of the court of appeals whether or not the contempts that were pending there were on appeal and he advised that they were not.

So far as I know, they are pending and I have no knowledge in the records whether or not there are any appeals of those contempt proceedings.

In summary, what I was able to find from the public records is that there are four outstanding arrest orders, two arising out of criminal contempt orders and two arising out of civil contempt orders.

The first civil contempt arrest order is the one of Justice Chimera. The first criminal contempt order is the one of Justice Streit, which refers back to the civil contempt of October 25, 1966; the second civil contempt arrest order is the order of Justice Waltemade, which refers back to the incident with Judge Frank that I mentioned.

The second criminal contempt arrest order is the order of Judge Markewich, which refers back to the orders of Judge Levy.

Mr. GEOGHEGAN. Mr. Goldfarb, I have a question at this time. You have been making a reference to the fact that in some of these actions Mr. Adam Clayton Powell, on one or more occasions, personally signed, stipulations in which he promised the court to appear on certain dates and to submit to the courts jurisdiction with respect to proceedings involved. Will you tell me how often this did occur in fact?

Mr. GOLDFARB. There is attached as exhibit two written stipulations in which he agreed to appear, and there is one other alleged, but I have no evidence of it, in another action.

Mr. GEOGHEGAN. These two stipulations which you refer to were signed by Mr. Powell himself in addition to his attorneys?

Mr. GOLDFARB. I think so.

Mr. MOORE. Mr. Chairman, I have a followup question in this particular area.

Do I understand that these stipulations came about by reason of the fact that Mr. Powell was required to appear on a certain day and came in, and stipulated that for some reason or another, he couldn't appear on that day, and that another day was set and he agreed to present himself at the future day, is that not the character of these stipulations?

Mr. GOLDFARB. My understanding, Mr. Moore, is that he was not honoring subpenas. I think he was claiming immunity to the process. And in two incidents he did agree and signed stipulations that following up on one or another of the subpenas that arose, that he would appear on a certain date.

Mr. PATTERSON. Mr. Goldfarb, those two incidents only occurred after proceedings were pending before the appellate division in connection with court orders requiring him to appear at an earlier date, is that not correct?

Mr. GOLDFARB. I believe that is so, yes, sir.

Mr. PATTERSON. And did Mr. Powell appear on either of the dates which he promised to appear?

Mr. GOLDFARB. Are you referring to the two stipulations?

Mr. PATTERSON. In the stipulations?

Mr. GOLDFARB. He did not appear on those dates.

Chairman CELLER. You have been referring to some exhibits. Have you submitted those exhibits?

Mr. GOLDFARB. They are being stapled up and thermofaxed. They are judicial opinions. We had some difficulty getting copies made.

Chairman CELLER. Those exhibits then will be placed in the record.

Mr. GEOGHAGEN. These are opinions, Mr. Chairman, and orders of the New York courts obtained from various sources in New York.

(Document follows:)

EXHIBIT No. 1

43 MISC. 2D 314

ESTHER JAMES, PLAINTIFF, v. ADAM C. POWELL, JR., DEFENDANT

Supreme Court, Special Term, New York County, May 8, 1964

Contempt—order of arrest—defendant judgment-debtor, who failed to appear for examination pursuant to order of contempt is ordered arrested but arrest will defendant while House of Representatives, of which he is member, is in session—defendant waived his constitutional immunity from arrest by failing to appear and by consenting when House was not in session, to appear on date when House was in session—same judgment, even though reduced, was in effect when defendant was in contempt—defendant could have exercised right to refrain from giving evidence tending to incriminate him on his examination.

1. An order of arrest will issue against defendant judgment-debtor, a member of Congress, based on defendant's failure to appear on May 1, 1964 for examination pursuant to a contempt order, the order of arrest being stayed while the House of Representatives is in session and defendant is a member of that body. Defendant failed satisfactorily to excuse or explain his misconduct and such misconduct was calculated to and actually did defeat, impair, impeded and prejudice the rights and remedies of plaintiff judgment-creditor.

2. A member of the House of Representatives is privileged from arrest during his attendance at sessions and in going to and returning from same. But where defendant was held in contempt and fined for failure to appear pursuant to a contempt order on a day when the House was not in session, and he stipulated in writing that he would appear on a day fixed by the court if the judgment against him were affirmed conditionally, and the court, upon conditional affirm-

ance, fixed a day when Congress was in session, defendant waived his constitutional immunity and his failure to appear on the last day fixed, even though Congress was in session, is a contempt warranting defendant's arrest.

3. When the judgment against defendant was conditionally affirmed, the amount of the jury's verdict was reduced as excessive. The original judgment stood, although in reduced amount and defendant never ceased to be a judgment-debtor at any stage of the proceedings. The contempt order related to the same judgment and not to a new judgment.

4. Defendant's constitutional right to refuse to give evidence which might tend to incriminate him could have been exercised at his examination.

Raymond Rubin for plaintiff. *George Donald Covington* for defendant.

THOMAS C. CHIMERA, J. This is an application for an order of arrest of the defendant, judgment-debtor, based on a contempt order of this court arising from the willful refusal or unwillingness of defendant to submit to examination in proceedings to enforce a money judgment.

It appears that a subpoena duces tecum returnable September 20, 1963 was served by substituted service upon defendant after four attempts at personal service. Upon defendant's failure to honor said subpoena, plaintiff moved to punish him for contempt. In that proceeding the service was traversed and the matter was referred to a Special Referee to hear and report with recommendations. By order of Mr. Justice MARKEWICH, the said Special Referee's report finding proof of due service was confirmed. The traverse was overruled and the examination was ordered for the fifth day next succeeding service of a copy of the said order with notice of entry, which order provided *inter alia* that defendant could purge himself of his contempt by paying the entire judgment or by appearing for examination on a new scheduled date. The order of Mr. Justice MARKEWICH was appealed and the appeal suspended on stipulation of the parties, dated December 31, 1963, signed by defendant in person and by the attorneys for both parties, until the disposition in the Appellate Division, of an appeal from the judgment itself. The stipulation provided, among other things, that within 15 days after service of a copy of the order affirming or *conditionally affirming* such judgment, defendant would appear for such examination at a time and date to be agreed upon by both counsel and, in the absense of agreement, to be fixed by Special Term.

The appeal from the judgment resulted in a "conditional affirmance". The attorneys failed to agree on the time and date of the examination provided for and the matter was brought to Special Term where Mr. Justice BACKER, on March 27, 1964, finally set the examination for May 1, 1964 at Special Term, Part II, at 10:00 a.m., unless otherwise stipulated by the parties.

Defendant thereafter applies for a stay of the examination and this application was denied on April 29, 1964 by Mme. Justice AMSTERDAM.

The defendant failed to appear for examination on May 1, 1964.

In his memorandum defendant raised six points, four of which are cumulative or wholly unworthy of comment. The other two resist this application on the grounds (1) of constitutional privilege and in any event that his conduct is excusable; (2) that there is in the record no order fining the defendant the amount of the judgment entered against him and no operable contempt order upon which, for its validity, an arrest order must be based.

Section 6 of article I of the Constitution of the United States, insofar as applicable to this matter, reads as follows: "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".

Where *arrest* is concerned, except in criminal cases, the provision is abundantly clear and there is ample judicial support for this proposition (*Williamson* v. *United States*, 207 U.S. 425; *Long* v. *Ansell*, 293 U.S. 76, and cases cited).

And there is substantial support too, judicial and otherwise, for the proposition that a legislator is privileged from civil process, directing him to appear and attend in a civil matter during his attendance at a legislative body and in going to and returning from same, the disobedience of which is punishable by body execution (see *People ex. rel. Hastings* v. *Hofstadter*, 258 N.Y. 425 and authorities therein cited).

To paraphrase Lord MANSFIELD, quoted in *Williamson* (*supra*, p. 439), the rationale of the constitutional fiat, the judicial utterances and the respected

writing above cited, the wisdom of these conclusions is bottomed on the necessity for members of Legislatures to be free in their persons in cases of civil suits, for there may come a time when the safety and welfare of the Nation or the State may depend upon their attendance in Congress or the Legislature as the case may be.

Jefferson put it differently but pointedly: "This privilege from arrest, privileges of course against all process, the disobedience to which is punishable by an attachment of the person, * * * and with reason, because a member has superior duties to perform in another place." (Quote from *Matter of Potter*, 55 Barb. [appendix] 625, 628.)

These are concepts easily acceptable and it would not be difficult to accept, too, the conclusion that a Congressman *subject to call* is either in attendance, going to or returning from Congress, so long as that body is in session, whether the Congressman is busy with important committee work or basking in the sunshine of Puerto Rico on a given day. The magic words appear to be "while congress is in session". Happily, although this conclusion offers the possibility of an intriguing dialogue, it will not be necessary to this opinion because the decision of this court must be based on other considerations.

We may not lose sight of the fact that the contempt of court charged here is related back to the subpoena duces tecum, through a tortuous course, ruled to have been properly served upon defendant; to an unexplained refusal to appear on the date mentioned therein; to an order adjudging defendant in contempt, fining him the full amount of the judgment as of that time and generously permitting defendant to purge himself by paying the fine or submitting to the examination on a new date fixed; to an appeal from that order and a *suspension* of that appeal on terms substantially dictated by defendant, stipulated over his signature and sealed with his written promise to submit to examination if the appeal from the judgment itself would result in defendant's disfavor in whole or in part—*all of these acts and proceedings taking place during a time when Congress was not in session.*

The end result of all this was that another new date subsequently had to be set for the examination, this date falling within a period when Congress *was* in session.

My learned colleague, Mme. Justice AMSTERDAM, was asked to say that defendant, who solemnly agreed to appear for examination when Congress would be in session, *as a condition for a stay of an examination scheduled on a day during which Congress was not in session*, must be allowed to plead congressional immunity. She refused to say so on the ground that defendant had waived his constitutional immunity "if any in fact ever existed".

On this application I am asked to rule that the constitutional immunity in question may not be waived by defendant, that it belongs to the people and, by extension, to Congress. It is not difficult to come to this conclusion. Be that as it may, such a conclusion will give no comfort to defendant because the acts of this defendant during the period in which he could assert no such privilege and for which he was already found in contempt and fined, are the acts that he must answer for.

In his affidavit submitted in answer to the moving papers, defendant deposes that his written stipulation to appear to testify on May 1, 1964 was made in good faith but that he "did not intend, nor did (he) contemplate that this agreement would bind (him) to the performance of an act which, if consummated would constitute a gross violation of (his) duties in Congress and to the nation." And he goes on to further depose that he is Chairman of the Committee on Education and Labor of the House of Representatives which is considering very important legislation and that "the President of the United States has requested of (him) that the work of the committee concerning the Economic Opportunities Act be expedited because of its urgency * * * and that (he) and members of the committee have been so engaged *almost* daily for the past several weeks" (emphasis ours).

The suggestion that if defendant had honored his "word" on May 1, 1964, it would have constituted "a gross violation of (his) duties in congress and to the nation" is fatuous. And his bland assertion that he neither intended nor contemplated that his "word" would bind him to the performance of such an act, is a contemptuous acknowledgment that he never intended to keep his word from the very beginning.

Finally, defendant's attempt to cloak his committee's activities with the character of a presidential command performance *to the exclusion of all personal freedom and obligation*, and, his intimation that the President of the United States would encourage defendant's wanton disregard of the authority of this or of any other court is beneath the dignity of a man in high public office.

We come now to the second basis for defendant's resistance to the application herein.

I find it difficult to believe that counsel for defendant does not know the implications of the decision of the learned Appellate Division reducing, as excessive, the original judgment entered on the verdict of the jury at Trial Term. It is sufficient to say that the original judgment stands; albeit for a lesser amount, and that defendant never ceased to be a judgment-debtor at any stage of the proceedings under attack. Moreover, in the absence of a stay of proceedings pending final appeal to the Court of Appeals, such appeal does not alter defendant's status as a judgment debtor subject to examination in supplementary proceedings.

The following is the full argument set forth under "Point Three" of defendant's brief: "The record discloses the existence of a contempt order which was settled and abandoned by mutual agreement of the parties. That contempt order related to a prior judgment and the failure to appear pursuant to a subpoena. The plaintiff's instant aggrievement relates to the failure of defendant to have obeyed a court order requiring defendant to appear in court on May 1, 1964 to be examined. For her relief, on account of said default, plaintiff is relegated to the remedy of moving to punish defendant for disobeying the Court's order. Since she has not so moved, a motion to arrest defendant is premature. Section 5104, C. P. L. R., Section 5251."

Defendant cannot be so naive! The stipulation dated December 31, 1963 *conditionally* provides for the settlement and abandonment of the contempt order dated December 27, 1963 (MARKEWICH, J.). The contempt order, *supra*, does not relate to a prior judgment. There is only one judgment in this case. A modification on appeal does not constitute a second judgment. Plaintiff's instant application relates to the contempt order, *supra*, of which the subsequent order dated March 27, 1964 (BACKER, J.), requiring defendant to appear in court on May 1, 1964, is a mere extension, expressly intended to substitute for the original examination date fixed in the contempt order, *supra*, and is the critical condition for the proposed settlement and abandonment of the contempt order in question.

Consider this language of the stipulation itself:

Par. 1. "That the appeal from the order of Mr. Justice Arthur Markewich dated December 27, 1963, be and the same hereby is *suspended* pending the determination of the main appeal herein from the judgment" etc.

Par. 9. "*Upon compliance with the terms of this stipulation by Adam Clayton Powell, Jr.* without conceding the fact or valid finding of such contempt, it is agreed and consented to that Adam Clayton Powell, Jr., be deemed purged of the contempt order dated December 27, 1963, and that the fine be waived in all respects" (emphasis supplied).

An examination in supplementary proceedings need not be an extended affair unless a judgment debtor is evasive and unco-operative.

It was not a valid argument to say, too, as defendant did, that an examination would have compelled him to give evidence which might tend to incriminate him. All of his constitutional rights could have been asserted on the examination itself and a Justice at Special Term would be there to evaluate and to rule upon them.

Defendant has failed satisfactorily to excuse or explain his misconduct and such misconduct was calculated to and actually did defeat, impair, impede and prejudice the rights and remedies of the plaintiff-judgment-creditor.

Moreover, 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 a 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.

The fine for his contempt has already been fixed in the order of December 27, 1963. The intention of Mr. Justice MARKEWICH is clear and the amount of the fine must adjust to the condition imposed by the Appellate Division.

There is, in my judgment, no foreseeable day on which we may expect this man to appear on his own, so that only one course is open to the court.

An order of arrest shall issue with provision for a stay until the current session of the House of Representatives stands in recess.

ORDERED that execution of this order shall be stayed while the U.S. House of Representatives is in session and defendant is a member of that body.

EXHIBIT No. 2

Appellate Division—First Judicial Department

Stipulation

ESTHER JAMES, PLAINTIFF-RESPONDENT

against

ADAM CLAYTON POWELL, JR., DEFENDANT-APPELLANT

IT IS HEREBY STIPULATED AND AGREED AS FOLLOWS

1. That the appeal from the Order of Mr. Justice Arthur Markewich dated December 27, 1963, be and the same hereby is suspended pending the determination of the main appeal herein from the judgment dated April 5, 1963; and

2. That upon the decision of the herein court, upon the appeal from the aforementioned judgment, the appeal from the aforementioned order of December 27, 1963, shall automatically be discontinued; and

3. That within fifteen days after service of a copy of the order affirming and/or conditionally affirming said judgment, Adam Clayton Powell, Jr. agrees to appear to be examined in supplementary proceedings as a judgment debtor at Special Term, Part II, of the Supreme Court of the State of New York, County of New York, at a time of day and date agreed upon by both counsel, or at such other place as agreed to by both counsel, and in the absence of agreement as may be fixed by Special Term; and

4. Pending the service of a copy of the final order on said appeal in this court, all actions or proceedings in supplementary proceedings herein against Adam Clayton Powell, Jr. be and the same hereby are stayed, but, the stay shall not apply to the service of subpeonas, restraining orders, filing of lis pendens or commencement of actions by service of summons and, or complaint against third parties only; and

5. That no application be made to adjourn the argument and or submission of the appeal herein; and

6. That if the judgment be reversed and the complaint dismissed or a new trial ordered unconditionally all proceedings by the plaintiff herein in supplementary proceedings shall automatically be terminated; and

7. That in respect to Third Party subpoenas, the plaintiff will agree to adjourn the examinations until the determination of the appeal herein in the event a request is made by the third party; and

8. That pending the determination of the appeal herein, and in the event of an affirmance and or conditional affirmance of the judgment herein, Adam Clayton Powell, Jr. hereby agrees not to make or cause to be made or permit to be made any transfers and or assignments of any of his rights in and unto any property; and

9. Upon compliance with the terms of this stipulation by Adam Clayton Powell, Jr., without conceding the fact or valid finding of such contempt, it is agreed and consented to that Adam Clayton Powell, Jr. be deemed purged of the Contempt Order, dated December 27, 1963, and that the fine be waived in all respects; and

10. That the herein stipulation is conditioned upon and will be duly executed by Adam Clayton Powell, Jr., and a copy thereof delivered to the attorney for the plaintiff no later than 4:00 P.M. on Friday, January 3, 1964, but the attorney for the defendant agrees to notify the attorney for the plaintiff prior to noon on Friday, January 3, 1964, that said stipulation has been duly executed by Adam Clayton Powell, Jr.

Dated: December 31, 1963.

RAYMOND RUBIN,
Attorney for Plaintiff-Respondent.
GEORGE DONALD COVINGTON,
Attorney for Defendant-Appellant
Adam Clayton Powell, Jr.

State of New York, County of New York

On the 2nd day of January, 1964, before me personally appeared Adam Clayton Powell, Jr., to me known and known to me to be the person described in, and who executed, the foregoing instrument, and acknowledged that he executed same.

G. DONALD COVINGTON,
Notary Public.

EXHIBIT No. 3

20 APP. DIV. 2d 689

(February 6, 1964)

1 ESTHER JAMES, Respondent, v. ADAM C. POWELL, JR., Appellant.—Judgment in favor of plaintiff unanimously reversed, on the law, on the facts and in the exercise of discretion, the verdict vacated and a new trial granted, with costs to defendant-appellant, unless plaintiff stipulates to accept, in lieu of the award by verdict, $11,500 as compensatory damages and $35,000 as punitive damages, in which event, the judgment is modified to that extent and as so modified, affirmed, with costs to defendant-appellant. In this libel action, it is evident that the jury verdict is grossly excessive in the award for punitive damages and that a verdict in excess of $35,000 for such damages is not warranted by the record. Settle order on notice. Concur—Botein, P. J., Breitel, Valente, McNally and Bastow, JJ.

EXHIBIT No. 4

14 N.Y. 2D 881

ESTHER JAMES, RESPONDENT, v ADAM C. POWELL, JR., APPELLANT

Submitted June 3, 1964; decided July 10, 1964.

Libel and slander—slander—in action to recover damages for allegedly slanderous statements concerning plantiff, made by defendant, Member of Congress, during television interview, jury rendered verdict in favor of plaintiff for compensatory and punitive damages—Appellate Division reduced amount awarded for punitive damages, stating that verdict in excess of reduced amount was not warranted by record—contentions by defendant that Special Term committed reversible error when, in prior order, it struck alleged defense of qualified privilege, that plaintiff failed to prove her indentity with person mentioned by defendant during telecast, that trial court erred in permitting certain testimony as to plaintiff's good character, in making certain comments during trial and in its charge, and that verdict was excessive—order of Appellate Division affirmed.

James v. *Powell*, 20 A D 2d 689, affirmed.

APPEAL from an order of the Appellate Division of the Supreme Court in the First Judicial Department, entered March 5, 1964, which (1) reversed, on the law and the facts and in the exercise of discretion, a judgment of the Supreme Court in favor of plaintiff, entered in New York County upon a verdict rendered at a Special and Trial Term (THOMAS A. AURELIO, J.), and (2) granted a new trial unless plaintiff stipulated to reduce the amount of the verdict from $11,500 in compensatory damages and $200,000 in punitive damages to $11,500 in compensatory damages and $35,000 in punitive damages. Plaintiff did so stipulate and the judgment of the trial court was reduced accordingly and, as reduced, affirmed. The action was commenced to recover damages for allegedly slanderous statements concerning plaintiff, made by defendant, a Member of Congress, on March 6, 1960 while he was being interviewed on a commercially sponsored weekly television program known as "Between The Lines" and telecast over station WNTA which was owned by the NTA Television Broadcasting Corp.

During the said program defendant stated, among other things, that "there is a woman named Esther James who is a bag woman for the Police Department in Washington Heights". The Appellate Division stated that a verdict in excess of $35,000 for punitive damages was not warranted by the record. In the Court of Appeals defendant argued that Special Term committed reservible error when, in an order dated July 6, 1962, it struck an alleged defense of qualified privilege from his answer; that plaintiff failed to prove her identity with the person mentioned by defendant during the telecast; that the trial court committed reversible error in permitting certain testimony as to plaintiff's good character; that the trial court committed reversible error when, after sustaining an objection to a question and upon being asked by defense counsel to "please admonish the jury to completely disregard that", it stated "Yes; disregard that. It is the question plus the answer that makes the evidence in the case"; that the trial court committed prejudicial error in its charge regarding failure of a party to take the stand and in various comments made by it during the trial, and that the verdict was excessive. Plaintiff argued that, assuming defendant had the right to raise the defense of qualified privilege, the record established that the charges made by him against plaintiff during the telecast had no basis and were recklessly made to a large group of viewers; that, accordingly, there was a sufficient showing of malice to offset any possible claim of qualified privilege; that plaintiff was sufficiently identified as the person referred to by defendant during the telecast; that no error was committed in the admission of testimony as to plaintiff's character; that, no exception having been taken to the charge nor to any refused request to charge, no question relating thereto could be raised on the present appeal, and that there was no basis for a further reduction of the verdict.

William C. Chance, Jr., for appellant.

Raymond Rubin for respondent.

Order affirmed, with costs; no opinion.

Concur: Chief Judge DESMOND and Judges DYE, FULD, VAN VOORHIS, BURKE, SCILEPPI and BERGAN.

EXHIBIT No. 5

379 U.S. 966

January 18, 1965

No. 613. POWELL *v.* JAMES. Court of Appeals of New York. Certiorari denied. *Henry R. Williams* and *George D. Covington* for petitioner. *Raymond Rubin* for respondent.

EXHIBIT No. 6

24 APP. DIV. 2d 428

(June 17, 1965)

2 ESTHER JAMES, Appellant,, v. ADAM C. POWELL, JR., et al., Respondents.—Appeal from order entered March 31, 1965, granting defendants' motion to vacate a default judgment, unanimously dismissed, without costs or disbursements. The order granted the motion on condition defendants agreed to appear and answer and pay plaintiff $84.43 disbursements incurred. We are not concerned wth the remainder of the order which was predicated on defendants' failure to stipulate to appear and answer and pay the disbursements. The record shows that money orders for the $84.43 were received by the attorney for plaintiff and deposited in his bank account and that defendants did appear and answer. The acceptance and retention of the $84.43 constituted a waiver of plaintiff's right to appeal from the order. (*Ocean Road Terrace Co-op. Apts. v. Necko Operating Corp.*, 20 A D 2d 660; *Mikaelian v. Aldrese*, 19 A D 2d 604; *Wesson v. Dullzell*, 15 A D 2d 744; *James v. Quimet*, 283 App. Div. 819; *Brenner v. Steven Plumbing Supply Co.*, 279 App. Div. 1087; *Clair Marcelle, Inc. v. Agfa Ansco Corp.*, 250 App. Div. 508.) The attempt to refund the disbursements theretofore accepted came too late. Accordingly, the appeal must be dismissed. Concur—Rabin, J. P., Valente, McNally, Eager and Steuer, JJ.

EXHIBIT No. 7

CITE AS 266 N.Y.S. 2D 245

25 A.D.2d 1

ESTHER JAMES, PLAINTIFF-RESPONDENT, v. ADAM CLAYTON POWELL, JR., AND YVETTE POWELL, DEFENDANTS-APPELLANTS

Supreme Court, Appellate Division, First Department, Jan. 18, 1966.

Action for interference with collection of judgment. The Supreme Court, New York County, John L. Flynn, J., entered an order on September 29, 1965 denying motion of two defendants to dismiss the complaint, and such defendants appealed. The Appellate Division, Steuer, J., held that an uncollected judgment is not a bar to recovery from judgment debtor for tortious conspiracy to interfere with enforcement of the judgment.

Affirmed.

Witmer and Stevens, JJ., dissented.

1. Torts 13

Under common law of New York, whoever by improper means interferes with execution of a judgment is liable for damage caused to judgment creditor.

2. Torts 13

The Debtor and Creditor Law does not affect common-law right of recovery for tortious interference with collectibility of judgment. Debtor and Creditor Law, § 270 et seq.

3. Judgment 590(4)

An uncollected judgment is not a bar to recovery from judgment debtor for tortious conspiracy to interfere with enforcement of the judgment. CPLR § 5014, subd. 3.

4. Damages 115
Judgment 892

The measure of damages for tortious interference with collectibility of judgment is not amount of judgment, but the loss or expense caused by the interference, which could embrace the judgment itself, in which event satisfaction of the judgment so obtained would operate to satisfy the original judgment.

Henry R. Williams, New York City, for defendants-appellants.

Raymond Rubin, New York City (Raymond Rubin and Joseph A. Wolfert, New York City, on the brief), for plaintiff-respondent.

Before McNALLY, J. P., and STEVENS, EAGER, STEUER and WITMER, JJ.

STEUER, Justice.

Plaintiff sued four defendants: Adam and Yvette Powell, and Gonzalo and Carmen Diago. The first cause of action is against defendants Powell only. It is that cause of action which is the subject of the motion to dismiss.

The allegations of this cause of action are that plaintiff obtained a judgment against defendant Adam Powell in the sum of $46,739.35, which judgment is unsatisfied except to the extent of $1,557.32; that at the time of the entry of judgment said defendant owned real estate in Puerto Rico of a value in excess of the amount of the judgment; and that thereafter, through the defendant Yvette Powell as attorney-in-fact, he transferred the property to the defendants Diago for the purpose of hindering and defrauding the plaintiff in the collection. It is further alleged that, as a consequence plaintiff has been unable to collect her judgment. We take these allegations to mean that the defendants connived to make the purported transfers with the intent and object of depriving plaintiff of the opportunity to issue execution against the property. We are not now concerned with whether plaintiff will be able to prove such an intent or purpose.

The argument made on behalf of the moving defendants makes no distinction between them. In brief, this argument is that no relief can be had because, under article 10, Debtor and Creditor Law, plaintiff, having no lien on the property conveyed, has no cause of action. However, while the complaint is no model of the pleader's art, it is quite clear that relief is sought not under the statute but at common law.

[1] At common law, whoever by improper means interfered with the execution of a judgment was liable for the damage he caused to the judgment creditor

(Mott v. Danforth, 6 Watts 304 (Pa.); Collins v. Cronin, 117 Pa. 35, 11 A. 869). The right of action has been recognized and discussed at length by the United States Supreme Court in Findlay v. McAllister, 113 U.S. 104, 5 S. Ct. 401, 28 L. Ed. 930, and is undoubtedly part of the common law of this state (Quinby v. Straus, 90 N.Y. 664). In the *Quinby* case an action for damages was held maintainable against a judgment debtor and his attorney who conspired to put chattel mortgages on certain of the debtor's personalty to prevent those items from being subject to execution. Whatever question may have arisen can be traced to the following sources: cases dealing with the rights of the judgment creditor against transferees of property from the judgment debtor; the effect of the Debtor and Creditor Law; and the paucity of authority, particularly recent authority, on the subject.

The *Quinby* case in this state was followed by Braem, et al. v. Merchants' National Bank, 127 N.Y. 508, 28 N.E. 597. In that case a judgment debtor to the plaintiff confessed a judgment in favor of the defendant. The latter was also a bona fide creditor of the debtor. The defendant succeeded in issuing execution before the plaintiff did. The court held that, as defendant was a legitimate creditor, it had a perfect right to proceed against the debtor, and the fact that the debtor cooperated did not affect its right and denied recovery. In other words, any interference with plaintiff's effort to collect on the judgment was not tortious. And the opinion points out (127 N.Y. p. 514, 28 N.E. p. 598) that were this not the fact the rule of the *Quinby* case would apply. And it has continued to be the law that where the recipient of property from a judgment debtor has come by it honestly, no common law cause of action lies against him (Northville Dock Corp. v. Aller, 15 N.Y. 2d 498, 254 N.Y.S. 2d 109, 202 N.E. 2d 556). That this has no bearing and certainly no adverse effect on the proposition that a cause of action lies for a tortious interference with the collectibility of a judgment appears clearly from the discussion in Findlay v. McAllister, supra. The court dismissed its earlier decision, Adler v. Fenton, 24 How. [65 U.S.] 407, 16 L. Ed. 696 a case generally relied on where recovery is denied following a transfer by a debtor. Mr. Justice Woods pointed out that as in the *Adler* case it was found that there were no tortious acts by the transferees, that decision did not preclude recovery where such acts appear.

[2] That the Debtor and Creditor Law does not affect the relief sought in this complaint is quite clear. The purpose of the relevant sections is to provide complete and speedily relief to a creditor against a fraudulent debtor. It increases rather than restricts the instances where relief may be had (see American Surety Co. of New York v. Conner, 251 N.Y. 1, 7, 166 N.E. 783, 785, 65 A.L.R. 244). And it specifically provides (§ 280) that in any case not provided for, the rules as to the effect of fraud shall govern. By no means can this statute be interpreted to take away from a creditor a remedy he had at common law.

Lastly, we are required to take note of a situation which applies to the defendant Adam Powell alone. It is the rare and exceptional case where a judgment creditor who has been frustrated in his efforts to collect his judgment will again sue that debtor in a further effort to collect the same debt. Generally, it would be a futile gesture, as the creditor already has what he would hope to gain by the suit, namely, a judgment. And there would be little reason to believe that he could obtain satisfaction of the second judgment where he had failed in regard to the first. However, the fact that such a procedure is for very good reason seldom initiated neither means nor implies that it may not be done. In *Quinby*, supra, recovery against the judgment debtor as one of the conspirators in a tortious conspiracy to interfere with the execution was allowed.

[3] It is true that there are dicta in two cases (Goldberg v. Korman, 257 App. Div. 990, 13 N.Y.S. 2d 708, and Kimmelsman v. Bishop, 251 App. Div. 724, 295 N.Y.S. 601) that a second recovery is not permissible. We believe these to be unfortunate expressions. The situation is not to be confused with two pending actions for the same relief. There is, of course, a distinct and absolute prohibition against collecting on two judgments for a single debt. But there appears to be no valid reason why an uncollected judgment should be a bar. The holder of an unsatisfied judgment is expressly allowed to sue on the judgment itself wherever he can show a good reason for so doing (CPLR 5014, subd. 3).

[4] In any event, this is neither a suit on the judgment nor for the same relief, and not even specifically to collect it. It is for damages resulting from a tort. The amount of the judgment is not the measure of the damages; it is

rather the loss or expense caused by the interference (Penrod v. Mitchell, 8 Serg. & R. 522 (Pa.)). Conceivably, this could embrace the judgment itself (see Quinby v. Strauss, supra), in which event satisfaction of the judgment so obtained would also operate to satisfy the original judgment.

The order denying the motion to dismiss the first cause of action should be affirmed.

Order entered on September 29, 1965, denying defendants' motion to dismiss the complaint affirmed with $30 costs and disbursements to abide the event.

All concur except STEVENS and WITMER, JJ., who dissent in an opinion by WITMER, J.

WITMER, Justice (dissenting):

I cannot agree that a cause of action at law exists in this State in favor of a judgment creditor, having no lien on specific property, against his judgment debtor and another for disposing or aiding in the disposition of the judgment debtor's property so as to hinder and impede, and possibly defeat, collection of the judgment. There are two aspects of the cause of action before us, to wit, (1) the action by the judgment creditor against the defendant Adam Clayton Powell, Jr., the judgment debtor, and (2) the action by the judgment creditor against the co-defendant wife, Yvette Powell. Of course, the statute (CPLR 5014) expressly forbids an action upon a money judgment by the judgment creditor against his judgment debtor, except for limited purposes not here pertinent. Thus, as the majority holds, the action is not specifically to collect the judgment, but it is for damages many times in excess of the amount of the judgment, to be measured, say the majority, by the loss or expense caused by the interference, and conceivably embracing the judgment itself, "in which event satisfaction of the judgment so obtained would also operate to satisfy the original judgment."

It is not too early in this discourse to point out practical difficulties in that ruling, and to ask what happens in the event of partial satisfaction of the new judgment, assuming (1) that the payment is less than the original judgment and that the new judgment includes the judgment creditor's special losses and the expenses of securing it, (2) that the payment is in the same amount as the original judgment, but the new judgment includes the judgment creditor's losses and expenses of obtaining it, or (3) that the payment is greatly in excess of the original judgment but not a complete satisfaction of the new judgment? Legislation or judicial decision could make provision for the measure of damages and the effect of payments (see General Obligations Law, § 15–103); but the present holding leaves much in doubt.*

The law of this State and many other states has long denied a right of action at law by a general creditor or a judgment creditor, having no lien on specific property, against his debtor or others for dispositions of the detor's property with intent to defraud creditors. (Adler v. Fentor, 65 U.S. (24 How.) 407, 16 L.Ed. 696 (1860); Northville Dock Corp. v. Aller, 15 A.D.2d 947, 226 N.Y.S.2d 313, affd. 15 N.Y.2d 498, 254 N.Y.S.2d 109, 202 N.E.2d 556; Braem v. Merchants' Nat'l Bank, 127 N.Y. 508, 28 N.E. 597, affg. 53 Hun 638, N.L.S. 846; Kaspin v. Thaw, 262 App.Div. 861, 28 N.Y.S.2d 461; Goldberg v. Korman, 257 App.Div. 990, 13 N.Y.S.2d 708; Kimmelsman v. Bishop, 251 App.Div. 724, 295 N.Y.S. 601; Hurwitz v. Hurwitz, 10 Misc. 353, 31 N.Y.S. 25; Sussman v. Sussman, Sup., 115 N.Y.S.2d 252, n. o. r.; Bradford v. Sonet, Sup., 64 N.Y.S.2d 876, n. o. r.; Bartol v. Bennett, Sup., 56 N.Y.S.2d 314, n. o. r.; Perkins v. Becker's Conservatories, Inc., 318 Mass. 407, 414, 61 N.E.2d 833; Moody v. Burton, 27 Me. 427 (1847); Lamb c. Stone, 11 Pick. 527 (Mass., 1831); and see Findlay v. McAllister, 113 U.S. 104, 114, 5 S.Ct. 401, 28 L.Ed. 930; 24 N.Y. Jur., Fraudulent Conveyances, § 128; N.Y.Jur., Conspiracy, § 14; 15 C.J.S. Conspiracy § 9 b; Anno-Liability for Influencing Preference, 112 A.L.R. 1250.) These decisions are founded upon reason and policy, particularly well set forth in Adler v. Fenton, supra, Hurwitz v. Hurwitz, supra, and Moody v. Burton, supra. In Moody v. Burton, supra, at pp. 432–435, the Court reasoned in part as follows:

"Stripped of the allegations describing the manner, in which the alleged fraud was perpetrated, the declaration presents the common case of a fraudulent

*NOTE.—For considerations as to the measure of damages under the majority holding see Mott v. Danforth, 6 Watts 304, 308 [Pa. 1837] and Penrod v. Mitchell, 8 Serg. & R. 522, 525 [Pa. 1822]. In the *Penrod* case, at p. 525 the court said, "If the value of the property assigned were not the standard, there would be no reason why damages beyond the amount of the judgment might not be given; which I apprehend, could not be done, even if the value were of greater amount than the judgment." And see Moody v. Burton, 27 Me. [1847] 427, 434–435.

conveyance of property, made for the purpose and with the intent to defraud creditors.

"Creditors may consider such conveyances to be unlawful and void, and may cause the property to be applied to the payment of their debts by the use of any of the different legal and equitable processes applicable to their case and afforded by the law for that purpose. Some one of those processes has been found to be well suited to such a purpose, and by a proper selection and use of it, a creditor upon satisfactory proof may obtain payment from property so conveyed, or from its proceeds in the hands of a fraudulent holder.

"Omitting the selection of any of the long established remedies and the usual course of procedure, it is now proposed by an action on the case to seek, not the property fradulently conveyed or its proceeds, but a judgment against those who were parties to the fraud, for the amount of damages, which the plaintiff can prove, that he has suffered by reason of such fraudulent conveyance. If such an action can be maintained in this, it may in very other case, where a fraudulent conveyance has been made of real or personal property with an intention to defraud creditors. If such an action upon such proof can be maintained by any one, it may be also by each creditor. There is nothing to give one a right superior to that of another. * * * The damages in such actions are not measured by proof or consideration of the benefit which the wrongdoer may have derived from his wrongful or unlawful act. They are limited and measured only by the injury, which his conduct has occasioned. If therefore the principles which regulate this form of action are to be regarded and preserved, all creditors, who have been injured by a fraudulent conveyance of their debtor's property, must have an equal right to recover damages to the extent, to which each has thereby been a loser. And the effect upon a party receiving such a conveyance must be to subject him to damages in no degree regulated by the amount of property received, and limited only by the injury occasioned, it may be, to very numerous creditors similarly situated and injured. To place him in such a position the whole law regulating the rights and liabilities arising out of proof, that one has received a conveyance of a debtor's property with an intention to defraud his creditors, must be changed. That law, as it has been administered in civil actions does not punish a person for becoming a party to such a fraud. Does not punish the debtor and vendor, who has thus conveyed his property. It only deprives the purchaser of all benefit to be derived from it, by declaring his title thus obtained to be void, when it may injuriously affect the rights of creditors. It leaves the moral turpitude and other injurious effect upon creditors and upon society to be punished, as the sovereign power may provide. To allow each creditor to maintain an action on the case against a fraudulent purchaser to recover damages, supposing them to be capable of legal estimation, would be to make use of a civil action for the recovery of sums, in the nature of a penalty, to the full amount of all, which could be recovered. * * * A debt due from one person cannot be satisfied by the recovery of damages from another person, unconnected with and a stranger to it, without some statute provision. The creditor would recover damages in satisfaction for an injury suffered, not on account of a debt due and in satisfaction of it."

In addition to the above considerations the courts have found that there can be no satisfactory, workable measure of damages in an action of this nature. Until the creditor obtains a lien upon specific property of his debtor, he can have no more claim to an asset of the debtor than any other creditor. The asset may be lost to the debtor and the reach of his creditors in innumerable ways. What is the measure of plaintiff's damages resulting from the defendants' conveyance in the present case? She has lost only one chance to secure payment. She may still be able to reach the conveyed asset, if indeed it was fraudulently conveyed. Thus, the plaintiff's damage would be too uncertain and speculative to be the subject of computation and award. In any event the creation of such a cause of action should be done, if at all, by the Legislature. In Adler v. Fenton, supra, 65 U.S. 407, at 413, 16 L. Ed. 696, the court said: "In the absence of special legislation, we may safely affirm, that a general creditor cannot bring an action on the case against his debtor, or against those combining and colluding with him to make dispositions of his property, although the object of those dispositions be to hinder, delay and defraud creditors." And see, Moody v. Burton, quoted supra.

The majority place much reliance upon Quinby v. Strauss, 90 N.Y. 664. That case was carefully considered in Braem v. Merchants' Nat'l Bank, supra, 53

Hun 638, 6 N.Y.S. 846, 849–840, affd. 127 N.Y. 508, 28 N.E. 597, and in Hurwitz v. Hurwitz, supra, 10 Misc. 353, 358–359, 31 N.Y.S. 25, 28, and in the latter opinion it was pointed out that the judgment creditor in the *Quinby* case had obtained a lien before the defendants interfered with the property. Herein, in my judgment, lies the crux of the present discussion and the point which leads the majority to an erroneous conclusion. I think it clear that an action at law, as well as in equity, will lie in behalf of a judgment creditor against his judgment debtor and others for fraudulently disposing of an asset upon which the judgment had become a lien, or by any lienor against those who damage his security (Quinby v. Strauss, supra; Van Pelt v. McGraw, 4 N.Y. 110; Yates v. Joyce, 11 Johns.R. 136; Findlay v. McAllister, 113 U.S. 104, 111, 5 S. Ct. 401, 28 L. Ed. 930; Adler v. Fenton, supra, 24 How. pp. 410–412, 16 L. Ed. 696; Moody v. Burton, supra, 27 Me. 427, 435–436). The same principle has been applied with respect to an owner whose goods were fraudulently obtained by others (Moore v. Tracy, 7 Wend. 339). But until the creditor has obtained a lien, no legal right that he possesses is violated by dispositions of the debtor's property; and no damage is provable. (See Moody v. Burton, supra, 27 Me. pp. 434–435.)

It is to be noted that the case of Mott v. Danforth, 6 Watts 304 [Pa. 1837], relied upon by the majority, was one of three cases of which the United States Supreme Court in Findlay v. McAllister, supra, 13 U.S. p. 114, 5 S.Ct. p. 405: "The three cases last cited extend the rule further than the exigency of the present case requires, and further than this court has been disposed to go." In Collins v. Cronin, 117 Pa. 35, 11 A. 869, relied upon by the majority, the plaintiff lost, but that case did recognize the principle of Mott v. Danforth, supra. In the case of Penrod v. Mitchell, 8 Serg. & R. 522 [Pa. 1822], cited by the majority, the plaintiff was a judgment creditor, and the court held that the measure of damages should have been the value of the property fraudulently conveyed. In Hurwitz v. Hurwitz supra, 10 Misc. 353 p. 358, 31 N.Y.S. at p. 28 at the court suggests that the reason for the Pennsylvania rule was "the defect in equity jurisdiction peculiar to that state, [wherein] a remedy by common-law action may be thought indispensable. Still, we cannot assent to the doctrine of the case."

In Ward v. Petrie, 157 N.Y. 301, at p. 310, 51 N.E. 1002, at p. 1005, the court discussed the question before us, citing among other cases Braem v. Merchant's Nat'l Bank, supra, and stated that it need not decide the question in that case. The *Braem* case was relied upon in the opinion of the Appellate Division in Northville Dock Corp. v. Aller, supra, 15, A.D.2d 947, 226 N.Y.S.2d 313; and undoubtedly the Court of Appeals had in mind the *Quinby*, *Braem* and *Ward* cases when it unanimously affirmed the *Northville* case in 15 N.Y.2d 498, 254 N.Y.S.2d 109, 202 N.E.2d 556.

It should further be pointed out that the cause of action under consideration cannot be sustained on the theory of "*prima facie* tort." Such a cause of action may not embrace a traditional tort, as fraud, which is pleaded in the cause at bar; and, furthermore, damages in such an action must be pleaded especially (Brandt v. Winchell, 286 App.Div. 249, 141 N.Y.S.2d 674, affd. 3 N.Y.2d 628, 170 N.Y.S.2d 828, 148 N.E.2d 160; and see Moody v. Burton, 27 Me. 427, 435–436.) Moreover, such cause of action may only be invoked when the defendant acts solely with intent to harm the plaintiff, without justification or excuse, as distinguished from an intention merely to commit the act. (Advance Music Corp. v. American Tobacco Co., 296 N.Y. 79, 70 N.E. 401; Adler v. Fenton, supra, 65 U.S. p. 410, 16 L.Ed. 696.) The plaintiff has not alleged such a cause of action.

The plaintiff contends that in any event she is entitled to punitive damages in this cause of action. The right to punitive damages is basically dependent upon the existence of a cause of action for compensatory damages, even though the latter may be but nominal in amount (Kiff v. Youmans, 86 N.Y. 324, 331). Stated in another way, the claim for punitive damages does not constitute an independent cause of action. (See Knibbs v. Wagner, 14 A.D.2d 987, 222 N.Y.S. 2d 469; Gill v. Montgomery Ward & Co., 248 App.Div. 36, 41, 129 N.Y.S.2d 288, 294, 49 A.L.R. 2d 1452; Dworski v. Empire Discount Corp, 46 Misc. 2d 844, 260 N.Y.S.2d 938; 1 Seelman, Libel & Slander, rev. ed., § 137.) Since a valid cause of action for compensatory damages has not been alleged herein, the cause of action will not support a claim for punitive damages.

It should be observed, also, that most of the New York cases which have granted monetary damages for fraudulent conveyances have been equitable actions to set aside conveyances; and where the asset cannot be reconveyed, the courts have frequently awarded monetary damages in its stead, but in an amount

not to exceed the value of the property fraudulently conveyed (see Lowendahl v. L. Van Bokkelen, Inc., 260 N.Y. 557, 184 N.E. 90; American Surety Co. v. Conner, 255 N.Y. 1, 7, 166 N.E. 783, 785, 65 A.L.R. 244; Hamilton Nat. Bank v. Halsted, 134 N.Y. 520, 31 N.E. 900; Valentine v. Richardt, 126 N.Y. 272, 27 N.E. 255; Quinby v. Strauss, 90 N.Y. 664; Post v. Browne, 279 App.Div. 922, 110 N.Y.S.2d 595, affd. 304 N.Y. 610, 107 N.E.2d 92; Shugerman v. Sohn, 255 App.Div. 866, 7 N.Y.S. 2d 587); but, as noted above, a creditor with a lien may maintain an action at law for interference with his specific security Whether in an appropirate case punitive damages may also be awarded in such an action in the light of recent authorities (I. H. P. Corp v. 210 Cent. Park South Corp., 16 A.D.2d 461, 228 N.Y.S.2d 883, affd. 12 N.Y.2d 329, 239 N.Y.S.2d 547, 189 N.E.2d 812; Walker v. Sheldon, 10 N.Y.2d 401, 223 N.Y.S.2d 488, 179 N.E.2d 497; cf. Moody v. Burton, supra, 27 Me. 427, 433–434 and Penrod v. Mitchell, supra, 8 Serg. & R. 522, 525), need not be considered at this time.

The order of the court below should be modified to the extent of striking the first cause of action, and, as modified, affirmed with costs and disbursements to the appellant.

STEVENS, J., concurs.

EXHIBIT No. 8

271 N.Y.S. 2D 265

17 N.Y. 2d 812

ESTHER JAMES, RESPONDENT, *v.* ADAM CLAYTON POWELL, JR., ET AL., APPELLANTS

Court of Appeals of New York, May 5, 1966

Appeal from Supreme Court, Appellate Division, First Department, 25 A.D. 2d 1, 266 N.Y.S. 2d 245.

The Supreme Court, Special Term, New York County, John L. Flynn, J., entered an order denying a motion to dismiss the complaint, and the defendants appealed.

The Appellate Division entered an order affirming the order of the Special Term. Witmer and Stevens, JJ., dissented.

The defendants appealed to the Court of Appeals.

Appeal dismissed, with costs, upon the ground that the order appealed from does not finally determine the action within the meaning of the Constitution.

All concur.

EXHIBIT No. 9

Supreme Court, New York County

(5544—1964)

ESTHER JAMES, PLAINTIFF

against

ADAM CLAYTON POWELL, JR., AND YVETTE POWELL, DEFENDANTS

It is stipulated, consented to and agreed, by and between the attorney for the plaintiff and the attorney for the defendant, Adam Clayton Powell, Jr., and the defendant, Adam Clayton Powell, Jr., personally, that the examination before trial of the defendant Adam C. Powell, heretofore scheduled and fixed to be had and conducted on November 8th, 1965, at the Supreme Court of New York, County of New York, before the Clerk of Special Term, Part 2, thereof, Room 315, 60 Centre Street, New York, New York, at 10 a.m., of that day, by order of Mr. Justice Brust made on October 8, 1965, at Special Term, Part No. 2 and the same hereby is adjourned to November 24, 1965, at the same time and place.

Dated, October 9, 1965.

RAYMOND RUBIN,
Attorney for the Plaintiff.
HENRY R. WILLIAMS,
Attorney for the Defendant.
ADAM C. POWELL,
Defendant.

EXHIBIT No. 10

CITE AS 270 N.Y.S. 2D 789

26 A.D. 2d 525

ESTHER JAMES, PLAINTIFF-RESPONDENT, v. ADAM CLAYTON POWELL, JR., YVETTE POWELL, DEFENDANTS-APPELLANTS

Supreme Court, Appellate Division, First Department, June 14, 1966

Action to recover for interference with collection of judgment. An inquest for assessment of damages was held after defendants' answer was stricken for failure to appear for examination before trial, and the judgment entered upon such inquest was challenged by defendants' appeal. The Appellate Division held that transfer deliberately made by judgment debtor to defeat enforcement of judgment obtained only two weeks earlier fully justified substantial punitive damages, but award was grossly excessive and would be reduced to $100,000.

Modified and affirmed.

1. Damages 203

For purposes of inquest for assessment of damages, held after defendants' answer was tricken for failure to appear for examination before trial, allegation that fraudulently transferred real estate exceeded in value amount of judgment which plaintiff had theretofore recovered against defendant could be taken as at least undenied.

2. Damages 203

Record of inquest for assessment of damages, held after defendants' answer was stricken for failure to appear for examination before trial, contained sufficient proof that fraudulently transferred real estate exceeded in value amount of libel judgment which plaintiff had theretofore recovered against defendant.

3. Damages 115

Compensatory damages resulting from defendants' tort could properly include amount remaining unpaid on judgment which plaintiff had recovered against defendant before Puerto Rico real estate was fraudulently transferred; and includable also would be outlays by plaintiff and her counsel, such as expenses incurred in their investigatory trips to Puerto Rico, as well as reasonable counsel fee.

4. Damages 89(1), 94

Transfer deliberately made by judgment debtor to defeat enforcement of judgment obtained only two weeks earlier fully justified awarding substantial punitive damages; but award was grossly excessive and would be reduced to $100,000.

5. Damages 203
Torts 21

Participation of codefendant in transfer made by judgment debtor to defeat enforcement of judgment warranted assessment of compensatory damages against codefendant; but degree of moral culpability on her part sufficient to require punitive sanction was questionable on record presented by inquest for assessment of damages held after defendants' answer was stricken for failure to appear for examination before trial.

R. Rubin, New York City, for plaintiff-respondent.
H. R. Williams, New York City, for defendants-appellants.
Before BOTEIN, P. J., and BREITEL, RABIN and EAGER, JJ.
PER CURIAM.

[1–5] Judgment entered upon an inquest for assessment of damages held after defendants' answer was stricken for failure to appear for examination before trial in accordance with a court order, unanimously modified, on the law, on the facts and in the exercise of discretion, to the extent of (1) reducing the award of punitive damages in the first decretal paragraph to $100,000, (2) deleting the second decretal paragraph, and (3) reducing the award of compensatory damages in the third decretal paragraph to $55,785.76; and the judgment, as

so modified, is affirmed, with $50 costs and disbursements to plaintiff. We discuss only the questions of damages, since we do not find that the numerous other points raised by appellants warrant the complete vacatur of the judgment as sought by them. The record shows that $33,250.76 remains unpaid on the libel judgment which plaintiff recovered against defendant Adam Powell on April 5, 1963 (mod. 20 A.D.2d 689, 246 N.Y.S.2d 998, affd. 14 N.Y.2d 881, 252 N.Y.S.2d 87, 200 N.E.2d 772). The material allegations of the complaint in the instant action, summarized in James v. Powell, 25 A.D.2d 1, 2, 266 N.Y.S.2d 245, 246, include an allegation that the fraudulently transferred Puerto Rico real estate exceeded in value the amount of the libel judgment. That allegation, among the other material allegations defendans' answer put in issue, was one of the "matters intended to be established by the examination" (Colonial Beacon Oil Co. v. B. Taranto, Inc., 143 Misc. 425, 426, 256 N.Y.S. 854, 856), and by reason of the striking out of defendants' answers may be taken as at least undenied (cf. Feingold v. Walworth Bros., Inc., 238 N.Y. 446, 454–455, 144 N.E. 675, 677–678). But indeed, apart from that principle, the record contains sufficient proof, such as the certificate of registry of property reflecting a sale for the amount of $50,000 and an assessment for the purpose of auction at $50,269.60 and the testimony of plaintiff's attorney. Accordingly, the compensatory damages resulting from defendants' tort may properly include the above-mentioned sum of $33,250.76 remaining unpaid on the libel judgment (see 25 A.D.2d 1, at p. 4, 246 N.Y.S.2d 245, at p. 248). Includible also are outlays by plaintiff ($1,500) and her counsel ($6,035), such as expenses incurred in their investigatory trips to Puerto Rico, as well as a reasonable counsel fee, which we limit to $15,000, since the much higher amount sought embraces many services unrelated to the questioned transfer. While that transfer, deliberately made by defendant Adam Powell, A Member of Congress, to defeat enforcement of a judgment obtained but two weeks earlier, fully justifies substantial punitive damages against him, the amount awarded by the trial court is grossly excessive. The participation of his co-defendant in the transfer warrants compensatory damages against her, but a degree of moral culpability on her part sufficient to require a punitive sanction is on the present record questionable. Settle order on notice.

EXHIBIT No. 11

EXCERPT FROM THE NEW YORK LAW JOURNAL, AUGUST 1, 1966

(By Mr. Justice Saypol)

James v. *Powell*

Motion by the judgment creditor for an order directing the judgment debtor Yvette Powell to make installment payments of $100 per week on account of the judgment of December 15, 1965, (CPLR 5226) is granted as indicated. (See companion decision on the contempt motion for details of the judgment and its details as modified by Appellate Division on June 15, 1966).

There is no submission of any kind by the judgment debtor. Presumably, she is to have some kind of dispensation on the ineffective companion submission. To the extent of extending the court's grace, the debtor may have a trial of the issue of her necessary requirements, (CPLR 5226) based on the judgment creditor's showing that her salary as her husband's secretary is $18,970 per annum. This with his Congressional salary of $30,000, make $49,970 for both and to this must be added his clerical income aggregating another $16,896 for a minimum of almost $66,000 each year for both.

Settle order providing for a trial of the issue as indicated in the companion motion.

James v. *Powell*

Motion by the judgment creditor for an order directing the judgment debtor, Adam Clayton Powell, Jr., to make installment payments of $500 per week on account of the judgment of April 5, 1963 (CPLR 5226), is granted as indicated.

The details of the two separate judgments against Congressman Powell in favor of the plaintiff Esther James are described in the decision on the accompanying contempt motion. Characteristically, the debtor Powell, Jr., shrinks from meet-

ing the issue, leaving it to his lawyer to touch the direct issue, but by oblique attack—on the facts, incompetently, by hearsay as to the service of the motion, and on the law, irrelevantly, speciously at best.

The judgment creditor makes a showing, prima facie, that the debtor has income consisting of (1) $30,000 a year, at least, salary as a Congressman, (2) on the testimony under oath of Vashti Flowers, president of the Abyssinian Baptist Church that as its pastor, Mr. Powell has a salary of $575 per month plus $833.33 monthly in lieu of parsonage, (3) Mrs. Yvette Powell (the subject of a similar companion motion) has an annual salary of $18,970 from the United States Government as her husband's Congressional employee, (4) that Mr. Powell has an advance of $2,500 from a publisher of his contemplated autobiography, and (5) another $1,000 for one of various magazine articles. There are no other judgments or other installment orders extant. In the aggregate, the creditor asks for a direction to pay $26,000 a year toward the satisfaction of an outstanding judgment on which the unpaid balance is over $30,000 by a debtor whose annual regular income is at least $47,896.

The judgment debtor is actually in default here, as is his established, uniform course. His lawyer's objections to jurisdiction for lack of service of the underlying motion papers are incompetent, and, in any event, irrelevant. Mr. Williams the lawyer has no standing to swear or affirm for his client who remains silent. Service was effected according to the proofs of service by certified mail pursuant to CPLR 5226 and deemed complete upon mailing (CPLR 2103 [b]2, [c]) and the effectiveness confirmed by filing pursuant to CPLR 2103(d). (Weinstein-Korn-Miller, Civ. Prac., Vol. 2, sec. 2103[6].) How Mr. Powell's status as a Congressman, or how the dignity of the House of Representatives can be affected or offended, as Mr. Williams suggests, is wholly inapparent. Paraphrasing, not only does he not make a mountain of a mole hill, he builds a mole hill from nothing. Mr. Williams erroneously attacks the validity of the 1965 judgment, overlooking that the order here is sought on the 1963 judgment, which as shown in the accompanying contempt decision has withstood all attack right to the Supreme Court of the United States (20 A.D. 2d 689, aff'd 14 N.Y. 2d 881, cert. den. 379 US 966). Mr. Williams pleads "Under our system of government justice is administered impartially, even to its enemies." With that the court is in full agreement, but in no event does it consider Mr. Powell its enemy. If such there be, his behavior suggests that he is his own worst enemy. Mr. Williams argues, finally, that because it is recognized that salaries of federal employees are exempt from garnishment or attachment and because there is no precedent, presumably "because it was considered in the public interest that our lawmakers should be free of those kinds of problems which might affect their peace and serenity of mind and prevent them from paying serious attention to the great problems of this great country." The best and only answer to that is the prophylaxis of obedience to the law and respect for the courts. This Congressman has not nor should he have any special privilege. No doubt, the New York Legislature was not of the same mind as evidenced by the comment of the Advisory Committee which drafted the CPLR (McKinney's Cons. Laws, Book 7B, Comment, Third Report, p. 1130). Such an order under the predecessor section CPA 793 against a steamship inspector employed by the Department of Commerce was held not beyond the power of a State Court as an interference with the efficiency of the duties to be performed and an unconstitutional interference with a federal instrumentality because the order did not become operative until the income came into the hands of the judgment debtor (Reeves v. Crownshield, 162 Misc. 118, aff'd 274 N.Y. 741).

The only question which emerges, although not raised by the parties, in the language of the statute, CPLR 5226, is "In fixing the amount of the payments, the Court shall take into consideration the reasonable requirements of the judgment debtor and his dependents, and payments required to be made by him or deducted from the money he would otherwise receive * * *". In view of the debtor's default, the Court would be warranted in granting the application as presented. Nevertheless, in adherence to the law as written, the plaintiff having made her showing, the Court recognizes the obligation to give "due regard to the reasonable requirements of the judgment debtor and his dependents." The burden of proof is on the judgment debtor. (Industrial Bank of Commerce v. Kelly, 28 Misc. 2d 889).

Settle order providing for the trial of the issue by special referee to report with his recommendation, or to the court or to court and a jury.

James v. Powell, Jr.

Motion by the plaintiff for an order to punish the judgment debtor for contempt must be denied, not on the merits, but solely for technical defects in the movant's papers.

The plaintiff holds two judgments against the defendant Adam Clayton Powell, Jr. The first for defamation was entered on April 5, 1963, for $211,739.35; on March 5, 1964, it was reduced by the Appellate Division to $46,500, on the plaintiff's stipulation for such a reduction (20 A. D. 2d 689). On July 10, 1964, the modified judgment was affirmed by the Court of Appeals (14 N. Y. 2d 881) and ultimately certiorari was denied by the Supreme Court (379 U.S. 966). The second judgment, for tortious interference with the first defamation judgment (complaint sustained 25 A. D. 2d, appeal dismissed, May 5, 1966,—— N.Y. 2d ——) was entered on December 15, 1965, against Powell and his wife Yevette for $100,247, representing compensatory and punitive damages. On June 14, 1966, this judgment was modified by the Appellate Division by reducing the punitive damages and limiting them to $100,000 against Powell, Jr., alone and reducing compensatory damages to $55,785.76, consisting of $33,250.76, the balance remaining unpaid on the first judgment and outlays toward its collection of $1,500 by the plaintiff and $6,035 by her counsel and counsel fees of $15,000 (—A.D. 2d —, N.Y. L. J., June 15, 1966, p. 17, col. 1).

The instant motion to punish the judgment debtor (CPLR 5210, 5251; Judiciary Law, sec. 753) is based on the judgment debtor's default in responding to a subpoena duces tecum in enforcement proceedings (CPLR, article 52) on December 16, 1965. He likewise defaulted on this motion on its original return date, January 7, 1966.

Service of the subpoena was made by substituted service pursuant to CPLR 308.3 and the instant order to show cause provided for its similar substituted service.

No competent showing is made by the judgment debtor. On the argument of the motion the judgment creditor supplemented the prayer by asking for judgment of criminal as well as civil contempt. 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 to be criminal. "The creditor has a right to informed fully in regard to his debtor's property, and he ought not to be regarded as meddlesome or importinent in seeking honestly for such information." (Lathrop v. Clapp, 40 N. Y. 328.) "The very object of supplementary proceedings is to ferret out fraudulent conveyances and concealments of property" (People ex rel. Roach v. Hanbury, 162 App. Div. 343). "An exhaustive examination is authorized to enable the judgment creditor to determine whether or not it is safe to levy on any property of the judgment debtor in disregard of any assignment or transfer thereof claimed to have been fraudulently made or otherwise to be invalid, or whether it is advisable to apply for the appointment of a receiver to maintain an action to recover the property or to set the transfer aside" (Matter of First Nat. Bank v. Gow, No. 2, 139 App. Div. 582).

As has been said, the judgment debtor takes refuge in silence. His lawyer by a combination affidavit and law memorandum attacks the service of the subpoena in conclusory fashion without recital of any detail. He attempts to cloak his client in the shroud of Congressional immunity but overlooks that the House of Representatives of which the debtor is a member was in recess on the respective return days of the subpoena and contempt order. It is not at all improbable that the distinguished Speaker of the House and that body itself, on appropriate representations, in the interest of comity between the legislative and judicial branches would yield up its distinguished member for the satisfaction of the judicial process. The most that can be said for this debtor's misbehavior is that it reflects his own peculiar brand of civil disobedience.

But for all that has been said, due process, the process which the law says is due, is still to be afforded. There are two defects in the movant's proceeding. Recognizing the rule strieti juris, there must be accorded to the accused even the most technical rights (In re Berkon, 180 Misc. 659, reversed on other grounds 268 App. Div. 825, aff'd N.Y. 828). The subpoena which was issued by the attorney for the plaintiff recites that "judgment was entered on April 5, 1960."

There is no such judgment. The affidavit of service by Jay Tauber, sworn to December 20, 1965, recites in conclusory fashion that he made four visits on December 17, 18 and 20, 1965, to the residence of the judgment debtor but could not effect service of the order to show cause with due diligence. Contrastingly, the affidavit of service of the subpoena by the same process server, sworn to November 26, 1965, recites that on each of the three different days or stated hours he conversed with a woman whom he advised that he had a subpoena for service. CPLR 308.3 authorizes substituted service where personal service cannot be made with due diligence. Professor Joseph W. McLaughlin in his commentary to CPLR 308 (McKinney's Cons. Laws of New York, Book 7B, CPLR 1–500, CPLR, sec. 308, p. 475) observes that since substituted service is only available where the plaintiff cannot with due diligence effect personal service, the plaintiff should detail in his affidavit of service the attempts made to serve the defendant personally. (Iroquis Gas Corp. v. Collins, 42 Misc. 2d 632). The nature of the proceeding excludes the possibility of correcting any error.

EXHIBIT No. 12

EXCERPT FROM THE NEW YORK LAW JOURNAL, AUGUST 29, 1966

James v. *Powell, Jr.*

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).

On reconsideration, the motion to punish the judgment debtor for contempt, as complemented by the oral application to punish the debtor for criminal contempt is granted as follows.

The subject of contempt, as such, is complex, abtruse, confusing, and replete with subsidies. Broadly speaking contempt in the area of the conduct of the courts consists of two separate kinds of misconduct, denominated either as civil or criminal contempt. The background statute is found in the Judiciary Law, starting at Sections 750–752, defining criminal contempt, and thereafter from Section 753, defining civil contempt. It is said in respect to either that where the alleged misconduct occurs in the immediate view and presence of the court, action by the Court may be taken summarily, because the Court has direct knowledge and therefore needs no other evidence to support an adjudication.

It would be more helpful in discussion to use the phrase "private contempt" as descriptive of civil contempt. The first embraces, as private or civil contempt, the wrong to the litigant. Where there has been such a wrong and it is established by due process, Judiciary Law, Section 753 et seq., provides the punishment: in the absence of a showing of greater damage, a maximum fine of $250, also there may be a jail term of up to thirty days, or both; if greater damage is shown, there may be a fine up to the amount of the judgment plus costs and expenses. If the fine remains unpaid, there may be confinement pending the payment of the fine.

It is usual in civil contempt judgments to incorporate a provision permitting the contemnor to purge his offense by paying the penalty. Alternatively, if not paid there could be provision to serve out over a period one day for each dollar of the fine, unless the judgment debtor is otherwise discharged by law.

When the misconduct consists of an offense against the court itself, its office and order, especially if accompanied by willfulness, that is deliberate or reckless or calculated conduct, showing disdain for the court, despise of the court, separate and apart from civil or private contempt, for criminal contempt the contemnor may be fined a maximum of $250, sentenced to a jail term of up to thirty days, either or both. In that event the fine goes to the public treasury.

The Civil Practice Law and Rules in article 52 provides the method in aid of a judgment creditor like the plaintiff to enforce collection of a judgment. The

article is in fact denominated "Enforcement of Money Judgment," which is fully descriptive.

Among the available procedures for enforcement is that authorizing compulsory investigation by examination of the judgment debtor and others with the aid of the process, that is, a subpoena of the court. As has been discussed in the original opinion on this motion, a judgment creditor has every right, upon obtaining the judgment, to be informed concerning the debtor's property, toward the end that there be no fraudulent diversion or disposal of property.

It should be made clear that as a matter of public policy today, imprisonment for debt is looked upon with disfavor in the courts. When, however, in the administration of justice it develops that misconduct calculated to defeat justice is apparent, upon an adequate finding it becomes the duty of the court, upon the presentation by the offended party, to take appropriate action, and that may be to order imprisonment, not for debt but for misconduct. It is for that reason that the enforcement of judgments article, article 52, includes provisions in section 5210 and 5251 authorizing the court to adjudge one who ignores or defies the process or subpoena of the court, its mandate directing the judgment debtor to appear to be examined.

There is another offense separate and apart and independent, recognized in the criminal law as an offense against all the people of the state, known as criminal contempt. That is a defined crime for which punishment of a maximum of one year in prison, together with a fine of up to $500, may be imposed upon conviction after trial.

Broadly speaking, for facile appreciation, the contempt procedures under the Judiciary Law, Criminal and Civil contempt are the remedies made available to catch up with a fugitive debtor. Criminal prosecution under the Penal Law is the collateral condemnation to establish and punish anarchistic defiance to the commonwealth's prejudice.

The defendant has defaulted on this motion to punish him for contempt. It is demonstrated prima facie, in a background of repeated offenses of similar kind that this defendant is chargeable with criminal contempt on establishing his willfulness. On the matter of his related civil contempt in the presence of his defaults in responding to the subpoena and to the order to show cause, it would be a futility to make another adjudication of civil contempt, when it is recognized that purging himself of any of his civil contempts would end all the civil proceedings. Moreover, there is a second judgment, which was affirmed by the Appellate Division on June 15, last, adjudging this defendant and his wife guilty of the wrong or tort of deliberately defeating the judgment creditor's rights.

On the other hand, on the demonstrated perverse and persistent misbehavior of this judgment debtor, past established misconduct which the court may recognize judiciously but the immediate offense not in its immediate view and presence, as a matter of due process, (to use the words of the defendant's own lawyer, "even to the Court's own worse enemy)", it is concluded that he is entitled to a trial of the issue of his willfulness.

Mr. Plaintiff, you will submit an order, settle it on notice, providing for a trial of the issue of willfulness as an element essential to an adjudication of criminal contempt, including in your order a detailed factual recital in the form of findings of the previous adjudications of this defendant's misconduct.

As was previously said, that trial may be had either before a special referee of the court, before the court itself, or, if either side elects, the court and jury. It would perhaps be best to let this defendant lay his case before a jury of his peers.

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 the order to be settled hereon, Mr. Plaintiff, you will include a direction addressed to the public prosecutor of this county, the district attorney of New York County, conveying the direction of the court for him forthwith to consider the question of prosecution of this defendant for the crime, under section 600 of the Penal Law, of criminal contempt, leaving it to the prosecutor to pursue the course that he may deem advisable either by his filing the usual information in the case of a misdemeanor, or alternatively by laying the details before a grand jury.

If the district attorney elects to proceed on his information and complaint and if it appears that the presence of the defendant may be doubtful, the prosecutor

is free to call upon this court to sit as a committing magistrate to entertain the information and to issue its warrant to arrest and compel the presence of the defendant.

You may settle your order accordingly, Mr. Plaintiff.

We shall proceed to another matter. Recently the court made two decisions on the direction to this judgment debtor and his co-defendant to make income payments in account of the judgments against them. The court made clear in its decision that as a matter of right, again due process, on the language of the statute, each of the defendants was entitled to a trial of the issue of availability of funds, in other words, fixation of an amount in the light of their usual requirements.

Orders have now been submitted for the plaintiff. I have none from the defendants.

I had said in my decision that the trial could be either before a special referee, the court, or a court and jury. The submitted orders provide for a trial for the court alone.

I have signed the plaintiff's orders putting the trial on the calendar for September 6, 1966. Trial Term, Part I. The orders will be handed to the clerk.

EXHIBIT No. 13

273 N.Y.S. 2D 730

ESTHER JAMES, PLAINTIFF, v. ADAM CLAYTON POWELL, JR., DEFENDANT

Supreme Court, Special Term, New York County, Part II, Oct. 4, 1966

Proceeding on witness' objection to presence of newsmen and others at examination to determine witness' financial relations with judgment debtor. The Supreme Court, Special Term, New York County, Part II, Abraham J. Gellinoff, J., held that examination of witness by judgment as to witness' financial relations with judgment debtor to aid in discovery of assets of judgment debtor was not a "sitting of the court" within statutory requirements that such sittings be public, even though examination might be conducted in courthouse, and protective order directing that examination be private could be issued at witness' request.

Application granted.

See also 43 Misc. 2d 314, 250 N.Y.S. 2d 635; 26 A.D. 2d 525, 270 N.Y.S. 2d 789.

1. Criminal Law 635
Trial 20

Right conferred by statute, that sittings of court be public, may be invoked only by accused in criminal prosecution or by either party in civil case, but not by members of general public including the press. Judiciary Law, § 4.

2. Trial 20

Examination of witness by judgment creditor as to witness' financial relations with judgment debtor to aid in discovery of assets of judgment debtor was not a "sitting of the court" within statutory requirements that such sittings be public, even though examination might be conducted in courthouse, and protective order directing that examination be private could be issued at witness' request. Judiciary Law, § 4; CPLR § 2303; Rules 3110, 3113, subd. (a), 5224 and subd. (d).

Raymond Rubin, New York City, for plaintiff.
George Donald Covington, New York City, for third party.
ABRAHAM J. GELLINOFF, Justice.

Pursuant to a subpoena issued by the attorney for a judgment creditor of Congressman Adam Clayton Powell, one Odell Clark has appeared for examination as to his financial relations with Powell. The purpose of the examination is to aid in the discovery of assets of the judgment debtor. Clark's attorney has objected to the presence at the examination of newsmen and others, claiming that he is only a "third party witness" and that the proceeding is not one which is required to be open to the general public.

[1] The only statute applicable to civil actions or proceedings is section 4 of the Judiciary Law, which provides that "[t]he sittings of every court within

this state shall be public, and every citizen may freely attend the same", subject to the right of the court in certain specified types of cases to exclude persons not directly interested. The right conferred by this section, i.e., the right that sittings of the court be public, may be invoked only by the accused in a criminal prosecution or by either party in a civil case, but not by members of the general public, including the press (Matter of United Press Associations v. Valente, 308 N.Y. 71, 80, 123 N.E. 2d 777, 780). The attorney for the judgment creditor herein seeks to invoke the right granted by section 4, supra.

The question presented is whether said section applies to the present examination.

Under the new Civil Practice Law and Rules, an attorney for a judgment creditor may issue a subpoena, without obtaining a court order, for the attendance of the judgment debtor or any other person to testify in aid of the enforcement of the judgment (CPLR 5224; see, also, CPLR 2302). CPLR 5224 provides that the examination may be conducted "before any person authorized by subdivision (a) of rule 3113" and "at a place specified in rule 3110". Subdivision (a) of Rule 3113 authorizes the examination to be held, if within the state, before "a person authorized by the laws of the state to administer oaths" (e.g., a notary) and Rule 3110, in the case of a resident of this state, requires the examination to take place within the county of the witness' residence, or in the county where he is regularly employed or has an office for the transaction of business. Only if the "party to be examined is a public corporation" is there a requirement that the examination shall be in court. Rule 5224(d) provides for the examination and cross-examination of the witness, the transcription of the testimony if requested, and the noting of objections by the officer before whom the deposition is taken.

Thus the entire proceeding, from the issuance of the subpoena to the signing of the deposition may be had outside of the courthouse and without any supervision by the court. The only references to the court contained in Rule 5224 are a statement that the deposition shall proceed "subject to the right of a person to apply for a protective order" and a provision that "unless the court orders otherwise", a person other than the judgment debtor may produce a sworn transcript of original books of account in place of the original books.

Rule 5240, dealing with applications for a "protective order" authorizes the court to make an order denying, limiting, conditioning, regulating, extending or modifying the use of any enforcement procedure".

It seems clear that, if the attorney for the judgment creditor had chosen to conduct the examination of the witness in a law office or in some other non-court location, section 4 of the Judiciary Law would have no application, for the hearing would not be a "sitting" of a court. Of course, the statute *would* apply to any applications made to the court for protective orders or other relief.

[2] Does the fact that the attorney for the judgment creditor in the present case elected to conduct the examination in the courthouse give him the right to insist that the examination be public, a right which he would not have had if he had selected another place for the examination? In this court's opinion, it does not. The examination, even if physically held at the courthouse, is required by Rule 5224 to be conducted in the same manner as if held elsewhere. No provision is made for the actual presence of the court or for any court rulings except upon applications made to the court for a protective order or for modification of a subpoena for the production of books of account. As in the case of examinations conducted outside the courthouse, applications made to the court must be open to the public by virtue of Section 4 of the Judiciary Law. The examination of the witness, however, is not required by statute to be open to the public, since it is not a "sitting" of the court even if it is conducted in the courthouse.

In the circumstances, the witness is entitled to a "protective order" directing that the examination be private. In Weinstein-Korn-Miller-New York Civil Practice, the statement is made (Vol. 6, pp. 52–734) that "Typically, CPLR 5240 will be used by a person who believes that he is being improperly subjected to a particular enforcement procedure or a person who feels that one of the parties is abusing an enforcement procedure that has been properly commenced." On the same page it is stated that "The purpose of CPLR 5240 is to prevent 'unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice to any person or the courts.' "

Since the judgment creditor has no right to insist that the examination itself be public, the application of the witness that it be conducted in private is granted.

Let the examination continue in the appropriate room usually set aside by the court for such examinations.

EXHIBIT No. 14

EXCERPT FROM THE NEW YORK LAW JOURNAL, NOVEMBER 14, 1966

TRIAL TERM, PART VIII

By Mr. Justice Matthew M. Levy.

JAMES v. POWELL, JR.—(Dictated on the record after argument of counsel.)

The Court: All right, sir, I am prepared to make my decision.

I do not deem it a difficult matter in the least to determine the effect of the decision and opinion of the Appellate Division. In my view, each of you gentlemen has sought to superimpose upon that decision and opinion a strained, unreasonable and illogical construction, as will appear as I proceed with my ruling. 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 non-participation, may be, and must be ignored, since I shall make my decision presently.

Under the provisions of the Judiciary Law, Section 750, Subdivision A(3), this court has the power to punish for a criminal contempt a person guilty of willful disobedience to its lawful mandate. The only matter before me is the question of the adjudication of the defendant's criminal contempt of court, and the punishment therefor.

I have held in my decision, dated October 27, 1966, that, under the law of the case, as heretofore established, this court has jurisdiction over the person of the defendant and over the subject matter of this proceeding.

The jury has found, with ample justification on the evidence, that the defendant has willfully disobeyed five individual mandates of the court by not appearing for examination on the following days: 1, September 20, 1963, pursuant to subpoena; 2, May 1, 1964, pursuant to order of the court; 3, November 27, 1964, pursuant to subpoena; 4, November 24, 1965, pursuant to order; and, 5, December 16, 1965, pursuant to subpoena.

After the trial before me, and by decision of October 25, 1966, the Appellate Division has held in a related case that:

"Failure to obey a subpoena in civil proceedings—"

I underline "subpoena."

"— is a civil, but not a criminal contempt."

The Appellate Division made no ruling whatsoever in respect of the wilful disobedience of an order as distinguished from a subpoena.

I have indicated to you, during the argument, that the decision of the Appellate Division, under our established law, is binding upon me as authoritative precedent, and I hold that it supersedes so much of the law of the case made at Special Term of this court, and heretofore referred to, as is contrary to that appellate decision.

As a consequence, the defendant is not adjudicated in criminal contempt, and the proceeding is dismissed, in respect of the following: Disobedience number one, the date being September 20, 1963; disobedience number three, the date being November 27, 1964; and disobedience number five, the date being December 16, 1965.

It is to be noted that the order of Special Term, dated September 14, 1966, which referred the issue for trial, in effect, to court and jury—and it fell to my lot to try the case in regular order—I say that that order, which established the law of the case, so far as I was concerned, not only directed "a trial by jury of the issue of the wilfulness as determinant of the guilt of the defendant Adam Clayton Powell, Jr., of criminal contempt in failing to appear pursuant to the" mandates referred to on the dates specified, but, also, "ordered that the plaintiff's motion to adjudge the defendant in civil contempt be denied."

In view of the subsequent decision of the Appellate Division that a debtor who disobeys a subpoena is guilty of civil, though not of criminal, contempt of court, the dismissal of the proceedings, which I have just announced, in so far as they involve disobediences numbers 1, 3 and 5, is without prejudice to such application that the plaintiff may be advised to make, or to such determination that my learned colleague at Special Term may seek to make, with respect to his denial of the motion to adjudge the defendant guilty of civil contempt.

Now, that leaves for consideration by me disobedience numbers 2 and 4 involving, not subpoenas, but orders of the court. I hold that the defendant is guilty of criminal contempt of court in respect of each thereof, and there is adjudication accordingly.

Now, as to punishment, I have culled, from the record of the massive files in this matter, the official comments made 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 United States 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 the 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 but two 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 willfull 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.

Now, under section 751 of the Judiciary Law:

"Punishment for a (criminal) contempt * * * may be by fine, not exceeding $250, or by imprisonment, not exceeding thirty days, in the jail of the county where the court is sitting, or both, in the discretion of the court."

I do not at all go along with Mr. Rubin's argument that I have the power, in the light of the Appellate Division decision, to sentence the defendant to 150 days in jail on the basis of five disobedience counts here, and of fining him $1,250 on the basis of five times $250. For the three subspoenas are out, so far as I am concerned.

And, equally, I want to say to Mr. Williams, that, so far as I am concerned, the two orders are in.

Were I to ignore the plain reading of the Appellate Division decision, I would be doing violence to the mandate of the law at the same time that I stated that I would not sanction the defendant's conduct in that respect.

So, I shall take up the two remaining disobediences.

As to disobedience number 2, the first order, requiring the defendant to appear for examination on May 1, 1964, in proceedings supplementary to judgment and execution, that date was fixed by the court, on consent of the attorneys, at the request of the defendant, and in pursuance of a stipulation personally signed by him. He did not appear for examination on that date, or at any time since, and, to this date, there has been no indication of regret, contrition or repentance.

Accordingly the defendant Adam Clayton Powell, Jr., is adjudicated in criminal contempt for this willful disobedience, and is given the maximum sentence, imprisonment for thirty days, and a fine of $250.

The fourth disobedience, referring to the second order, which required the defendant to appear for examination before trial in the second action, on November 24, 1965, stands, in my view, on a somewhat different footing. In that instance, when the defendant failed to appear and the plaintiff moved to strike the defendant's answer and to punish the defendant for contempt, my learned colleague, at Special Term, granted the motion to strike, but denied the motion to punish. As a result of this decision, while there has been no punishment in civil contempt, judgment has been obtained by the plaintiff against the defendant for some $100,000 in excess of the first judgment for libel obtained by her against him. In my view, that is a substantial punishment.

Accordingly, while I adjudicate the defendant in criminal contempt for this disobedience and sentence him to thirty days in jail and $250 fine, I direct that

the two jail sentences of thirty days each shall be served concurrently, and that the two fines of $250 each be cumulative. Both fines to be paid to the State of New York.

You gentlemen will kindly settle an order and mandate accordingly and it shall be made returnable after the date of election, within reasonable time from this date, and with a reasonable time to the adversary to read and study and to present a counter order.

Gentlemen, so far as I am concerned, each of you may have an exception to the rulings that I have made.

I will now proceed with the trial in the next case.

EXHIBIT No. 15

ORDER OF COMMITMENT

At a special term part II of the supreme court of the State of New York, held in and for the County of New York, at the courthouse, 60 Centre Street, Manhattan, on the 28th day of November, 1966

ESTHER JAMES, PLAINTIFF-JUDGEMENT-CREDITOR

Index #11333—1960
Index #5544—1964
COMMITMENT ORDER

against

ADAM CLAYTON POWELL, JR., DEFENDANT-JUDGEMENT-DEBTOR

Present: Hon. Arthur Markewich.

Upon reading and filing the affidavit of Lawrence Rauch, duly sworn to the 17th day of November, 1966, the affidavit of Raymond Rubin, duly sworn to the 23rd day of November, 1966, the affidavit of Edith Friedman, duly sworn to the 23rd day of November, 1966, and exhibit attached thereto, and upon the order of Mr. Justice Matthew M. Levy, entered the 17th day of November, 1966 adjudging Adam Clayton Powell, Jr. to be in criminal contempt of court pursuant to Section 750 subdivision A (3) of the Judiciary Law in having wilfully disobeyed and deliberately defied an order dated March 27, 1964, in wilfully failing to appear for examination on May 1, 1964, and fining him the sum of $250.00 and directing that he surrender for imprisonment on November 23, 1966 at 10:30 A.M. at Special Term Part II of this Court for a period of thirty days in the Civil jail of the County of New York for his wilful failure to appear for examination on May 1, 1964 pursuant to the order of Mr. Justice Backer dated March 27, 1964, and further directing that in default of the payment of said fine or any part thereof that he be imprisoned in said jail until such fine is fully paid or for a period of thirty days after the expiration of the definite period of thirty days for which he was to be imprisoned as aforesaid as provided in Section 751 of the Judiciary Law, as well as adjudging Adam Clayton Powell, Jr. to be in criminal contempt of court pursuant to Section 750 Subdivision A (3) of the Judiciary Law in having wilfully disobeyed and deliberately defied an order dated October 27, 1965, in wilfully failing to appear for examination on November 24, 1965, and fining him the sum of $250.00 and directing that he surrender for imprisonment on November 23, 1966 at 10:30 A.M. at Special Term Part II of this Court for a period of thirty days in the Civil Jail of the County of New York, which said period shall be served concurrently with the aforementioned definite thirty day period hereinabove set forth, for his wilful failure to appear for examination on November 24, 1965 pursuant to the order of Mr. Justice Brust dated October 27, 1965, and further direction that in default of the payment of such additional fine, or any part thereof, he be imprisoned in said Jail until such additional fine is fully paid or for an additional period of thirty days after the expiration of the definite period of thirty days, and after the expiration of the additional period in the event of the non-payment of the first fine, for which he was to be imprisoned as aforesaid as provided in Section 751 of the Judiciary Law, and said order

having provided that service of a copy of the order of Mr. Justice Levy dated November 17, 1966, with notice of entry, be made upon the Sheriff of the City of New York and upon the defendant Adam Clayton Powell, Jr. and upon his attorney, but that service upon Adam Clayton Powell, Jr. may be made either personally or by registered mail and if made by registered mail it shall be at his residence in New York County, his office in Washington, D.C. and his abode in Bimini, The Bahamas, and further that if the defendant Adam Clayton Powell, Jr. failed to so appear commitment may issue on an ex parte application to the Court at Special Term Part II for apprehension of the defendant; and it appearing to the satisfaction of the Court from the aforesaid affidavits of Lawrence Rauch, Raymond Rubin and Edith Friedman, that a copy of said order a Mr. Justice Matthew M. Levy entered the 17th day of November, 1966 with notice of entry thereof, adjudging said Adam Clayton Powell, Jr. in criminal contempt was duly served upon Adam Clayton Powell, Jr., the Sheriff of the City of New York and the attorney for Adam Clayton Powell, Jr. on the 17th day of November, 1966 and that said Adam Clayton Powell, Jr. failed to surrender as directed by said order on the 23rd day of November, 1966 as well as failed to pay the aggregate fine of $500.00 at said time.

Now, on motion of Raymond Rubin, attorney for the plaintiff judgment creditor herein, it is

Ordered that the motion to punish the defendant Adam Clayton Powell, Jr. for criminal contempt pursuant to Section 750 subdivision A (3) of the Judiciary Law for wilful disobedience to the mandate of this Court, to wit, the wilful failure of Adam Clayton Powell, Jr. to appear for examination on the 1st day of May, 1964 pursuant to the order dated March 27, 1964, and his wilful failure to appear for examination on November 24, 1965 pursuant to the order dated October 27, 1965, each constituting a wilful disobedience to and a deliberate defiance of a lawful mandate of this Court and each constituting a violation of Section 750 subdivision A (3) of the Judiciary Law, be and the same hereby is granted, and it is further

Ordered and adjudged that the defendant Adam Clayton Powell, Jr. is guilty of a criminal contempt of Court pursuant to Section 750 subdivision A (3) of the Judiciary Law in having wilfully disobeyed and deliberately defied the order dated March 27, 1964, and it is further

Ordered and adjudged that the defendant Adam Clayton Powell, Jr., by reason of and in punishment for such criminal contempt be committed to the custody of the Sheriff of the City of New York, at the Civil Jail in the County of New York for imprisonment therein for the period of thirty days, and the said defendant Adam Clayton Powell, Jr. be and he hereby also is fined the sum of $250.00 and that in default of the payment of said fine or any part thereof that he be imprisoned in said Jail until such fine is fully paid or for a period of thirty days after the expiration of the definite period of thirty days for which he is to be imprisoned as aforesaid as provided in Section 751 of the Judiciary Law, and it is further

Ordered and adjudged that the defendant Adam Clayton Powell, Jr. is guilty of a criminal contempt of court pursuant to Section 750 subdivision A (3) of the Judiciary Law in having wilfully disobeyed and deliberately defied the order dated October 27, 1965, and it is further

Ordered and adjudged that the defendant Adam Clayton Powell, Jr. by reason of and in punishment for such criminal contempt be committed to the custody of the Sheriff of the City of New York, at the Civil Jail in the County of New York for imprisonment therein for the period of thirty days, which said period shall be served concurrently with the aforementioned definite thirty days period hereinabove set forth and that the said defendant Adam Clayton Powell Jr. be and he hereby is also fined an additional sum of $250.00 and that in default of the payment of such additional fine, or any part thereof, he be imprisoned in said Jail until such additional fine is fully paid or for an additional period of thirty days after the expiration of the definite period of thirty days and after the expiration of the additional period in the event of the non-payment of the first fine, for which he is to be imprisoned as aforesaid, and it is further

Ordered and adjudged that the fines aforesaid are to be paid to the State of New York, and it is further

Ordered that the Sheriff of the City of New York to whom a certified copy of this order certified by the Clerk of the Court shall be delivered, shall forthwith on receipt thereof, and without further process, take the body of Adam Clayton Powell, Jr., the defendant judgment debtor herein, and commit him to the Civil

Jail of the County of New York, to be there detained in close custody as herein provided or until he shall otherwise be discharged according to law, and it is further

Ordered, that this order may be executed on any day of the week including Sunday.

Enter:

(s) AM, J.S.C.

Filed Nov. 26, 1966; Co. Clerk's Office, New York.

EXHIBIT No. 16

ESTHER JAMES, PLAINTIFF-JUDGMENT-CREDITOR-APPELLANT, v. ADAM CLAYTON POWELL, JR., DEFENDANT-JUDGMENT-DEBTOR-RESPONDENT, AND YVETTE POWELL, DEFENDANT-JUDGMENT-DEBTOR

Supreme Court, Appellate Division, First Department, Oct. 25, 1966

Plaintiff judgment creditor made a motion to punish defendant judgment debtor, who was a United States Representative, for contempt for wilful failure to obey a subpoena in a supplementary proceedings. The Supreme Court, Special Term, New York County, Sidney A. Fine, J., entered an order on September 9, 1966 denying the motion, and the plaintiff judgment creditor appealed. The Supreme Court, Appellate Division, Steuer, J., held that failure to obey a subpoena in civil proceedings is civil but not criminal contempt, and that there is no immunity from service of a subpoena because of constitutional provision giving to Senators and Representatives immunity from arrest, except in certain cases, during attendance at sessions and in going to and returning therefrom, and that defendant judgment debtor was guilty of civil contempt and would be fined $250 and would be sentenced to 30 days in jail, but he would be excused from imprisonment if he complied with order of examination.

Order modified, on the facts and the law and as a matter of discretion, to find defendant judgment debtor guilty of civil contempt.

Stevens, J., dissented.

See also Sup., 273 N.Y.S.2d 73.

1. Witnesses 21

Failure to obey subpoena in civil proceedings is a civil contempt but not a criminal contempt. Judiciary Law, §§ 750 and subd. A, par. 5, 753 and subd. A, par. 5.

2. United States 12

Immunity under section of federal Constitution giving to Senators and Representatives immunity from arrest, except in certain cases, during attendance at sessions and in going to and returning therefrom is immunity from civil arrest, and there is no exemption from civil process short of arrest. U.S.C.A.Const. art. 1, § 6.

3. United States 12

In view of provision of federal Constitution giving to Senators and Representatives immunity from arrest, except in certain cases, during attendance at sessions and in going to and returning therefrom, member of Congress must respond to civil process and is liable for all consequences of disregarding civil process except that he cannot be subjected to arrest, and consequently there is no immunity from service of subpoena, since a subpoena is not an "arrest." U.S.C.A.Const. art. 1, § 6.

See publication Words and Phrases for other judicial constructions and definitions.

4. United States 12

Purpose of section of federal Constitution giving to Senators and Representatives immunity from arrest, except in certain cases, during attendance at sessions and in going to and returning therefrom is not for benefit or even convenience of individual legislators but is to prevent interference with the legislative process, and it prevents judicial branch of government from effecting such interference by restricting power of courts. U.S.C.A.Const. art. 1, § 6.

5. United States 12

Section of federal Constitution giving to Senators and Representatives, immunity from arrest except in certain cases, during attendance at sessions and in going to and returning therefrom applies only in instances where exercise of judicial power will constitute actual interference with legislative or executive branches as distinct from one that is theoretical or conditional. U.S.C.A.Const. art. 1, § 6.

6. Execution 419
United States 12

Defendant, who willfully failed to obey subpoena in supplementary proceedings, though a United States Representative, was guilty of civil contempt, and he would be fined $250 and would be sentenced to 30 days in jail, but he would be excused from imprisonment if he should appear for examination. Judiciary Law, § 753; U.S.C.A.Const. art. 1, § 6.

R. Rubin, New York City, for plaintiff-judgment-creditor-appellant.
H. R. Williams, New York City, for defendant-judgment-debtor-respondent.
Before BOTEIN, P. J. and McNALLY, STEVENS, STEUER and BASTOW, JJ.

STEUER, Justice.

Plaintiff judgment creditor moved to punish the judgment debtor for contempt for a wilful failure to obey a subpoena in supplemenary proceedings. 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. However, much as this conduct may be deplored, if, upon this particular application, he acted within his rights, he is not subject to sanction. On the other hand, if his conduct is not legally excusable, it is time for this sorry spectacle to be terminated by definite action.

[1] The application seeks punishment for both a civil and criminal contempt. The debtor does not dispute that there is jurisdiction to punish for a civil contempt (while not conceding that a proper case for such sanction was made out) but disputes jurisdiction to punish for criminal contempt. We believe the respondent's contention in this respect to be sound. The opening words of Judiciary Law, section 750 provide: "A court of record has power to punish for a criminal contempt, a person guilty of any of the following acts, and no others." There follow some eight specific situations in which the power may be employed. Section 753 deals with the power to punish for civil contempt. Here, again, are listed eight specific situations. Among these is: "5. A person subpoenaed as a witness, for refusing or neglecting to obey the subpoena, or to attend, or to be sworn, or to answer as a witness." This should be contrasted with the same numbered subdivision of section 750, which reads: "5. Contumacious and unlawful refusal to be sworn as a witness; or, after being sworn, to answer any legal and proper interrogatory." Patently the situation here involved—failure to respond to a subpoena—is covered by section 753, the section on civil contempt, in direct terms and is not so covered in section 750, dealing with criminal contempt. Where the legislature has specified the instances to which criminal and civil contempt are respectively applicable the inclusion of one instance under one heading and its omission under another leaves no room for interpretation. Failure to obey a subpoena in civil proceedings is therefore a civil but not a criminal contempt.

As stated, respondent does not deny jurisdiction for civil contempt. His defense to this phase of the application is that his refusal to obey the subpoena was not willful. Factually he sets out—what is not disputed—that the subpoena was both served upon him and made returnable on a date when Congress was in session. It is not entirely clear whether he contends that, being a Representative, he is excused during the session or whether he believed himself to be immune from process and hence did not willfully disobey the process. We will consider the question as if both points are raised.

[2–5] Article 1, section 6 of the United States Constitution gives to Senators and Representatives immunity from arrest (except in certain cases not material here) during attendance at sessions and in going to and returning therefrom.

The immunity is from civil arrest (see Williamson v. United States, 207 U.S. 425, 436, 28 S.Ct. 163, 52 L.Ed. 278), but there is no exemption from civil process short of arrest (Long v. Ansell, 293 U.S. 76, 55 S.Ct. 21, 79 L.Ed. 208). To elaborate on the above, a member of Congress must respond to civil process and is liable for all consequences of disregarding the same except that he cannot be subjected to arrest during a session of Congress. Consequently, there is no immunity from the service of a subpoena. "A subpoena is not an arrest, though there are circumstances in which disobedience to its command may give rise to an arrest" (People ex rel. Hastings v. Hofstadter, 258 N.Y. 425, 429, 180 N.E. 106, 107, 79 A.L.R. 1208). Whether or not the fact that a subpoena may, if disobeyed, give rise to an arrest brings it within the spirit of the constitutional exemption has not been authoritatively passed upon, and differing views have been expressed. As regards the exemption to members of the Congress, the only judicial expression discovered is that the possibility of imprisonment creates no exemption. It was observed that a body attachment would not be involved if the subpoena was obeyed and if disobeyed some other form of sanction could well be employed (United States v. Cooper, 4 Dall. 341, 1 L.Ed. 859). We believe that the foregoing is the proper approach, and the conclusion that there is no exemption from the process necessarily follows. The purpose of the exemption is not for the benefit or even the convenience of the individual legislators. It is to prevent interference with the legislative process. And it prevents the judicial branch of the government from effecting such an interference by restricting the power of the courts. However, it is the broad principle that any such restriction of the judicial branch is limited to the instances where the exercise of judicial power would constitute an actual interference with the legislative or executive branches as distinct from one that is theoretical or conditional (People ex rel. Broderick v. Morton, 156 N.Y. 136, 50 N.E. 791, 41 L.R.A. 231). It may be argued, however, that attendance as a witness in itself may interfere with attendance at the sessions of Congress and hence come within the spirit of the exemption, if not its letter. This argument depends on the assumption that the court in the face of a showing of such actual interference will fail to make suitable provision by way of adjournment or fixing of a time and place of examination which will obviate any real conflict. Congress does not sit around the clock and legislators are frequently absent from its halls, entirely legitimately, during more or less extensive periods of the legislative session. Here, no attempt was made to seek any accommodation. Had such been made and refused, a different question would be presented, namely, whether the refusal showed the abuse of a proper discretion. The filed record in this and in the companion case leave no room for speculation that the debtor was not amenable to examination at any time or place. And the question of whether attendance on the subpoena would, in fact, work an interference, was never presented. Actually, at this writing, the Congressional session has been completed and Congress has adjourned.

It might be conceivable that although the debtor here did not enjoy an exemption, he believed he did, and that consequently his disregard of the process was not wilful. It would be a sufficient answer that he was submitted no affidavit to that effect. Nor could he very well do so in light of the prior decisions in his own case, which must have received his attention (see, for example, James v. Powell, 43 Misc.2d 814, 250 N.Y.S.2d 635).

[6] There only remains a disposition which takes into consideration the foregoing factors. The debtor is guilty of a civil contempt. For such he is fined $250 and is sentenced to 30 days in jail. The order to be entered hereon, will, however, be limited by the provisions in the dispositive paragraph of this opinion.

No costs are allowed on this application because the briefs submitted by both sides were not helpful.

The order of Special Term should be modified on the facts and the law and as a matter of discretion to find respondent guilty of a civil contempt and to punish him by a fine of $250 and a jail sentence of 30 days. Respondent shall appear on November 3, 1966 at 10:30 A.M. at Special Term, Part II, New York County Supreme Court, then and there to be examined or if he refuses to be examined, to surrender for service of the term imposed. Service of the term of imprisonment will be stayed during the examination and any adjournment of the same and the respondent, if he complies with the order of examination will be excused from the imprisonment. Nothing herein contained shall prevent respondent from applying on good cause shown for fixing an alternate date for

examination reasonably close to the date fixed. Service of a copy of the order herein may be made personally or by registered mail, addressed to respondent's residence in New York County or his office in Washington, D.C. If respondent fails to appear on November 3, 1966 or any alternate date that may have been substituted in accord with this disposition, commitment may issue on an ex parte application.

Order, entered on September 9, 1966, modified, on the facts and the law and as a matter of discretion, without costs or disbursements, so as to find respondent guilty of a civil contempt and to punish him by a fine of $250 and a jail sentence of thirty days. Respondent shall appear on November 3, 1966 at 10:30 A.M. at Special Term, Part II, New York County Supreme Court, then and there to be examined or if he refuses to be examined, to surrender for service of the term imposed. Service of the term of imprisonment will be stayed during the examination and any adjournment of the same and the respondent, if he complies with the order of examination will be excused from the imprisonment. Nothing contained in the opinion of this Court filed herein shall prevent respondent from applying on good cause shown for fixing an alternate date for examination reasonably close to the date fixed. Service of a copy of the order entered herein may be made personally or by registered mail, addressed to respondent's residence in New York County or his office in Washington, D.C. If respondent fails to appear on November 3, 1966 or any alternate date that may have been substituted in accord with this disposition, commitment may issue on an ex parte application.

All concur except STEVENS, J., who dissents in an opinion.

STEVENS, Justice (dissenting):

While I am in accord with much of what is set forth in the majority opinion, I am unable to agree procedurally with the disposition. Service of the subpoena and the return date fixed therein was at a time while Congress was in session. Such a subpoena carried with it the possibility of arrest in the event of disobedience. The constitutional provision (Constitution of the United States, Article 1, Section 6) grants immunity from arrest to members of Congress while Congress is in session with certain specified exceptions not material here. In my view prior to adjudicating respondent in contempt as the Court has done a directive should have issued fixing a date for respondent's appearance subsequent to the adjournment of Congress in default of which respondent could then have been adjudged in contempt. The record on appeal is scanty, the briefs of no value, and the issue posed by reason of time of service, the status of respondent, and the constitutional provision heretofore referred to not entirely free from doubt (cf. People ex rel. Hastings v. Hofstadter, 258 N.Y. 425, 430, 180 N.E. 106, 107–108, 79 A.L.R. 1208; Long v. Ansell, 293 U.S. 76, 55 S.Ct. 21, 79 L.Ed. 208; Barlett v. Blair, 68 N.H. 232, 38 A. 1004). A judgment of arrest, though its execution be referred, as here, may by its very nature inhibit proper performance of legislative duties. This is one of the objects sought to be avoided by the immunity from arrest provision.

EXHIBIT No. 16a

AT A TERM OF THE APPELLATE DIVISION OF THE SUPREME COURT HELD IN AND FOR THE FIRST JUDICIAL DEPARTMENT IN THE COUNTY OF NEW YORK, ON THE 25TH DAY OF OCTOBER, 1966.

ESTHER JAMES, PLAINTIFF-JUDGMENT-CREDITOR-APPELLANT

vs.

ADAM CLAYTON POWELL, JR., DEFENDANT-JUDGMENT-DEBTOR-RESPONDENT, AND YVETTE POWELL, DEFENDANT-JUDGMENT-DEBTOR

(Filed Oct. 25, 1966)

Present: Hon. Bernard Botein, Presiding Justice; Hon. James B. M. McNally, Hon. Harold A. Stevens, Hon. Aron Steuer, Hon. Earle C. Bastow, Justices.

An appeal having been taken to this Court by the plaintiff-judgment-creditor-appellant from an order of the Supreme Court, New York County, entered on September 9, 1966, denying plaintiff's motion for an order adjudging defendant-judgment-debtor-respondent in contempt.

And said appeal having been argued by Mr. Raymond Rubin of counsel for the appellant, and by Mr. Henry R. Williams of counsel for respondent; and due deliberation having been had thereon; and upon the opinion of this Court filed herein,

It is ordered that the order so appealed from be and the same is hereby modified, on the facts and the law and as a matter of discretion, without costs or disbursements, so as to find respondent guilty of a civil contempt and to punish him by a fine of $250 and a jail sentence of thirty days. Respondent shall appear on November 3, 1966 at 10:30 A.M. at Special Term, Part II, New York County Supreme Court, then and there to be examined or if he refuses to be examined, to surrender for service of the term imposed. Service of the term of imprisonment will be stayed during the examination and any adjournment of the same and the respondent, if he complies with the order of examination will be excused from the imprisonment. Nothing contained in the opinion of this court filed herein shall prevent respondent from applying on good cause shown for fixing an alternate date for examination reasonably close to the date fixed. Service of a copy of the order entered herein may be made personally or by registered mail, addressed to respondent's residence in New York County or his office in Washington, D.C. If respondent fails to appear on November 3, 1966 or any alternate date that may have been substituted in accord with this disposition, commitment may issue on an ex parte application. (one of the Justices dissenting)

Enter:

HYMAN W. GAMSO, *Clerk.*

EXHIBIT No. 17

Court of Appeals, State of New York

ESTHER JAMES, PLAINTIFF-RESPONDENT

against

ADAM CLAYTON POWELL, JR., DEFENDANT-APPELLANT, AND YVETTE POWELL, DEFENDANT

Whereas, the defendant-appellant's application for a stay addressed to Judge Fuld has been denied,

It is hereby stipulated and agreed by and between the attorneys for the respective parties hereto, that the examination of Adam Clayton Powell, Jr. as directed by the order of the Appellate Division, be and the same hereby is adjourned to December 9, 1966 at 9:30 A.M. at Special Term Part II, of the Supreme Court, New York County, 60 Centre Street, New York, New York; and it is further

Stipulated and agreed that if the decision of the Court of Appeals has not been rendered by said date, then and in that event, the examination is adjourned to the first Tuesday at 9:30 A.M. after said decision unless the Court of Appeals directs otherwise; and it is further

Stipulated and agreed that in the event that the appeal by the said Adam Clayton Powell, Jr. shall be affirmed and the date of the examination agreed to be held under the terms of this stipulation falls after Congress has reconvened, then and in that event, the said appellant agrees not to object in the Supreme Court, New York County, to the holding of said examination on the alleged ground of Congressional immunity; and it is further

Stipulated and agreed that the foregoing is granted upon the condition that the appellant serve and file his record on appeal and his points on or before November 11, 1966 and that the respondent serve and file her points on or before November 19, 1966 and that the appeal be argued on November 21, 1966, and upon the further condition that the appellant deposit with the attorney for the respondent on or before November 2, 1966 the full amount of the judgment referred to in the subpoena ($293.12) with interest to date plus the fine of $250.00. In the event of reversal by the Court of Appeals making unnecessary the payment of the fine, said money shall be applied towards payment on account of the major judgment herein. In the event of an affirmance by the Court of Appeals of the order of the Appellate Division, said moneys shall be applied in satisfaction of the judgment of $293.12 and in payment of the fine of $250.00.

Nothing herein contained shall be deemed an admission on the part of the defendant, Adam Clayton Powell, Jr., of the obligation to appear for an examination on his ability to pay the said judgment of $293.12 in the proceeding and the said defendant disavows any such obligation to appear and be examined after the fine and the judgment have been paid as provided for in this stipulation.

And the parties hereto consent, subject to the approval of the Court of Appeals that the appeal be heard on the printed record in the Apellate Division and any additional required papers; and the defendant-appellant herewith consents that the plaintiff serve and file a notice of cross-appeal on November 2, 1966 and same may be heard on the argument of defendant-appellant's appeal without additional papers.

Dated November 1, 1966

RAYMOND RUBIN,
Attorney for Plaintiff-Respondent.
HENRY R. WILLIAMS,
Attorney for Defendant-Appellant.

EXHIBIT No. 18

Court of Appeals

No. 531

State of New York, ss: Pleas in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 1st day of December in the year of our Lord one thousand nine hundred and sixty-six, before the Judges of said Court.

WITNESS: The Hon. Charles S. Desmond, Chief Judge, *Presiding.* Raymond J. Cannon, *Clerk.*

REMITTITUR December 1, 1966.

ESTHER JAMES, RESPONDENT-APPELLANT

vs.

ADAM CLAYTON POWELL, JR., APPELLANT-RESPONDENT

Be it Remembered, That on the 16th day of November in the year of our Lord one thousand nine hundred and sixty-six, Adam Clayton Powell, Jr., respondent the appellant in this cause, came here unto the Court of Appeals, by Henry R. Williams, his attorney, and filed in the said Court a notice of Appeal and return thereto from the order of the Appellate thereon of the Supreme Court in and for the First Judicial Department. And Esther James, the respondent appellant in said cause, afterwards appeared in said Court of Appeals by Raymond Rubin, her attorney, and also filed a Notice of Appeal.

Which said Notices of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

Whereupon, The said Court of Appeals having heard this cause argued by Mr. Henry R. Williams, of counsel for the appellant-respondent, and by Mr. Raymond Rubin, of counsel for the respondent-appellant, and after due deliberation had thereon, did order and adjudge that the order of the Appellate Division of the Supreme Court appealed from herein be and the same hereby is affirmed, without costs. Pursuant to the stiplation entered into between the parties the examination of the appellant Powell is adjourned and he is directed to appear at such examination on December 9, 1966 at 9:30 A.M. at Special Term, Part II, of the Supreme Court, New York County, 60 Centre Street, New York, New York.

And it was also further ordered, that the records aforesaid, and the proceedings in this Court, be remitted to the Supreme Court of the State of New York, there to be proceeded upon according to law

Therefore, it is considered that the said order be affirmed, without costs, &c., as aforesaid.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Supreme Court of the State of New York before the Justices thereof, according to the form of the statute in

such case made and provided, to be enforced according to law, and which record now remains in the said Supreme Court, before the Justices thereof, &c.

RAYMOND J. CANNON,
Clerk of the Court of Appeals of the State of New York.

Court of Appeals, Clerk's Office, *Albany*, December 1, 1966.

I hereby certify, that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto.

[SEAL] RAYMOND J. CANNON,
Clerk.

EXHIBIT No. 19

Excerpt From the New York Law Journal, October 6, 1966

SUPREME COURT—SPECIAL TERM, PART I

New York County

By Mr. Justice Frank.

JAMES v. POWELL, JR.—The motion to confirm the report of the Special Referee sustaining the propriety of the service of the original subpoena dated December 15, 1965, is granted.

The judgment debtor having failed to appear in response to said subpoena, and having further defaulted on the subsequent motion to punish him for contempt for such failure of appearance, a decision was rendered by this court on March 31, 1966, adjudging him guilty of contempt. Before settlement of an order thereon, the judgment debtor brought an application to vacate such decision and to open his default on the contempt motion. While the papers submitted in support of such application were wholly insufficient, the court, in recognition of the seriousness of an adjudication of contempt, provided for the holding of a hearing to afford the judgment debtor a further opportunity to demonstrate some meritorious basis for the relief sought by him. Instead of promptly availing himself of such opportunity, he occasioned several adjournments of the hearing by pleading involvement, always extensively documented, in official duties incidental to his legislative position. When it became apparent that he intended to continue in this vein indefinitely, the court scheduled the hearing peremptorily against him.

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 definance designed to frustrate and impede the judgment creditor in the lawful collection of her judgments. Consistent with such policy, the judgment debtor did nothing more at the hearing than to interpose a perfunctory attack upon the validity of the underlying subpoena of December 15, 1965, mandating a separate hearing thereon as a matter of due process. Beyond the raising of this issue, the judgment debtor made not the slightest attempt to submit any excuse for his default on the contempt motion, of which proper service had concededly been made, or to indicate that he had any semblance of a defense thereto, although it had been made clear that such were critical issues with respect to the application for relief which he had initiated. The referee's report in connection with the service of the subpoena and the minutes of the proceedings thereon clearly demonstrate that such issue was raised without any real basis in merit. It was merely another play in the seemingly endless series of maneuvers and dilatory tactics by which the judgment debtor manifests his distaste and disrespect for our judicial processes. His failure at any time to submit any facts whatsoever that might in the slightest justify his willful default on the motion to punish for contempt clearly demonstrates the spurious nature of the application addressed thereto. By virtue of such baseless application the judgment debtor has succeeded not only in sub-

stantially delaying the entry of an order on the original adjudication of contempt to the obvious prejudice of the judgment creditor, but such also constituted a direct affront to the court in willfully misusing and abusing its machinery and processes by bringing before it matters known to be sham and frivolous.

The foregoing machinations, having long delayed the entry of an order upon the decision adjudging the judgment debtor guilty of contempt, such should now be done with the greatest of dispatch.

The original motion to punish for contempt herein was supplemented by an oral application to punish the judgment debtor for criminal as well as civil contempt. Criminal contempt would appear warranted in light of the nature of the instant misconduct which significantly, was addressed to a judgment, covering punitive as well as compensatory damages, awarded for the fraudulent transfer of property in interference of the collection by plaintiff for her judgment in the libel action between the parties, and which misconduct it must further be noted is but one of the more current of a long series of similar disobediences by this judgment debtor in these two interrelated actions. Since, however, a trial of the judgment debtor for criminal contempt, based upon such repeated disobediences, has already been directed by another judge of this court (see James v. Powell, 1 N.Y.L.J., August 29, 1966, page 14, column 6, Mr. Justice Saypol), a similar disposition herein would be a meaningless duplication that would accomplish little beyond that of providing the judgment debtor with a new base for protracted procedural and appellate maneuvers and thereby further delay and frustrate the judgment creditor in the collection of her judgments. Moreover the attorney for the judgment creditor has advised the court that in light of the foregoing he is no longer pressing h's application for criminal contempt on the present motion.

On the other hand, there being no prior order of civil contempt in this action, unlike the companion libel action, the entry of such an order is not only warranted but is essential to the protection of the rights of the judgment creditor.

To forestall any further delay and to avoid the almost compulsive dilatory maneuvers which the settlement of an order appears to evoke from the judgment debtor, the court directs the attorney for the judgment creditor to submit forthwith an appropriate order adjudging the judgment debtor guilty of civil contempt for which he is fined the entire amount of the judgment herein together with disbursements in the sum of $100 and counsel fees in the amount of $500. The order should also include a provision affording the judgment debtor leave to purge himself of said contempt either by paying the entire judgment, or by paying said disbursements and counsel fees and submitting himself to the judgment creditor's attorney, together with all books and records as provided for in the original subpoena herein, for a full and complete examination of his assets and finances at Special Term, Part II of this court at 10 A.M. on October 7, 1966, provided service if a copy of this order together with notice of entry thereon is made upon the judgment debtor's attorney on or before 4 P.M. on October 4, 1966, or such alternative date, at the same place and hour of the day, as the judgment creditor may choose, provided that service of said order is made upon the judgment debtor's attorney at least three days prior to said date. The order may also provide for the submission of a body execution ex parte upon the failure of the judgment debtor, to so purge himself.

EXHIBIT NO. 20

EXCERPT FROM THE NEW YORK LAW JOURNAL, OCTOBER 17, 1966

JAMES v. POWELL.—The plaintiff judgment creditor has submitted ex parte, an order directing the commitment of the defendant judgment debtor. The application for this commitment is based upon an order, dated October 3, 1966, made by one of the justices of this court, in which the defendant was adjudged in civil contempt upon his willful failure to appear on December 15, 1965, pursuant to a subpoena for his examination in proceedings to enforce collection of the prior money judgments. (The willful failure of a defendant to respond to a subpoena issued in such proceedings is a civil contempt within the provisions of the Judiciary Law, section 753, and CPLR 5251).

The order of October 3, 1966, assessed a fine against the defendant in the same amount as the unpaid money judgments in the sum of $156,049.76 with

interest from December 14, 1965, plus counsel fees of $500 and disbursements in the sum of $106. The order further provided that the judgment debtor was to appear at 10 A.M. on October 7, 1966, at a Special Term, Part II, of this court, to be examined concerning his assets. He was at the same time to produce the books and records called for in the subpoena, dated December 15, 1965, or, in the alternative, to submit to such examination and produce said books and records at 10 A.M. three days after the service of a copy of that order on his attorney. It was further provided that if the judgment debtor failed to pay the fine assessed against him or failed to appear at the time set for his examination, then an order of commitment would issue without any further notice.

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.

The plaintiff's unsuccessful but sustained efforts to collect the judgments is a matter of record and the multiple judicial proceedings instituted to enforce such collection may be found in the records of this court.

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.

There is no legal impediment to the making of an order finding the judgment debtor in civil contempt because of his disobedience and refusal to comply with the process of the court. The sheriff of any county of New York State where the judgment debtor may be found is authorized and directed to arrest him, when the Congress is in recess, and confine him until lawfully discharged. Order signed stimultaneously herewith.

EXHIBIT No. 21

241 F. SUPP. 858

Application of Esther JAMES, Petitioner, for an order directing the Attorney General of the United States, Nicholas deB. Katzenbach, to commence a quo warranto proceeding against Adam Clayton Powell, Jr., etc.

United States District Court, S.D. New York, April 28, 1965.

Judgment creditor of member of House of Representatives filed an application for an order directing the Attorney General of the United States to commence a quo warranto proceeding against the member of the House of Representatives to determine his right or title to his office, or in the alternative to give the judgment creditor such right. The District Court, Tenney, J., held that the judgment creditor did not have such interest as to entitle her to institute a quo warranto proceeding, and that the District Court had no power by mandamus to compel the Attorney General to exercise his discretion of instituting a quo warranto proceeding, and that federal courts have no jurisdiction to pass on qualifications and legality of election of any member of the House of Representatives, and that the Attorney General did not have power to compel action by the House of Representatives.

Motion denied and petition dismissed.

1. Quo Warranto 24

Judgment creditor of member of House of Representatives could not maintain quo warranto proceeding to determine right or title of member to office merely because of her status as judgment creditor who was unable to obtain arrest of member because of his congressional immunity. D.C. Code 1961, §§ 16-1601 et seq., 16-1601 to 16-1604.

2. Courts 265

The "all writs statutes" does not purport to confer original jurisdiction of mandamus proceeding on federal District Court but rather to prescribe scope of relief which may be granted when jurisdiction otherwise exists. 28 U.S.C.A. § 1651(a).

3. Courts 265

Statute providing that federal District Courts shall have original jurisdiction of any action in nature of mandamus to compel officer or employee of United

States or any agency thereof to perform duty owed to plaintiff was enacted to extend to federal District Courts authority to issue writs of mandamus theretofore granted to District Courts in the District of Columbia, and it does not enlarge scope of permissible mandamus relief. 28 U.S.C.A. § 1361.

4. Attorney General 7
Mandamus 73(1)

The institution of quo warranto proceeding in District Court for the District of Columbia is within discretion of Attorney General, and federal District Court has no power to compel its exercise by Attorney General. 28 U.S.C.A. § 1361; D.C.Code 1961, §§ 16–1601 to 16–1604.

5. Constitutional Law 68(3)

Federal courts have no jurisdiction to pass on qualifications and legality of election of any member of House of Representatives, in view of constitutional provision that each house shall be judge of elections, returns, and qualifications of its own members. U.S.C.A.Const. art. 1, § 5, cl. 1.

6. Attorney General 6

Attorney General does not have power to compel action by House of Representatives as to qualifications of one of its own members. U.S.C.A. Const. art. 1, § 5, cl. 1.

Raymond Rubin, New York City, for petitioner.
Robert M. Morgenthau, U.S. Atty., Arthur S. Olick, Asst. U.S. Atty., of counsel, for respondent.

TENNEY, District Judge.

Petitioner moves herein, by order to show cause, for an order directing the Attorney General of the United States "to institute a proceeding in the nature of *quo warranto* to determine the right or title of Adam Clayton Powell, Jr., to the Office of the United States Congressional Representative of the 18th Congressional District of the State of New York", or in the alternative giving petitioner such right, on the grounds that "said Adam Clayton Powell, Jr., was not an inhabitant of the State of New York between October 3, 1964, and December 31, 1964, and therefore not an inhabitant thereof at the time of his election in November of 1964."

Petitioner is a judgment-creditor of Congressman Powell and alleges that his "Congressional Immunity" to arrest "has impaired, impeded and prejudiced [her] in the pursuance of her legal damages and has deprived her of a valuable property right."

[1] I will first consider the latter of the two alternative prayers for relief, petitioner's request for leave to institute *quo warranto* proceedings. Congressman Powell, of course, is not a party to the within proceedings. Assuming that petitioner can obtain personal jurisdiction of Congressman Powell, has she standing to maintain a proceeding in the nature of *quo warranto* to determine his right or title to the office of United States Congressional Representative? Assuming, for the purposes of the motion, that petitioner's property rights may have been affected by Congressman Powell's "Congressional Immunity", she asserts no personal interest in the office he purports to hold. I am constrained to hold that her status as a judgment-creditor does not, by reason of her inability to obtain his arrest while protected by "Congressional Immunity", vest her with the "personal and direct interest in the subject of the litigation" (i.e., the office of Congressional Representative) required to entitle her to institute such a proceeding. Newman v. U.S. ex rel. Frizzell, 238 U.S. 537, 35 S.Ct. 881, 59 L.Ed. 1446 (1915); see also Ex parte Albert Levitt, 302 U.S. 633, 58 S.Ct. 1, 82 L.Ed. 493 (1937) (Per curiam); Fairchild v. Hughes, 258 U.S. 126, 42 S.Ct. 274, 11 L.Ed. 499 (1922); Commonwealth of Massachusetts v. Mellon, 262 U.S. 447, 43 S.Ct. 597, 67 L.Ed. 1078 (1923).

Having no status to maintain an action in the nature of *quo warranto*, may petitioner mandamus the Attorney General to institute such a proceeding? The basis of petitioner's claim is Article 1, Section 2, Clause 2, of the United States Constitution (U.S. Const. art. 1, § 2, clause 1) provides that:

"No person shall be a Representative * * * who shall not, when elected, be an Inhabitant of that State in which he shall be chosen."

[2] No question of the construction of the provision is involved herein. For the purposes of this motion it is assumed that Congressman Powell was not an

inhabitant of New York at the time of his election, since respondent has not answered the petition but has moved to dismiss. Petitioner relies on Section 1651 (a) of Title 28 of the United States Code (28 U.S.C. § 1651(a) (1950))—the "all writs statute"—and Title 28 of the United States Code, Section 1361 (28 U.S.C. § 1361 (Supp. 1964)). The former statute is clearly not applicable, since it does not purport to confer original jurisdiction but rather to prescribe the scope of relief which may be granted when jurisdiction otherwise exists. United States ex rel. Vassel v. Durning, 152 F.2d 455 (2d Cir. 1945) (Per curiam); Pugach v. Klein, 193 F.Supp. 630 (S.D.N.Y. 1961). The latter statute (28 U.S.C. § 1361) as amended to take effect October 5, 1962, provides that:

"The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff."

It is difficult to find any duty owed to petitioner by respondent herein. If petitioner has no standing to maintain an action in the nature of *quo warranto*, can she compel, by writ of mandamus, the Attorney General to institute such an action on her behalf and in discharge of a duty owed to her?

[3, 4] Section 1361 of Title 28 was enacted to extend to the Federal District Courts the authority to issue writs of mandamus theretofore granted to the District Courts in the District of Columbia; however, it does not enlarge the scope of permissible mandamus relief. Smith v. United States, 333 F. 2d 70, 72 (10th Cir. 1964); see 2 United States Code Cong. & Adm. News, pp. 2784-2785 (1962). What petitioner seeks is not an administrative determination but rather a determination as to the manner in which the Attorney General's discretion is to be exercised. The only federal authority for the institution of *quo warranto* proceedings is Title 16 of the District of Columbia Code, Sections 1601–1604 (1961 ed.), and while constituting general laws of the United States, it is clear that the institution of such proceedings is a matter within the discretion of the Attorney General, since Section 1603 of the District of Columbia Code provides for the institution of such proceedings by an "interested person" if the Attorney General refuses to act. In any event, an action under Title 16 of the District of Columbia Code, Sections 1601 et seq. must be brought only in the District Court for the District of Columbia. United States ex rel. State of Wisconsin v. First Federal Savings & Loan Ass'n, 248 F. 2d 804 (7th Cir. 1957), cert. denied, 355 U.S. 957, 78 S. Ct. 543, 2 L. Ed. 2d 533 (1958). The institution of such a proceeding in the District Court for the District of Columbia being within the discretion of the Attorney General, this Court has no power to compel its exercise. This principle has not been changed by the enactment of Section 1361 of Title 28 of the United States Code. Parker v. Kennedy, 212 F. Supp. 594, 595 (S.D.N.Y. 1963).

Finally, and it seems to the Court, conclusive, is the undeniable fact that Article 1, Section 5, Clause 1, of the Constitution (U.S. Const. art. 1, § 5, clause 2) provides that:

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

[5, 6] Accordingly, the federal courts have no jurisdiction to pass on the qualifications and the legality of the election of any member of the House of Representatives. See Keogh v. Horner, 8 F. Supp. 933 (S.D. Ill. 1934); cf., Sevilla v. Elizalde, 112 F. 2d 29 (D.C. Cir. 1940); see also Reed v. County Comm'rs, 277 U.S. 376, 388, 48 S. Ct. 531, 72 L. Ed. 924 (1928). Nor has the Attorney General power to compel action by the House of Representatives.

"The concept that the court should order the individual defendants to request Congress to give equitable relief to the plaintiffs violates the well established principle of separation of powers. We agree with the trial court that it 'would thwart every constitutional canon for this court to order an arm of the Executive Department to demand action by the Legislative Department.'" Smith v. United States, 333 F. 2d 70, 72 (10th Cir. 1964); see Parker v. Kennedy, supra, 212 F. Supp. at 595. Petitioner, in her reliance on cases such as W.M.C.A., Inc. v. Simon, 370 U.S. 190, 82 S. Ct. 1234, 8 L. Ed. 2d 430 (1962); Baker v Carr, 369 U.S. 186, 82 S. Ct. 691, 7 L. Ed. 2d 663 (1962); and Brown v. Board of Educ., 347 U.S. 483, 74 S. Ct. 686, 98 L. Ed. 873 (1954), confuses questions concerning the supremacy of the federal constitution and the doctrine of federalism with the relationship among the three branches of our Federal Government and the doctrine of separation of powers.

It is not necessary to determine whether petitioner could have contested Congressman Powell's election under Title 2, Chapter 7 of the United States Code, since in any event her time to so act has long since passed (2 U.S.C. § 201 (1927)).

Petitioner's motion is accordingly denied and her petition is dismissed. So ordered.

COUNTY CLERK, NEW YORK COUNTY

CLERK'S MINUTES OF SUPREME COURT ACTIONS AND PROCEEDINGS 1960

No. 11333-60

ESTHER JAMES, PLAINTIFF

against

ADAM CLAYTON POWELL, DEFENDANT

Attorney R. Rubin.

1960:
August 4: Index Number Assigned. Summons & complaints.
November 1: Summons & complaint.

1961:
February 3: Order, sp 1—Granted. Modify demand (Bill).
June 2: Stipulation of Discontinuance.
September 28: Statement, spec Rule Re Cal Practice Filed with note of Issue.
December 4: Order, spec I—withdrawn.

1962:
June 13: Order, spec I—grant leave—granted.
July 6: Order, spec I—granted—strike 3rd defense, etc.
July 18: Appeal.
July 23: Cross appeal.
October 26: Order, spec. & TT-2—granted, place cause on calendar.

1963:
January 31: Order, spec I—Granted. Withdrawn as attorney.
February 18: Notice of appearance. Notice of entry.
March 4: Notice of appearance. Affidavit.
April 5: Judgment Roll micro 17754 and 13446-64 costs.
April 26: Notice of appeal.
December 6: Letter.
June 7: Order, spec 2, denied, issue execution.
July 22: Order, spec I, denied, issue execution.
September 26: Subpeona order.
October 25: Order, S. II—Show cause.
October 28: Order, Sp I—Punish Contempt, marked off.
December 27: Order, spec I, punish for contempt, granted.

1964:
January 2: Appeal.
March 9: Remittitur—consent.
March 16: Judgment on remittitur. Costs.
March 24: Order, spec 2, show cause.
March 26: Notice of appeal.
March 27: Order, spec I, examination set for May 1, 1964.
March 31: Order, spec 2, show cause.
April 8: Appeal.
April 20: Order, spec 2, show cause.
April 27: Order, spec 2, show cause.
April 29: Order, spec I, referred to referee.
April 30: Order, spec I, denied stay proceedings.
May 1: Order, spec 2, show cause.
May 4: Notice of Appeal.
May 15: Appellate Div. order, denied. Costs.
May 19: Order, spec 2, show cause.
May 26: Order Spec. I. Denied. Modify subpoena.
June 4: Order Spec. I. Granted. Guilty of contempt. Order of arrest.
June 17: Order Spec. II. Produce a person with knowledge of all the facts.
July 20: Judgment for costs #33493. Bill of costs.
October 15: Order Spec. II. Show cause.
November 4: Subpoena d.t.
November 27: Order Spec. II. Show cause.
December 3: Affidavit of service.

1965:
January 22: Order Spec. I. Denied. Punish for contempt.
January 20: Order docketed as judgment. O-4646.
February 4: Subpoena d.t.
May 18: Order Spec. II. 5/20/65.
June 3: Order show cause (June 23).
June 23: Order Spec. II. Show cause 7/6/65.
June 28: Order Spec. I. Quash subpoena denied. Bond. 7/2/65. Order Spec. II show cause.
July 27: Order Spec. I. Contempt. 2 granted.
July 27: Order Spec. I. Turn over monies. Granted.
August 30: Appeal.
August 5: Order show cause (August 13).
September 30: Order Spec. I. Denied. Contempt.
November 1: Subpoena duces tecum.
November 26: Subpoena duces tecum.
December 16: Order show cause (January 7).
December 21: Affidavit of service.

1966:
July 27: Order Spec. I. Granted as indicated.
July 28: Order Spec. I. Granted.
July 27: Denied.
August 5: Copy order with affidavits of service.
August 15: Order Spec. I. Hearing to be held.
August 16: Note of issue. Copy order.
August 19: Order show cause (August 25, 1966).
September 8: Order Spec. I. Denied. Vacate subpoena.
September 14: Order Spec. I. I/F/O contempt granted.
September 16: Note of issue.
September 21: Application to adjourn.
October 4: Memo opinion. Private examination to be held.
October 11: Extract and exhibits.
October 27: Memo opinion.
November 10: Memo decision.
November 17: Order TT VIII defendant to appear and surrender.
November 21: Notice of appeal.
November 30: Order Spec. I. Denied. Set aside commitment (memo opinion).
December 2: Memo decision (def. to pay). Minutes. Notice of appeal.
December 9: Order show cause (December 14).
December 13: Appeal.
December 28: Copy subpoenas d. t.

GENERAL EXHIBIT

COUNTY CLERK, NEW YORK CITY

CLERK'S MINUTES OF SUPREME COURT ACTIONS AND PROCEEDINGS 1964

No. 5544—1964

ESTHER JAMES, PLAINTIFF

against

ADAM CLAYTON POWELL, DEFENDANT

Attorney For Plaintiff: R. Rubin.

1964: April 8: Index Number Assigned. Summons & complaint—Affidavit of service.

1965:
January 22: Order—Spec II—Inquest & severance.
January 29: Note of issue.
February 9: Order—Spec II—Show cause—Feb. 10, 1965.
February 10: Order—Spec I—Vacate service—denied.

February 11: Extract of Minutes.
February 15: Bill of costs. Judgment—Micro No. 7524.
February 25: Subpoena with affidavit of substitute service (Adam Powell). Subpoena with affidavit of substituted service (Y. Powell). Notice of appeal.
March 1: Order—Spec II—show cause 3/5/65.
March 31: Order—Spec I—Vacate—granted to the extent.
April 5: Stipulation agreeing to appear and answer.
April 14: Order—Spec II—show cause 4/30/65. Order—Spec II—show cause 4/30/65
April 16: Affidavit.
April 23: Notice of appeal.
April 26: Answer.
June 21: Remitittur.
July 1: Order—Spec I—punish for contempt—denied.
July 27: Order—Spec I—Motion #77-78 consolidated.
July 27: Order—Spec I—strike answer denied.
August 23: Letter.
September 30: Order—Spec I—denied.
October 4: Order—Spec II—show cause 10-7-65.
October 8: Appeal.
October 29: Order—Spec I—set date for examination before trial—granted.
November 8: Subpoena (copy) 2.
November 24: Order—Spec II—show cause 12-1-65.
December 10: Order—Spec I—punish for contempt—denied.
December 13: Note of Issue.
December 15: Bill of costs. Judgment roll #25162 (Micro).
December 17: Notice of appeal.
December 21: Subpoena (2) Notice of appeal.

1966:
January 12: Order—Spec II—show cause 1/24/66. Order—Spec II—show cause 1/24/66.
January 18: Remitittur.
February 10: Notice of appeal.
April 19: Order—show cause (Apr. 25).
June 1: Order—Spec I—granted. Punish for contempt. Order—Spec I—debtor to appear for hearing.
June 14: Order—Spec I—directing appearance at later date.
June 15: Record on appeal (book).
June 17: Copy order—Appellate Div. Bill of Costs—Docketed (3) 6/17/66. Remitittur—Court of appeals.
July 7: Affidavit of Service.
July 12: Order—show cause (July 19).
July 13: Order—spec I—hearing to be held.
June 23: Bill of costs docketed 6/23/66 #25200.
June 29: Order show cause—spec II 7-12-66.
July 15: Notice of appeal.
July 22: Notice of appeal.
July 27: Minutes.
July 28: Report of special referee.
July 29: Order—spec I—denied contempt (see memo opinion).
August 4: Order—show cause (Aug. 29).
August 9: Affidavit of service.
August 15: Order—spec I—granted to extent of setting down issue for hearing.
August 16: Note of issue & copy order.
September 9: Order—spec I—denied, contempt.
September 16: Appeal.
October 3: Order spec I—granted, confirm report guilty of civil contempt (see memo opinion).
October 14: Order spec I—commit to jail (memo opinion).
October 25: Subpoena and affidavit of service.
October 27: Memo opinion. Remitittur (book).
October 31: Appeal.
November 2: Cross-appeal.
November 16: Order—show cause (Dec. 9, 1966).
November 28: Order spec II—guilty of criminal contempt, commit to jail.

November 29: Order, spec II, show cause 11/30/66.
December 2: Memo decision (debtor to pay).
December 6: Remittitur.
December 9: Order—show cause (Dec. 14).
December 14: Order—spec II—commit to jail.
January 11: Order—show cause (Jan. 31).

Mr. GEOGHEGAN. Mr. Chairman, I have here before me a certified copy of dates when the House was in session during the 88th and 89th Congress. This record is certified by the Clerk of the House, Mr. Jennings, and I would like to have this received in the record.

Chairman CELLER. It will be accepted.

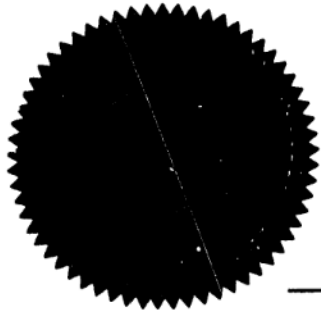
Mr. GEOGHEGAN. I might add, in answer to the question raised by Mr. Moore, the House was not in session on January 7, 1966. The second session of the 89th Congress did not convene until January 10, 1966.

(The document follows:)

W. Pat Jennings
Clerk

Office of the Clerk
House of Representatives
Washington, D.C.

I, W. Pat Jennings, Clerk of the House of Representatives, do hereby certify that the First Session of the Eighty-eighth Congress convened on January 9, 1963 and adjourned on December 30, 1963, the Second Session of the Eighty-eighth Congress convened on January 7, 1964 and adjourned on October 3, 1964, the First Session of the Eighty-ninth Congress convened on January 4, 1965 and adjourned on October 23, 1965, the Second Session of the Eighty-ninth Congress convened on January 10, 1966 and adjourned on October 22, 1966 as is evidenced by the Journal of the House of Representatives, the originals of which are in the custody of this office.



In witness whereof, I hereunto affix my name and the Seal of the House of Representatives, in the city of Washington, District of Columbia, this thirteenth day of February, anno Domini one thousand nine hundred and sixty-seven.

W. Pat Jennings
Clerk, U.S. House of Representatives

Mr. MACGREGOR. Mr. Chairman, may the record show at this point that the applicable provision of clause I, section 6, article 1 of the U.S. Constitution, reads as follows:

> The Senators and Representatives . . . shall be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same.

Chairman CELLER. Any other questions?

Thank you, Mr. Goldfarb.

Mr. CORMAN. Mr. Chairman.

I would like, and if you can't answer now, I would like in the record the dates that the Member-elect was to appear, which subsequently led to contempt citations, either civil or criminal, specific dates that he stipulated he would appear, and whether or not the House itself was in session on each of those dates.

Mr. GOLDFARB. Mr. Corman, you have, or will have, the stipulations themselves, and you have the dates that Congress was in session—I don't recall them offhand. The stipulation is an exhibit which you now have before you, and the dates have been offered, I assume, by Mr. Geoghegan, and so you will have that.

Mr. PEPPER. Mr. Goldfarb, why was it that the process of the courts of New York requiring Mr. Powell to appear on certain instances and to do certain things was not carried out?

Mr. GOLDFARB. Don't think I can answer that.

Mr. PEPPER. Or were not carried out?

Mr. GOLDFARB. I don't think I can answer that. The opinions indicate that they were not. You know——

Mr. PEPPER. I mean the various orders requiring Mr. Powell to appear before the several courts of New York State, why were those orders not executed? Why was Mr. Powell not required to appear?

Mr. GOLDFARB. He was required to appear. There are outstanding arrest orders. Are you asking me why New York courts haven't executed the arrest orders and sent someone down to arrest him? Is that your question?

Mr. PEPPER. What was the reason—ordinarily the process of the court has some significance, and ordinarily these processes are executed. Here it seems to me striking the sequence of orders of the courts which were either ignored or not complied with.

Now, was it due to the fact that Mr. Powell was not in the State of New York, or was it due in any part to the fact that he claimed congressional immunity?

Mr. GOLDFARB. I can only surmise those things; I don't know. I don't think I am the one to answer that question.

Mr. PEPPER. In any of the proceedings, was the claim of congressional immunity filed by counsel for Mr. Powell?

Mr. GOLDFARB. Yes, sir, that was raised at least once.

Mr. PEPPER. So that was one of the defenses urged against execution of these orders—that he had congressional immunity from the process?

Mr. GOLDFARB. That defense was raised at least one time that I read about.

Mr. PEPPER. Now, these contempt—criminal contempt orders are still in effect in New York?

Mr. GOLDFARB. Two criminal contempt arrest orders, and two civil contempt arrest orders, the best I can piece it together, are now out-

standing, and there is no record in the courts that they are being appealed, but I can't account to you, Mr. Pepper, for why the New York courts have not executed an arrest order.

Mr. GEOGHEGAN. Mr. Goldfarb—excuse me, Senator Pepper—Mr. Goldfarb, is it reasonable to infer the reason those arrest orders have not been executed is because Mr. Powell has been beyond the physical jurisdiction of the New York courts?

Mr. GOLDFARB. That could be, except there is a question of whether or not he could be extradited from any place. I thought that is what he was driving at, why they hadn't tried to extradite instead of just arresting in New York, and I don't know the answer to that question.

Mr. PEPPER. Thank you very much.

Mr. MOORE. Mr. Chairman, may I inquire whether or not, along with the witness' testimony, he has included the various orders of commitment that have been issued in the State of New York and various courts? Are they included?

Mr. GOLDFARB. Every order that I could find, that was a matter of public record, is in this analysis that I have presented to you.

Mr. MOORE. Can I visit with you just a moment on the question of criminal contempt in the State of New York and your familiarity with it?

What, in your opinion, would be the result if Mr. Adam Clayton Powell were to appear in the State of New York and submit to the jurisdiction of the court?

The reason I ask this question: Is criminal contempt of such a character in the State of New York that he could not, by his appearance, virtually wipe it out, and if he were to submit to the questions of the court and answer the questions that have been apparently posed numerous times for which his nonappearance has made the answer impossible?

Mr. GOLDFARB. I think the answer is "No." A civil contempt order can be purged. A criminal contempt order is a fait accompli, and there have been cases where courts have written up what they call the criminal contempt and put in a purge clause, but I don't think that is—I think they are extraordinary and they are really wrong. The two are often confused, but a criminal contempt order, so far as I know, and I think, cannot be purged. The civil contempt order is. The reason for that is that civil contempt orders are coercive-type orders, that is, "come in and do such-and-such, or go to jail." "If you come in and do such-and-such, then you don't go to jail."

Whereas a criminal contempt is punishment for an accomplished act, that is, "you did not do it, and I am punishing you for not doing it, and even if you come in and do it, it would be the same thing." Criminal contempt, if you could compare, Mr. Moore, larceny, if you return stolen goods, it doesn't mean you haven't stolen them. I don't think he could purge criminal contempts unless there is some peculiarity in criminal law I don't know about.

Chairman CELLER. Those criminal contempts, they are based upon New York statutes as well as common law?

Mr. GOLDFARB. They are all based on New York statute and not common law.

Chairman CELLER. And that New York State statute prescribes punitive damages, imprisonment, and fine?

Mr. GOLDFARB. Up to a year in jail, I think.

Chairman CELLER. Just as penalties for a crime?

Mr. GOLDFARB. Right. Well, no, there is a judiciary, there is a contempt which is allowed by the judiciary law in New York, and my understanding is that that is the applicable law in this case. There is also contempt allowed under the penal laws of New York, and I checked with Mr. Hogan's office——

Chairman CELLER. What are these—what are the outstanding criminal contempts?

Mr. GOLDFARB. Criminal contempts arise under section 753 of the New York judiciary law, and not under the penal law, section 600.

Mr. MOORE. May I follow and inquire when the character of the criminal contempts in this instance—I take it they are not under the Penal Code of the State of New York?

Mr. GOLDFARB. That is right. They are not.

Mr. PEPPER. Would the Senator yield there?

Do I understand you to say, in answer to the question my colleagues have asked, that these criminal contempts, judgments, that these criminal contempts orders are in the nature of judgments which either have to be executed or complied with, or perhaps could be pardoned by the pardoning authority of the State?

Mr. GOLDFARB. Well, there has been only one case in the district which raised the question of whether or not criminal contempt is subject to the pardon clause. I think it is. But I am not sure if New York's pardon procedures——

Mr. PEPPER. It either has to be served or the subject of a pardon, one or the other?

Mr. GOLDFARB. Right. It has to be executed or reversed or an arrest order executed.

Chairman CELLER. Thank you.

Do I understand that references to two criminal contempt citations, the penalty of Mr. Powell of the New York jurisdiction would be 30 days in jail and $500 fine? Am I correct?

Mr. GOLDFARB. $250 fine.

Chairman CELLER. $250 fine on each contempt, or it is combined?

Mr. GOLDFARB. I think there are two of those outstanding at the present time.

Chairman CELLER. Is the imprisonment concurrent—will it run concurrently?

Mr. GOLDFARB. That is my understanding.

Chairman CELLER. So it would be 30 days, plus twice $250?

Mr. GOLDFARB. Well, if they are concurrent——

Chairman CELLER. Both are concurrent?

Mr. GOLDFARB. I see what you are saying. There are two outstanding civil contempt orders: One, involving——

Chairman CELLER. I am speaking of criminal contempt.

Mr. GOLDFARB. Criminal contempt?

Chairman CELLER. Criminal contempt, as I understand it, has two fines, each $250, and two imprisonments, 30 days, but they are to run concurrently.

Mr. PATTERSON. Mr. Goldfarb, isn't there some reason to believe that his attorneys have paid the fines in connection with the contempt? Do the records show that?

Mr. GOLDFARB. I have not seen such records. It is possible, but I don't know. Since some of these are pending in the Court of Appeals, I would be inclined to doubt it, but that is only a surmise.

Chairman CELLER. In other words, as I gather it, on numerous occasions, Mr. Powell failed to appear when he was supposed to appear, and on two specific occasions, he failed to appear in default of his actual agreement, and that agreement was reduced to writing and he signed that agreement?

Mr. GOLDFARB. There were two stipulations, right.

Chairman CELLER. Any other questions?

Mr. MACGREGOR. Mr. Chairman, Mr. Goldfarb, you have indicated that your search of appropriate records of the various courts in New York have failed to indicate any evidence that Mr. Powell has caused any appeal to be taken from any of these contempt citations; is that correct?

Mr. GOLDFARB. Yes, but I am perplexed by one thing, and that is that in the pending appeal in the Court of Appeals involving the fraudulent transfer case, there are in those records several of these contempts. The clerk of the court advises that they are not part of the appeal, but they are there, and whether or not they are attached to that judgment, would fall with the judgement, I can't be sure. There is no opinion on this, and it is a pending matter, and I didn't contact the participant because I didn't think it was appropriate.

Mr. MACGREGOR. Mr. Goldfarb, under New York law is the right of appeal available to Mr. Powell on each and every one of these citations?

Mr. GOLDFARB. Oh, I think you can appeal a contempt any place.

Mr. MACGREGOR. That is my understanding, but you are the witness here, and I wanted to have it for the record.

Mr. GOLDFARB. I am quite certain that you can appeal any contempt action.

Mr. MACGREGOR. In other words, with the exception of the appeal on the civil action for fraudulent transfer, which may or may not involve one or two contempt citations, there does not appear to have been any appeal taken, although that appeal right was granted to Mr. Powell, from any of the four citations for contempt, two criminal and two civil, right?

Mr. GOLDFARB. It is not clear from the record. The clerk says they are not part of the appeal, but they are in the record of appeal. That is why I am somewhat baffled by that one aspect.

Mr. MACGREGOR. In connection with your examination of the criminal contempt citations, no appeal has been taken, although the right of appeal is accorded Mr. Powell under New York law?

Mr. GOLDFARB. I found no appeal any place.

Mr. MACGREGOR. Thank you.

Mr. MOORE. Will the gentleman yield?

Mr. MACGREGOR. Yes.

Mr. MOORE. If I may follow that question—under New York law, when does the opportunity to appeal in any of these contempt citations expire? Is it always available to him? Is it available to him today?

Mr. GOLDFARB. I would have to check. If he hasn't taken any action to date, I am sure that there is a provision, there is a time provision, but I don't know what that time provision is.

Mr. MOORE. I have asked counsel to determine the status of the appeal rights of either of the contempt citations so that we may have that, and I understand that you have to file an appeal within 30 days, but let's get the appropriate New York laws and provisions with respect thereto.

Chairman CELLER. Thank you very much, Mr. Goldfarb.* Our next witness is Mr. Dean Franklin of Chalk Airlines.

Will you raise your hand, please. Do you solemnly swear that the testimony you will give this matter now proceeding before this committee will be the truth, the whole truth and nothing but the truth, so help you God?

Mr. FRANKLIN. Yes, sir.

TESTIMONY OF DEAN FRANKLIN, CHALK AIRLINES, MIAMI, FLORIDA

Mr. PATTERSON. State your name, please?

Mr. FRANKLIN. Dean Franklin.

Mr. PATTERSON. What is your occupation, Mr. Franklin?

Mr. FRANKLIN. I am owner of Chalk Airlines and also a pilot.

Mr. PATTERSON. How long have you been with Chalk?

Mr. FRANKLIN. Over 30 years.

Mr. PATTERSON. Where is Chalk located?

Mr. FRANKLIN. On MacArthur Causeway, Miami, Fla.

Mr. PATTERSON. Are you appearing here in response to a subpena served on you?

Mr. FRANKLIN. Yes, sir, I did.

Mr. PATTERSON. And did that subpena call for production of specific records of the Chalk Air Services?

Mr. FRANKLIN. Yes, sir; it did.

Mr. PATTERSON. Have you got them with you here today?

Mr. FRANKLIN. Yes, sir; I have.

Mr. PATTERSON. That subpena relates to travel of certain named persons, does it not?

Mr. FRANKLIN. Yes, sir.

Mr. PATTERSON. Did the names mean anything to you when you received the subpena from the select committee?

Mr. FRANKLIN. Yes, sir; we have transported these people from our base on MacArthur Causeway to Bimini in the Bahamas.

Mr. PATTERSON. Do you have the subpena with you?

Mr. FRANKLIN. I believe I handed it to someone.

[Document handed to the witness.]

Mr. PATTERSON. Could you read for the record the names of the persons contained in the subpena?

Mr. FRANKLIN. Yes, sir. Committee of the House of Representatives of the United States of which——

Mr. PATTERSON. Just the names and persons?

Mr. FRANKLIN. To produce all of the said records relating to airline tickets issued and used by Adam C. Powell, C. Sumner Stone, O'Dell Clark, John Warren, Corinne Huff, Emma T. Swann, Cleomine A. Lewis, Sylvia A. Givens, Aurora A. Harris for transportation between Miami, Fla., and Bimini.

*Subsequent to his testimony Mr. Goldfarb informed the committee that continued investigation has indicated that there is only one outstanding criminal contempt order in the State of New York, that it is currently being appealed to the Appellate Division and, as a result, is not yet a final order.

Mr. PATTERSON. The subcommittee had difficulty in establishing that the people in whose names travel was purchased had actually travelled to Miami from Washington, D.C. Are each of the persons contained in the subpena familiar to you?

Mr. FRANKLIN. Yes, sir; they are familiar to me, however, I haven't seen them enough to be able to identify all of them. I can identify some of them.

Mr. PATTERSON. Do you see any of them in the hearing room today?

Mr. FRANKLIN. Yes, I do.

Mr. PATTERSON. Would you tell me who you see.

Mr. FRANKLIN. I believe the gentleman behind me there is Mr. Stone, and the gentleman sitting next to him, I recognize him, but I don't know his name.

Mr. PATTERSON. Thank you.

Did you receive a letter at any time in connection with the payment of bills for either freight or in connection with travel of any of these persons and how such travel was to be paid for?

Mr. FRANKLIN. Yes, I did.

Mr. PATTERSON. Have you brought that with you?

Mr. FRANKLIN. Yes, sir; I believe it is here.

Mr. PATTERSON. Could you read that letter into the record, please?

Mr. FRANKLIN (reading):

DEAR SIR: May I respectfully request that all mail and or bills pertaining to the Yacht, Adam's Fancy, be forwarded to the following address: Huff Enterprises Ltd., 2161 Rayburn Building, Washington, D.C.

Your cooperation in handling the above matter will be greatly appreciated.

Mr. PATTERSON. What is the date of that letter?

Mr. FRANKLIN. The date of the letter is October 30, 1966.

Mr. PATTERSON. Who is it signed by?

Mr. FRANKLIN. It is signed by Corinne Huff, president of Huff Enterprises.

Mr. PATTERSON. I have no further questions of this witness.

Mr. MOORE. Mr. Chairman, may I inquire of the witness the nature and character of your operation as a charter service? Do you maintain definitive logs of each of your flights and would you respond?

Mr. FRANKLIN. Yes, I do, sir.

Mr. MOORE. And do these logs reflect the names of the passengers for each of the charter flights?

Mr. FRANKLIN. Yes, sir. We also run a scheduled air taxi operation which is individual passengers and we carry a manifest on all of those flights.

Mr. MOORE. In response to the subpena, have you made available to counsel of this committee the manifests for the period and time involved for inquiry in this subpena?

Mr. FRANKLIN. Yes, sir, I have.

Mr. MOORE. Mr. Chairman, it would appear this would be the appropriate place to receive the particular documents which would be in the manifest and recite the various individuals that have used the Chalk Airline Service that would be the submatter of the inquiry and have been named in the subpena and I would suggest that we make them part of the record at this time.

Chairman CELLER. Do you have with you those documents?

Mr. FRANKLIN. Yes, I do, sir.

Chairman CELLER. They will be accepted in the record.

(The document follows:)

Passenger manifest (to Bimini)

Name	Ticket No.	Address	CH	CR	Previous
JULY 2					
Wyman Harrison	2858	1456 Ashley Dr., Virginia Beach, Va.	$15		
Robert Adriance	2859	1212 Kittiwake Ct., Virginia Beach, Va.	15		
Michael Hinsey	1147	I-94	10		
Marlá Barnett	2860	3450 Southwest 69th Avenue, Miami, Fla.	15		
Lloyd Mitchell	2863	580 St Nicholas Ave., New York, N.Y.	15		
Livingston Wingate	2864	10 W. 135 St., New York, N.Y.	15		
Adam Clayton Powell	2866		15		
Emma Swann	2865	U.S. House of Representatives, Room 2161.	15		
Corrine Huff	2867		15		
James Durham	298	3508 Segovia, Coral Gables, Fla.	15		
Joan Durham	299		15		
Total			160		
JULY 9					
Carroll Swann	3165	U.S. House of Representatives, Washington, D.C.	15		
Frank Ferren	3166	1152 N.W. 8th St. Rd., Miami, Fla.		$15	
Elaine	3167			15	
Dan Rush	3168	13300 S.W. 63d Ave., Miami, Fla.	15		
Esrry Frank	3169	1865 79th St. Causeway, Miami, Fla.	15		
Total			45	30	

CHALK'S FLYING SERVICE INC.
CHARTER FLIGHT

Date: July 13, 1965.
Plane No. N702A
Departure From Bimini, Bahamas.
Departure Time: 3:30
Arrival At Miami, Fla.

Passenger list

	HT	CH	CR
Fred Waterman	$2		[1] $12
Roland McCann	2		[2]
Paul Murciano	2		[3] 15
Corinne Huff	2	$15	
Adam Powell	2	15	
Total	10	15	27

[1] B. reimbursed.
[2] No charge.
[3] Lab.

Passenger manifest (to Bimini, Bahamas), July 30

Name	Ticket No.	Address	CH	CR	Previous
Mr. C. Stone	3528	3724 Veazey St. NW., Washington, D.C.			
Mrs. C. Stone	3529	do			
Mr. O. Clark	3530	2181 Rayburn House Office Building, Washington, D.C.			
Mrs. O. Clark	3531	do			
Adam Clayton Powell	3532	U.S. House of Representatives, Washington, D.C.			
Corrine Huff	3533	2161 Rayburn House Office Building, Washington, D.C.			
Mrs. Carroll Swann	3534	4241 Nash St. NE., Washington, D.C.			

Passenger manifest (to Bimini, Bahamas), Jan. 1, 1966

Name	Ticket No.	Address	CH	CR	Previous
Dorothy Crameson	2107	3911 Northwest 5th St., Miami, Fla.	15		
Emma Swan	2108	4241 Nash St. NE., Washington, D.C.	15		

Passenger manifest (to Bimini, Bahamas), Jan. 24, 1966

Name	Ticket No.	Address	CH	CR	Previous
DeWitt Nelson	1066 1068	3620 SW. 32 St., Hollywood		$30	$15
Virgil Alexander	1069 1070	332 NW. 16th Terrace, Miami		30	15
Raymond J. Meurer	1832 1833	2995 Iroquois, Detroit, Mich	$30		15
Robert Smith	1071	2300 NW. 64th St., Maimi	(1)		0
Harold Fangboner	1384 1385	9018 Brierly Rd., Chevy Chase, Md.	30		15
Jean Fangboner	1386 1387	9108 Brierly Rd., Chevy Chase, Md.	30		15
Adam C. Powell	1388 1389	2161 Rayburn House Office Building.	30		15
Adam C. Powell, III	1390 1391	MIT	30		15
Carol Adridge	1392 1393	2161 Rayburn House Office Building.	30		15
Corrine Huff	1394 1395	2161 Rayburn House Office Building.	30		15
Total			210	60	135

[1] No charge.

Passenger manifest (to Bimini, Bahamas), Feb. 15, 1966

Name	Ticket number	Address	CH	CR	Previous
LeVon D. Hood	1312	320½ North McDonel, Lima, Ohio			$10
Thomas K. Jackson	1313	Cooperstown, N. Dak			10
Donald Plocher	1314	808 5th Ave., Aurora, Ill			10
Richard Falkenberg	1315	236			10
Frank Davis	1316	69A Bradbury Ave., Medford, Mass.			10
Aldo Ferrari	1317	74 Wall St., Ridgewater, Mass			10
Charles Rickabaugh	1318	South Sherman Ave., East Brunswick, N.J.			10
C. Sumner Stone	2613	Rayburn House Office Building, Washington, D.C.	$30		15
	2614				
Francis Swann	2615	do	30		15
	2616				
Total			60		100

Passenger manifest (to Miami, Fla., from Bimini, Bahamas), Feb. 19, 1966

Name	Ticket No.	Address	CH	CR	HT
Carroll Sevann	2616	175, Miami to Puerto Rico		15	2.00
Corrine Huff	1395	125, Miami to Puerto Rico		15	2.00
Adam Powell	1389	185, Miami to Puerto Rico		15	2.00
Summer Stone	2614	165, Miami to Puerto Rico		15	2.00
Mack McCune	2597	150, Miami to Puerto Rico	15.00	15	2.00
Donald Franz	2598	145, Miami to Puerto Rico	15 00	15	2.00
Leicester Hemingway	3502	190, Miami to Puerto Rico		10	2 00
Nolan Sanders	2718	125, Miami to Puerto Rico		10	2.00

Passenger manifest (to Bimini, Bahamas), Mar. 11, 1966

Name	Ticket No.	Address	CH	CR	Previous
Corrine Huff	2234	2161 Rayburn House Office Bldg., Washington, D.C.	$30		$15
	2233				
Adam Powell	2236	U.S. Congress, Washington, D.C.	30		15
	2235				
Robert J. Reed	2238	1268 Columbia Rd. NW., Washington, D.C.	30		15
	2237				
Francis C. Swann	2240	4241 Nash St. NE., Washington, D.C.	30		15
	2239				
Dr. Ray Good	2242	610 East 4th St., Northfield, Minn.	30		15
	2241				
Julian Brown	2243	I-94	10		10
Total			160		85

Passenger manifest (to Miami, Fla., from Bimini, Bahamas), Mar. 19, 1966

Name	Ticket No.	Address	CH	CR	H.T.
Robert Reed	2237				
Les Hemingway	3966	190	10	R.T.	2.00
Adam Powell	2236	185	15		2.00
Francis Swann	2240	190	15		2.00
Corinne Huff	2233	120	15		2.00
Robert Reed	2237	180	15		2.00
Clarence Moody	3564	200	12.50	R.T.	2.00
Roberto Graupere	6777	200	12.50		2.00
Viola Anderson	4004–05	115	10		
			20		2.00

Passenger manifest (to Bimini, Bahamas), April 1, 1966

Name	Ticket No.	Address	CH	CR	Previous
Ansil Saunders	4214	I-94	.....	BPRT	$10
James Rolle	4216	I-94	.....	BPRT	10
Aisworth Smith	4265	I-94	.....	BPRT	10
Fred Welch	.....	I-94	.....	$10	10
Maureen Smith	4224	I-94	.....	BPRT	10
Ann Pritchard	4222	I-94	.....	BPRT	10
Tammy Lecky	1226	368 NW. 57th St., Miami	.....	(1)	0
Corrine Huff	6055-6056	2161 Rayburn House, Washington, D.C.	$30	.....	15
Adam Clayton Powell	6057-6058	U.S. Congress, Washington, D.C.	30	.....	15
Wendell Pontious	1393-1394	366 Park Rd., West Hartford, Conn.	.....	30	15
Total	.....	.....	60	40	105

[1] No charge.

LL

Passenger manifest (to Miami, Fla., from Bimini, Bahamas), Apr. 16, 1966

Name	Ticket No.	Address	CH	CR	Previour
Charles Mastronaldi	6378	175	MRT	.....	20 0
Von P ushental	6380	170	MRT	.....	20 0
Wilbert Smith	6412	150	MRT	.....	20 0
Harry Seigel	2123	175	.....	.....	200
Hilda Thornton	6343	155	MRT	.....	200
Warreb Schafer, No. 2612	2125	200, Fisherman's Paradise	.....	1500	200
Alameta Schafer, No. 2613	2124	130, Fisherman's Paradise	.....	1500	200
Adam C. Powell	6058	190	MRT	.....	200
Corrine Huff	6056	125	MRT	.....	200 0

Passenger manifest (to Bimini, Bahamas), May 18

Name	Ticket number	Address	CA	CR	Prev.
Corrine Huff	7112 7111	2161 Rayburn House, Washington, D.C.	$30	.....	$15
Adam Clayton Powell	7114 7113	U.S. Congress	30	.....	15
George Crozer	7115	2300 St. Francis Rd., Ann Arbor, Mich.	15	.....	15
Veva Crozer	7116	2300 St. Francis Rd., Ann Arbor, Mich.	15	.....	15
Berton Hufsey	7117	7266 SW. 61st St., Miami	15	.....	15
Robert Smith	7118	4012 Old Leeds Ridge, Birmingham, Ala.	15	.....	15
Harriet Smith	7119	4012 Old Leeds Ridge, Birmingham, Ala.	15	.....	15
Robert Bechtold	7120	220 Azalea Dr., Gadsten, Ala	15	.....	15
Elizabeth Bechtold	7121	220 Azalea Dr., Gadsten, Ala	15	.....	15
Total	.....	.....	165	.....	135

Passenger manifest (to Miami, Fla.), May 23, 1966

Name	Ticket No.	Address	CA	CR	H.T.
Edward Ferguson	7183	.....	MR5	.....	$2.00
Leigh Carpenter	3209	.....	$15	.....	2.00
Nancy Swanson	3204	.....	15	.....	2.00
David Swanson	3208	.....	15	.....	2.00
Star A. Webster	3206	.....	15	.....	2.00
William C. Olsen	3205	.....	15	.....	2.00
Corrine Huff	7112	.....	MR5	.....	2.00
Adam C. Powell	7114	.....	MR5	.....	2.00
Total	.....	.....	75.00	.....	16.00

Mr. MOORE. I have one further inquiry. Do I understand you are the sole owner of Chalk Airlines?

Mr. FRANKLIN. It is a corporation, Captain Chalk is the president, and I own the controlling interest of the company.

Mr. MOORE. Did I understand you also to indicate that you were a pilot?

Mr. FRANKLIN. Yes, sir.

Mr. MOORE. May I inquire, did you receive or do you have any specific knowledge of the receipt of the type of payment that was made for any of these trips in which the subject matter of this hearing was involved? What was the nature of the payment? Was it a cash payment or was it by voucher or by draft? What was the nature of it?

Mr. FRANKLIN. Well, all passenger fares were paid in cash. And the cargo or packages were billed monthly.

Mr. MOORE. To whom were they billed?

Mr. FRANKLIN. Well, they were billed, excuse me, some of them were billed to Congressman Adam Clayton Powell, and some of them were billed to Huff Enterprises.

Mr. MOORE. In the instances in which they were billed to Mr. Adam Clayton Powell, can you tell us the nature of the draft or the check, was it his personal check that was received in payment for anything for which he was billed or do you recall or do your records reflect it?

Mr. FRANKLIN. No, I believe they were paid by check on Huff Enterprises. I believe that is how they were paid. I don't believe Mr. Powell has ever paid any personally.

Mr. MOORE. I assume your answer would be the same with respect to those invoices which were billed directly to Huff Enterprises?

Mr. FRANKLIN. Yes, sir.

Mr. MOORE. Can you tell the committee the banking institution upon which the checks for Huff Enterprises were drawn?

Mr. FRANKLIN. I don't recall. I believe it was a bank here in Washington.

I believe I had it somewhere but I just don't recall the name of the bank now. I am sorry, I don't have that here with me. It was a bank in Washington here and I believe the last check that was received was received on the bank in Bimini. This was the last invoice.

Mr. MOORE. Do you recall the name of the bank in Bimini to which the draft was drawn?

Mr. FRANKLIN. There is only one bank over there. It is the----

Mr. MOORE. Having never been there I don't know.

Mr. FRANKLIN. It is a very small place, just one bank, I believe it is the——

Mr. MOORE. There is a lot of activity down there. [Laughter.]

Mr. FRANKLIN. I think it is——

Mr. MOORE. Is it Barclay's Bank?

Mr. FRANKLIN. Either Barclay's Bank or Canadian Bank.

Mr. MOORE. Apparently there is more than one bank.

Mr. FRANKLIN. Just one bank.

Mr. MOORE. Aren't Barclay's Bank and Canadian Bank one and the same?

Mr. FRANKLIN. However, both banks are established in the Bahamas. I think it is the Royal Bank of Canada, I believe, is the other bank, and I just don't recall which one it is now.

I believe it is the Canadian Bank.

Mr. MOORE. And was this particular check, do you recall, for transportation or was it for cargo or merchandise?

Mr. FRANKLIN. It was for cargo; it was the last invoice that we have billed, February 1, 1967.

Mr. MOORE. What was the amount of that?

Mr. FRANKLIN. The amount of that was $94.

Mr. MOORE. Thank you, Mr. Chairman.

Mr. GEOGHEGAN. Mr. Franklin, among those persons named in the subpena that you received, could you please tell me if you could identify Mr. Adam Clayton Powell.

Mr. FRANKLIN. Yes, sir; I could.

Mr. GEOGHEGAN. Could you identify the person known as Odell Clark?

Mr. FRANKLIN. Yes, sir; I could.

Mr. GEOGHEGAN. Could you identify a person known as Corrine Huff?

Mr. FRANKLIN. Yes, sir; I could.

Mr. GEOGHEGAN. Could you identify a person named as Emma Swann?

Mr. FRANKLIN. I am not quite sure whether I could or not.

Mr. GEOGHEGAN. Could you identify any persons with the name Swann who were seen using your transportation service in the company of either Mr. Powell, Mr. Clark, or Miss Huff?

Mr. FRANKLIN. I could probably identify him if I saw him. Maybe I wouldn't know what their names were.

Mr. GEOGHEGAN. Thank you.

Chairman CELLER. Thank you very much, Mr. Franklin.

(Witness excused.)

Chairman CELLER. Our next witness is Mr. Robert Gray, member of the select committee investigating staff on loan from the General Accounting Office.

Mr. Gray?

Chairman CELLER. Will you raise your right hand, please?

(Whereupon Robert D. Gray was duly sworn.)

TESTIMONY OF ROBERT D. GRAY, SUPERVISOR ACCOUNTANT, GENERAL ACCOUNTING OFFICE

Mr. PATTERSON. Will you state your name, please?

Mr. GRAY. Robert D. Gray.

Mr. PATTERSON. What is your address, Mr. Gray?

Mr. GRAY. 7409 Longpine Drive, Springfield, Va.

Mr. PATTERSON. What is your occupation and title?

Mr. GRAY. I am a supervisor accountant. I work for the General Accounting Office. And I am assigned to the Select Committee—on loan.

Mr. PATTERSON. By the GAO?

Mr. GRAY. Yes, sir.

Mr. PATTERSON. How many years of experience have you had with GAO?

Mr. GRAY. About 20 years.

Mr. PATTERSON. You were previously assigned to the Special Subcommittee on Contracts, Committee on House Administration?

Mr. GRAY. Yes, sir.

Mr. PATTERSON. That is the Hays committee?

Mr. GRAY. Yes, sir.

Mr. PATTERSON. Did you supervise the accounting work of that committee?

Mr. GRAY. I did, sir.

Mr. PATTERSON. You are aware, are you not, that the hearings and report of that committee have been made a part of the record of this proceeding?

Mr. GRAY. Yes, sir.

Mr. PATTERSON. Did the work of the Hays committee cover the audit of certain expenditures of the House Committee on Education and Labor of the meeting of the 89th Congress?

Mr. GRAY. Yes; it did.

Mr. PATTERSON. Were the exhibits contained in the report of that subcommittee prepared under your supervision?

Mr. GRAY. They were.

Mr. PATTERSON. And particularly the exhibits pertaining to questionable travel, travel for which subsistence was not paid?

Mr. GRAY. Yes.

Mr. PATTERSON. For the Select Committee, have you prepared a similar audit in connection with the travel performed for the Education and Labor Committee during the 87th and 88th Congresses?

Mr. GRAY. Yes, I have, both the travel and other expenses generally of the committee.

Mr. PATTERSON. Would you explain the nature of that audit?

Mr. GRAY. Well, the audit was limited because of the time involved. We began the audit on February 3, which is less than 2 weeks ago. However, we have been able to satisfy ourselves that the total expenditures of the Education and Labor Committee which were $632,970 in the 87th Congress and about $465,635 in the 88th Congress did not exceed the funds authorized for the committee and that the expenditures for the salaries on Mr. Powell's congressional payroll did not exceed the statutory limitations.

Mr. PATTERSON. Statutory limitations?

Mr. GRAY. Yes, sir.

Mr. PATTERSON. Did you look into travel by Mr. Powell and the staff of the Education and Labor Committee in the 87th and 88th Congresses?

Mr. GRAY. Yes. However, our review of travel in the 87th and 88th Congresses could not be made in the detail that it was made in the 89th Congress for the Committee on House Administration, principally because the airlines are not required to retain copies of flight coupons, the actual tickets, beyond 2 years, and since the coupons were not available for travel in the 87th and 88th Congresses, we were unable to establish the use of airline tickets. Therefore, our review was of necessity limited to a comparison of tickets purchased through credit cards with claims for subsistence and other expenses filed by members and employees of the Education and Labor Committee.

Also, our review was further limited by the fact that the vouchers and supporting records for the 87th and 88th Congresses were in storage and we have been unable to date to locate the detailed support for some of the airline billings which will show more precisely the tickets purchased.

Mr. PATTERSON. Have you been able to ascertain from the records available certain findings relative to travel performed by the Education and Labor Committee?

Mr. GRAY. Yes.

Mr. PATTERSON. Of the 87th and 88th Congresses?

Mr. GRAY. Yes, our analysis covered about 320 tickets purchased on committee credit cards at a cost of about $23,800 in the 87th and 88th Congresses. While an additional $10,400 in tickets were purchased with credit cards during the period, we were unable to include them in our analysis because we have been unable to locate the detail supporting the vouchers. We have the vouchers but the detailed support to these vouchers hasn't been located. We found 105 tickets totaling about $8,000 in which tickets were purchased for specific trips but in our review of vouchers claiming reimbursement for subsistence we found no claim by the traveler for reimbursement of such expenses.

Mr. PATTERSON. Have you prepared a tabulation of the findings of your audit?

Mr. GRAY. Yes, I have.

Mr. PATTERSON. Do you have it with you?

Mr. GRAY. Yes.

Mr. PATTERSON. I ask that it be marked in evidence.

Chairman CELLER. That will be marked in evidence and received.

Mr. GEOGHEGAN. Mark that "Gray No. 1."

(The document follows:)

Schedule of tickets purchased for which no per diem was claimed, 87th and 88th Cong.

Ticket purchased in name of—	Number of tickets	Itinerary	Cost of tickets	Congress
Aller, D.C.	1	District of Columbia, Detroit, District of Columbia.	$52.19	87th
Do	1	District of Columbia, Philadelphia	24.15	88th
Do	2	District of Columbia, San Francisco, District of Columbia.	588.95	88th
Do	1	District of Columbia, Pittsburgh, District of Columbia.	28.35	88th
Do	1	District of Columbia, Lansing, District of Columbia.	83.27	88th
Anderson, Don	1	District of Columbia, Tallahassee, District of Columbia,	89.46	88th
Do	1	District of Columbia, New York, District of Columbia.	32.00	88th
Buckingham, Walter	3	Atlanta, District of Columbia, Atlanta	204.60	87th
Clark, Odell	1	New York City, Los Angeles, San Francisco, Los Angeles, New York City.	346.06	87th
Do	1	District of Columbia, Chicago, District of Columbia.	92.02	88th
Do	1	District of Columbia, Buffalo, District of Columbia.	47.99	88th
Do	1	District of Columbia, San Francisco, Los Angeles, San Diego, New York City, District of Columbia.	482.48	88th
Do	1	District of Columbia, New York City, Boston, New York City, District of Columbia.	60.00	88th

Schedule of tickets purchased for which no per diem was claimed, 87th and 88th Cong.—Continued

Ticket purchased in name of—	Number of tickets	Itinerary	Cost of tickets	Congress
Derrickson, R.C	1	District of Columbia, New York City, return.	$32.00	88th
Do	3	New York City-District of Columbia (shuttle).	48.00	88th
Do	1	District of Columbia-Tallahassee, Fla., return.	128.73	88th
Drum, Edward	1	New York City-District of Columbia	15.00	87th
Do	1	District of Columbia-New York City (shuttle).	15.00	87th
Do	1	District of Columbia, Dallas, District of Columbia.	168.08	87th
Edelman, Edmund	1	District of Columbia-Los Angeles, return	301.95	87th
Foreman, Jay	1	District of Columbia-New York City, return.	33.85	88th
Gallardo [1]	1	District of Columbia-San Francisco	152.25	88th
Do	1	San Francisco-District of Columbia	152.25	88th
Goodman, E	1	District of Columbia-Wheeling, return	41.69	87th
Graham, Walter	1	District of Columbia-Detroit, return	56.02	88th
Harris, Aurora	10	New York, shuttle, District of Columbia	157.00	88th
Do	1	District of Columbia-Cleveland-Detroit-New York, return.	85.37	88th
Do	1	District of Columbia-Dallas, return	181.13	88th
Houke, John	1	District of Columbia-San Francisco, return.	293.15	87th
Huff, Corrine	4	District of Columbia-New York, return	121.60	87th
Do	1	District of Columbia-Youngstown, return	47.41	87th
Do	5	District of Columbia-New York, return.	158.00	88th
Do	3	New York, shuttle-District of Columbia	45.00	88th
Do	2	District of Columbia-Youngston	90.52	88th
Do	1	District of Columbia-Los Angeles, return	288.23	88th
Lowe, Don	1	District of Columbia-New York, return	28.01	87th
MacNeil, E. Zelda	1	New York-District of Columbia	18.85	87th
Reynolds, C. J	1	District of Columbia, Chicago, Los Angeles, New York City, District of Columbia.	337.98	87th
Schwartz, Michael	1	District of Columbia, New York, District of Columbia.	32.00	88th
Do	1	District of Columbia, Chicago, Los Angeles, District of Columbia.	288.22	88th
Do	1	District of Columbia, Miami, District of Columbia.	156.24	88th
Shuler, Mary	2	District of Columbia, New York City, District of Columbia.	62.24	88th
Do	1	District of Columbia, San Francisco, District of Columbia.	370.55	88th
Southworth, A. M	1	District of Columbia, Los Angeles, District of Columbia.	288.23	88th
Stone, C. Sumner	2	District of Columbia, Chicago, District of Columbia.	190.05	88th
Vandewater, J. R	1	Los Angeles, District of Columbia, Los Angeles.	301.95	87th
Warren, John E	1	District of Columbia, New York City, District of Columbia.	32.00	88th
Do	2	District of Columbia, Shuttle, New York City.	32.00	88th
Wingate, Livingston	5	District of Columbia, New York City, District of Columbia.	146.00	87th
Do	1	New York City, District of Columbia, New York City.	32.01	87th
Do	2	District of Columbia, New York City	39.50	87th
Do	2	New York City, District of Columbia	32.00	87th
Do	12	District of Columbia, Shuttle, New York City.	192.00	87th
Do	2	District of Columbia Chicago, New York City, District of Columbia.	206.53	87th
Do	1	New York City, Miami, New York City	155.98	87th
Do	1	New York City, San Juan, New York City.	115.50	87th
Wolfe, Deborah	1	District of Columbia, New York City, District of Columbia.	32.00	87th
Do	1	do	32.00	88th
Zumas, Nicholas	1	District of Columbia, New York City	14.00	87th
Do	1	District of Columbia, New York City, San Juan, St. Thomas, Virgin Islands, District of Columbia.	175.98	87th
Total	105		8,055.57	

[1] Probably Gallarzo.

Mr. PATTERSON. Mr. Gray, what is the significance of the failure of the employees of the committee failing to claim per diem?

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.

Mr. PATTERSON. Were your findings with respect to the 87th and 88th Congresses in essence the same as your previous findings as to the method of travel?

Mr. GRAY. Yes, generally. Because we couldn't go into the same detail, we couldn't establish it as conclusively.

Mr. PATTERSON. You found the same practices seemed to be going on?

Mr. GRAY. Yes.

Mr. PATTERSON. Now, did you make a further analysis for the select committee of the travel made by the staff of the Education and Labor Committee during the 89th Congress?

Mr. GRAY. Yes, sir; we did.

Mr. PATTERSON. Did that relate particularly to travel from Washington, D.C., to Miami, Fla.?

Mr. GRAY. Yes. Yes, sir.

Mr. PATTERSON. What new records did you use to add to the information you had previously gathered when working for the Hays committee?

Mr. GRAY. We obtained records showing flights by three charter or air taxi services between Miami and Bimini and we also examined records of the Immigration and Naturalization Service showing the entrance and exit from the country of people in Miami and Bimini.

Mr. PATTERSON. Are those records complete or are they merely what you have been able to obtain in the short period of time since February 3?

Mr. GRAY. They are not complete. We got what we could in the time we had.

Mr. PATTERSON. Did you look at the records of the Chalk Air Service?

Mr. GRAY. Yes, sir.

Mr. PATTERSON. And the Bimini-Bahamas Ltd.?

Mr. GRAY. Right.

Mr. PATTERSON. And of American Air Taxi?

Mr. GRAY. Yes.

Mr. PATTERSON. And of Mackey Airlines?

Mr. GRAY. Yes.

Mr. PATTERSON. And in addition, the records of Immigration and Naturalization Service?

Mr. GRAY. Right.

Mr. PATTERSON. Did you prepare a tabulation of travel to and from Miami for which subsistance was not claimed by the staff and by Adam Clayton Powell on the basis of these records?

Mr. GRAY. Yes, I have that here.

Mr. PATTERSON. Do you have it with you?

Mr. GRAY. Yes.

Mr. PATTERSON. I ask it be marked in evidence as Gray exhibit No. 2, Mr. Chairman.

Chairman CELLER. That will be marked and accepted in the record.

Mr. PATTERSON. I believe that the committee has been previously distributed copies of Gray exhibit No. 2; is that correct?

Mr. GRAY. Yes.

(The document follows:)

Analysis of Miami travel purchased with Committee on Education and Labor funds for which no claim for subsistence was made.

Traveler per flight coupon	Traveler to Bimini per immigration records	Date of arrival in Miami	Date of departure to Bimini	Time of arrival in Miami	Time of departure to Bimini	Traveler returning from Bimini to Miami per immigration records	Date of arrival in Miami from Bimini	Date of departure from Miami	Time of arrival in Miami from Bimini	Time of departure from Miami	Airline used to/from Bimini	Travel within United States denied by witness	Page reference in Hays committee hearings
Aurora Harris	None	2-10-65		4:25 p.m.				2-16-65		4:30 p.m.			
Adam C. Powell	None	2-10-65		4:25 p.m.				2-16-65		4:30 p.m.		✓	213-214
Aurora Harris		3-11-65		4:25 p.m.		Corrine A. Huff	3-20-65	3-20-65	11:30 a.m.	1:00 p.m.	Chalk's		
Adam C. Powell	Adam C. Powell	3-11-65	3-11-65	4:25 p.m.		Adam C. Powell	3-20-65	3-20-65	11:30 a.m.	1:00 p.m.	"	✓	214-215
	Jerome Reed		3-11-65								"		
	Catherine Swann		3-11-65								"		
	Carroll Swann		3-11-65								"		
	Emma Swann		3-11-65								"		
Adam C. Powell	Adam C. Powell	4-30-65	4-30-65	12 noon		Adam C. Powell	5-10-65	5-10-65	4:00 p.m.	5:45 p.m.	Chalk's over, Am. Air Taxi return.		
Emma T. Swann	Emma T. Swann	4-30-65	4-30-65	12 noon		Corrine A. Huff	5-10-65	5-10-65	4:00 p.m.	5:45 p.m.		✓	[1]279, 280
	Carroll Swann		4-30-65										
Adam C. Powell	None	5-23-65				Corrine A. Huff	5-25-65		4:00 p.m.				
						Adam C. Powell	5-25-65		4:00 p.m.				
						Carroll Swann	5-25-65		4:00 p.m.				
Adam C. Powell	None	5-28-65		12:28 a.m.		Adam C. Powell	6- 4-65	6- 4-65	3:00 p.m.[3]	5:45 p.m.			
Emma T. Swann	None					Corrine A. Huff	6- 4-65	6- 4-65	3:00 p.m.[3]	5:45 p.m.		✓	[1]279, 280
Emma T. Swann	Emma T. Swann	7- 1-65	7- 2-65	10:18 p.m.	9:00 a.m.	Emma T. Swann	7-12-65	7-12-65		11:00 a.m.	Chalk's	✓	[1]279, 280
Cleomine B. Lewis.	Corrine A. Huff	7- 1-65	7- 2-65	10:18 p.m.	9:00 a.m.	Corrine A. Huff	7-13-65	7-13-65	4:10 p.m.	5:45 p.m.	"	✓	(?)
Michael Schwartz	Adam C. Powell	7- 1-65	7- 2-65	10:18 p.m.	9:00 a.m.	Adam C. Powell	7-13-65	7-13-65	4:10 p.m.	5:45 p.m.	"		
	Carroll Swann		7- 9-65		9:00 a.m.	Carroll Swann	7-12-65	7-12-65			"		
C. Sumner Stone	C. Sumner Stone	7-30-65	7-30-65	11:55 a.m.	11:55 a.m.						Chalk's	✓	129, 380
Dorothy W. Himes.	Corrine A. Huff	7-30-65	7-30-65	11:55 a.m.	11:55 a.m.						"	✓	204, 205
Adam C. Powell	Adam C. Powell	7-30-65	7-30-65	11:55 a.m.	11:55 a.m.						"		
Emma T. Swann	Mrs. Carrol Swann.	7-30-65	7-30-65	11:55 a.m.	11:55 a.m.	Mrs. Carol Swann.	8- 5-65				"	✓	[1]279, 280
Odell Clark	Odell Clark	7-30-65	7-30-65	11:55 a.m.	11:55 a.m.			8- 9-65		5:45 p.m.	"		
	Mrs. O. Clark		7-30-65		11:55 a.m.						"		
	Mrs. C. Stone		7-30-65		11:55 a.m.						"		
C. Sumner Stone	Adam C. Powell	9- 3-65	9- 3-65					9-12-65			Bimini-Bahamas Air Service.	✓	129
Emma T. Swann	Emma T. Swann	9- 3-65	9- 3-65	11:55 a.m.				9-12-65		5:45 p.m.	"	✓	[1]279, 280

See footnotes at end of table.

Analysis of Miami travel purchased with Committee on Education and Labor funds for which no claim for subsistence was made—Continued

Traveler per flight coupon	Traveler to Bimini per immigration records	Date of arrival in Miami	Date of departure to Bimini	Time of arrival in Miami	Time of departure to Bimini	Traveler returning from Bimini to Miami per immigration records	Date of arrival in Miami from Bimini	Date of departure from Miami	Time of arrival in Miami from Bimini	Time of departure from Miami	Airline used to/from Bimini	Travel within United States denied by witness	Page reference in Hays committee hearings
Donald T. Berens.	Adam C. Powell.	10-24-65	10-25-65								Chalk's		
Cleomine Lewis.	Corrine A. Huff.	10-24-65	10-25-65	8:20 p.m.							"	✓	(1)
Dorothy W. Himes.								10-30-65		5:45 p.m.		✓	206
C. Sumner Stone.								10-30-65		5:45 p.m.			
Emma T. Swann.	Corrine A. Huff.	11-15-65	11-15-65	12:45 p.m.		Corrine A. Huff.	11-13-65		4 p.m.		Chalk's		
Adam C. Powell.	Adam C. Powell.	11-15-65	11-15-65	12:45 p.m.							"	✓ [1]	279-280
C. Sumner Stone.	C. Sumner Stone.	11-19-65	11-20-65	12:18 p.m.		C. Sumner Stone.	11-22-65	11-22-65		1:30 p.m.	"		
Cleomine B. Lewis.	Corrine A. Huff.	12-12-65	12-12-65	2:40 p.m.							"	✓	(1)
	Adam C. Powell.										"		
C. Sumner Stone.	None	12-12-65		2:40 p.m.									
Odell Clark.	None.	12-19-65		12:40 p.m.									
Emma T. Swann.	Emma T. Swann (Name appears on Chalk's passenger manifest).	1-1-66	1-1-66	12:45 p.m.	2:45 p.m.						Chalk's		
Odell Clark	Adam Clayton Powell III.	1-23-66	1-24-66	7:40 p.m.	9 a.m.			1-31-66		12:30 p.m.	Chalk's		
Carol T. Aldrich.	Carol T. Aldrich.	1-23-66	1-24-66		9 a.m.						"		
Adam C. Powell.	Adam C. Powell.	1-23-66	1-24-66	7:40 p.m.	9 a.m.						"		
Cleomine B. Lewis.	Corrine Huff.	1-23-66	1-24-66	7:40 p.m.	9 a.m.						"		
Emma T. Swann.	Francis Swann.	2-14-66	2-15-66	8:40 p.m.	2:30 p.m.	Corrine A. Huff.	2-19-66	2-19-66		5:45 p.m.	Chalk's	✓	(1)
						Adam C. Powell.	2-19-66					✓	279-280 [1]
						C. Sumner Stone.	2-19-66						
						Carroll F. Swann.	2-19-66						

Emma T. Swann	Corrine A. Huff	3-11-66	3-11-66	12:45 p.m.	2:45 p.m.	Corrine A. Huff	3-19-66				Chalk's	✓	279-280[1]
Cleomine B. Lewis	Francis C. Swann.	3-11-66	3-11-66	12:45 p.m.	2:45 p.m.	Adam C. Powell	3-19-66	3-19-66		3:50 p.m.		✓	(2)
Odell Clark	Adam C. Powell	3-11-66	3-11-66	12:45 p.m.	2:45 p.m.	Robert J. Reed	3-19-66	3-19-66		5:30 p.m.			
	Robert J. Reed		3-11-66		2:45 p.m.	Francis C. Swann.	3-19-66						
Odell Clark								3-23-66		4:30 p.m.			
Odell Clark								4-1-66		11 a.m.			
Adam C. Powell	Adam C. Powell	4-1-66	4-1-66	12:55 p.m.	2:45 p.m.	Adam C. Powell	4-16-66	4-16-66		5:30 p.m.	Chalk's		
Cleomine Lewis	Corrine A. Huff (names appear on Chalk's passenger manifest).	4-1-66	4-1-66	12:55 p.m.	2:45 p.m.	Corrine A. Huff	4-16-66	4-16-66		5:30 p.m.	"	✓	(2)
John E. Warren	None	5-15-66		3:40 p.m.				5-15-66		6 p.m.		✓	307-308
John E. Warren	Adam C. Powell	5-18-66	5-18-66	11:59 a.m.	2:45 p.m.	Adam C. Powell	5-23-66	5-23-66		6 p.m.	Chalk's	✓	308-309
Cleomine B. Lewis	Corrine A. Huff (names appear on Chalk's passenger manifest).	5-18-66	5-18-66	11:59 a.m.	2:45 p.m.	Corrine A. Huff	5-23-66	5-23-66		6 p.m.	"	✓	(2)
John E. Warren	Adam C. Powell	6-29-66	6-29-66	11:59 a.m.							Chalk's	✓	309-310
John E. Warren	Corrine A. Huff	6-29-66	6-29-66								"		
Emma T. Swann		6-29-66		11:59 a.m.								✓	[1]279-280
Emma T. Swann		6-29-66											
Corrine A. Huff						Corrine A. Huff	7-17-66	7-17-66	3:20 p.m.	10 p.m.	American Air Taxi.		
Adam C. Powell						Adam C. Powell	7-17-66	7-17-66	3:20 p.m.	10 p.m.			
Sylvia J. Givens		8- 7-66		6:18 p.m.		Sylvia J. Givens	8-20-66	8-20-66	11:40 p.m.	12 p.m.	Bimini-Bahama return.		
	C. Sumner Stone		8- 8-66			Corrine A. Huff	8-20-66						
	Louise Stone		8- 8-66			Adam C. Powell	8-20-66				Chalk's to Bimini.		

[1] Emma T. Swann admitted to having made 3 trips to Miami. One of these trips was identified by Mrs. Swann as having been made in January 1966. The remaining 2 trips she testified as having made in 1965, but she could not identify the specific times of travel.

[2] Personal letter.

[3] Departure time from Bimini.

Mr. PATTERSON. Perhaps you would care to explain the nature of the various columns of entry in the tabulation, Mr. Gray. It is a three-page tabulation, as I understand it, but pages 1, 2, and 3 are identical in form, but just cover different periods in time; is that correct?

Mr. GRAY. That is right. The tabulation is in chronological order, and it relates the travel by the traveler of record on the airline ticket with the other records that we have been able to examine.

Mr. PATTERSON. Now, when you say "travel of record on the airline ticket," you mean the travel that was charged to the subcommittee?

Mr. GRAY. Right.

Mr. PATTERSON. Or the committee?

Mr. GRAY. Yes.

Mr. PATTERSON. Between Washington, D.C., and Miami?

Mr. GRAY. Right.

Mr. PATTERSON. That is the first column?

Mr. GRAY. Yes. The names appearing in the first column titled "Traveler Per Flight coupon," would be the name of the individual which appeared on the ticket.

Mr. PATTERSON. But not necessarily the individual who flew on the flight?

Mr. GRAY. That is right.

Now, the second column is entitled "Traveler to Bimini Per Immigration records." If, we found immigration records showing a person going between Miami and Bimini on the same date that the ticket was used, we have that person's name entered in that column.

Mr. PATTERSON. You mean your search of the immigration records were necessarily limited to looking on the same day?

Mr. GRAY. Yes, because of the time involved.

The next column is called "Date of Arrival in Miami." Now, that is the date that the commercial airline ticket from Washington or New York to Miami was actually used per the airline's records.

The next column is "Date of Departure to Bimini." The dates in that column were obtained either from immigration service records or the air taxi records.

The next column is called "Time of Arrival in Miami." That time is from the airline, the commercial airline records that flew into Miami on these flights.

The next column is "Time of Departure to Bimini." The times entered in that column would be the times that we were able to obtain from immigration records or the air taxi service records.

The next column is "Traveler Returning from Bimini to Miami." Now, this was obtained generally from immigration records.

Mr. PATTERSON. May I interrupt a second?

In connection with the date of departure from Bimini, I notice that there are some gaps on occasions. Has it come to your attention lately that there are certain other air facilities in Miami which can be used to get to Bimini or Opalocka, Fla.? It that the correct pronunciation?

Mr. GRAY. Yes, there are some other services.

Mr. PATTERSON. So this isn't a complete record, by any means?

Mr. GRAY. No, these were the ones that we could identify readily.

Mr. PATTERSON. I am sorry, Mr. Gray, would you go ahead with your description? I think you were on "Traveler, Returning from Bimini to Miami"?

Mr. GRAY. Yes, that is from immigration records.

Now, the next column is "Date of Arrival in Miami from Bimini." That date is taken from the immigration records or the air taxi service records.

The "Date of Departure from Miami" is from the commercial air carrier records, and the "Time of Arrival in Miami from Bimini" is taken from immigration or air taxi records.

"The Time of Departure from Miami" was taken from the commercial airline records that we have.

Now, the next column shows what air taxi service or airline was used between Miami and Bimini, and the next to the last column, merely a checkmark, we identified that with the previous testimony in the Hays hearings, which would indicate that the traveler listed over in the left-hand column had denied making this travel.

Mr. PATTERSON. Under oath before that committee?

Mr. GRAY. That is right.

And the last column shows the pages of the hearings in which this testimony appears.

Mr. PATTERSON. Now, let's—for the committee's benefit—go through a sample trip.

For instance, I want to find one that the records are fairly complete.

I notice that about the third item down on the first page relating to the traveler per flight coupon, Adam Clayton Powell, and Emma Swann, looks relatively complete. Would you describe to the committee what your analysis shows with respect to that trip?

Mr. GRAY. Yes, sir, I will try.

Mr. PATTERSON. No. 3 on the first page, Mr. Chairman.

Mr. GRAY. Third group. That would indicate that Adam C. Powell, and Emma T. Swann were the names on the tickets used for a trip to Miami; that the immigration records showed that Adam C. Powell and Emma T. Swann and Carroll Swann traveled from Miami to Bimini on the same date.

Now, that date was April 30, 1965. The date of arrival in Miami was April 30, 1965; the date of departure to Bimini was April 30, 1965. The time of arrival in Miami was 12 noon.

We were unable in this particular case to determine the time of departure from Miami to Bimini. Now, the next column shows that Adam C. Powell and Corinne Huff returned from Bimini to Miami on May 10, 1965, and that they used a commercial airliner on the same day to leave Miami.

The next column shows that they arrived in Miami from Bimini at 4 p.m., and departed from Miami to Washington or wherever the commercial ticket was written, at 5:45 p.m. They used Chalk's Flying Service and American Air Taxi on the return. The checkmark indicates that Emma Swann, in the previous testimony before the Hays Committee, denied this travel.

Mr. PATTERSON. The last column shows the pages of the transcript?

Mr. GRAY. That is right.

Mr. PATTERSON. Now, if you would move down about three columns to a trip taken on July 1, 1965, Emma T. Swann, Cleomine B. Lewis,

and Michael Schwartz, according to committee charge records—would you similarly describe to the committee that item?

Mr. GRAY. This trip, the ticketholders of record were Emma T. Swann, Cleomine B. Lewis, and Michael Schwartz. The immigration records indicate that Emma T. Swann, Corinne A. Huff, Adam C. Powell, and Carroll Swann departed from Bimini on——

Mr. PATTERSON. Departed to Bimini?

Mr. GRAY. Departed to Bimini, and that they had arrived on commercial airliner July 1, 1965, at 10:10 p.m., and they departed for Bimini July 2, 1965, 9 a.m.

The next column indicates that Emma T. Swann, Corinne A. Huff, Adam C. Powell, and Carroll Swann returned from Bimini to Miami. Now, they didn't all return the same date. Emma Swann arrived on July 12; Corinne Huff on July 13; Adam C. Powell on July 13, and Carroll Swann on July 12, 1965.

The next column shows that they departed on commercial airliner from Miami, Emma Swann on July 12; Corinne Huff on July 13; Adam C. Powell on July 13; and Carroll Swann on July 12, 1965. We don't have the dates of departure for Emma Swann or Carroll Swann, but—oh, this is the arrival in Miami, excuse me.

Corinne Huff arrived in Miami and Adam C. Powell arrived in Miami at 4:10 p.m. They departed from Miami by commercial airliner at 5:45 p.m., same day.

Now, we also have Emma Swann departing from Miami at 11 a.m. on July 12. They all used Chalk's Air Service.

Now, the two checks indicate that both Emma Swann and Cleomine Lewis denied making this trip.

Mr. PATTERSON. Thank you, Mr. Gray.

Now, could we go to page 2 of your analysis and tabulation? And I refer particularly to the fifth group trip which I note merely reflects a trip down to Bimini. Would you describe, please, for Odell Clark, Carol T. Aldrich, Adam C. Powell, and Cleomine B. Lewis—do you see the entry I am referring to?

Mr. GRAY. Yes.

Mr. PATTERSON. Will you describe that for the committee, please?

Mr. GRAY. The first column indicates that the travelers of record, at least, on the commercial tickets to Miami, were Odell Clark, Carol T. Aldrich, Adam C. Powell, and Cleomine B. Lewis.

The next column shows that the immigration record shows that Adam Clayton Powell III, Carol T. Aldrich, Adam C. Powell, and Corinne Huff departed from Miami to Bimini on the same date. They all arrived in Miami on January 23, 1966, and they all departed to Bimini on January 24, 1966. They all arrived in Miami at 7:40 p.m., on the 23d, and departed for Bimini at 9 a.m. the next morning, except for Carol T. Aldrich. We couldn't find a record of her.

Mr. PATTERSON. Then the only departure you found, I take it, related to either Odell Clark or Adam Clayton Powell III, on January 31, 1966?

Mr. GRAY. Yes. As far as the airline or immigration records were concerned, Adam Clayton Powell III, or whoever used the airline ticket issued in the name of Odell Clark, departed from Miami January 31, 1966, and at 12:30 p.m.

Mr. PATTERSON. Now, Miss Lewis denied making the trip involved, is that correct?

Mr. GRAY. Yes, sir.

Mr. PATTERSON. Adam Clayton Powell III does not appear on the payroll of the House Education Committee?

Mr. GRAY. No, sir.

Chairman CELLER. Any questions?

Mr. PATTERSON. If we are through with the exhibit, I would like to ask the witness a few other questions.

All of the trips, Mr. Gray, between Washington, D.C., and Miami and back, were charged to the House Education and Labor Committee, is that correct?

Mr. GRAY. Yes; all of those that we covered, yes.

Mr. PATTERSON. Does it appear from your tabulations that a great deal of travel was made by persons using names other than their own?

Mr. GRAY. Yes, sir; it does.

Mr. PATTERSON. Does it appear that a great deal of travel has been charged to the committee which, in view of the ultimate destination, may well have been for personal reasons?

Mr. GRAY. Yes; I would say so.

Mr. PATTERSON. Does it appear that persons traveling on committee funds may not have been on the staff?

Mr. GRAY. Yes, sir.

Chairman CELLER. How many of the latter type of persons who traveled, whose cost of travel was charged to the committee, were not on the committee staff—how many such cases are there, about, in your examination, going back 2 years?

Mr. GRAY. Well, actually, Mr. Chairman, there has only been two or three cases that have been pretty conclusively shown. I believe one was brought out in the Hays report of four people going to New York who were not on the staff of the committee, I believe I was——

Mr. PATTERSON. Are you referring to Miss Dargan's testimony?

Mr. GRAY. Yes.

Chairman CELLER. That is an indication of the ones you pointed out this morning?

Mr. GRAY. Yes, sir.

Chairman CELLER. And there are probably others that you haven't averred to which are in these records presented this morning?

Mr. GRAY. There may be, sir.

Chairman CELLER. Any questions?

Thank you very much, Mr. Gray.

Mr. Pepper?

Mr. PEPPER. May I get again from you the figures? Did you give a figure of $23,000 representing the approximate aggregate of the travel charged to the Education and Labor Committee in the Eighty-seventh and Eighty-ninth Congresses?

Mr. GRAY. Eighty-seventh and Eighty-eighth, sir. We looked at vouchers for about 320 tickets totaling about $23,800 in the 87th and 88th Congresses.

Mr. PEPPER. They were tickets with respect to which there appeared to be a connection, the people that made the trip to Miami also made the trip to Bimini?

Mr. GRAY. No, that would be all travel, sir, by the committee. That is all travel.

Mr. PEPPER. It is mentioned on these sheets of yours here?

Mr. GRAY. Yes, the other schedule that was introduced.

Mr. PEPPER. I mean, I want to get it clear in my mind, you are suggesting that about $23,000 was the total cost of the travel of the parties who traveled between Washington and Miami and Miami to Washington, who also, from the other data, that you discovered from the other airlines between Miami and Bimini, and from immigration, indicated they also went from Miami to Bimini during the trip, is that correct?

Mr. GRAY. No, sir; the 323 tickets totaling $23,800 were the tickets we covered in our examination. They may have been tickets to anywhere in the United States.

Mr. PEPPER. Have you made any total of the cost of the tickets that were charged to the Education and Labor Committee by parties—either the chairman of the committee or employees of the committee—who appeared also, in addition to going from Washington to Miami, went to Bimini on the same trip—have you totaled that?

Mr. GRAY. We haven't totaled that, but we could very easily, sir.

Mr. PEPPER. Would you total that for the committee, please?

Chairman CELLER. That is very important. Would you total that for us?

Mr. GRAY. Yes.

Mr. MOORE. Mr. Chairman, both with respect to the 87th and 88th Congress, I understand the records are limited. But if you will make that separation?

Mr. GRAY. Yes.

Mr. PATTERSON. Mr. Gray, I don't believe we have the records of the 87th and 88th Congresses, do we, with respect to Bimini?

Mr. GRAY. No, sir; I am sorry, I thought he meant the work we did with this spread sheet over here for the 89th Congress.

Mr. MOORE. Mr. Gray, can we determine, as I understand, the figures you have given us are sort of bald travel figures for everybody on the committee?

Mr. GRAY. Yes, sir.

Mr. MOORE. Is there any method whereby you can separate from that total figure those trips which would have occurred between New York, Washington, and Miami?

Mr. GRAY. Yes, sir; we have those tabulated. We can separate those.

Mr. MOORE. And do you have available to you records that could match those trips up with flights to Bimini?

Mr. GRAY. No, sir; because of the lack of airline detail records. You see, in order to do that, we have to have the actual flight coupon that is taken up at the gate, when you go through the gate, and the airlines keep those only 2 years, and they destroy them after that.

Mr. MOORE. With respect to the records of Chalk Air Taxi, or any one of the private air taxi charterers in the Miami area, do you have any records for the 87th and 88th Congress that are available to you?

Mr. GRAY. Yes, sir; I believe we do, but it would be impossible for us to tie that with commercial carriers' records going down, because all we have is the date of ticket purchased rather than date of travel.

Mr. MOORE. You don't have the date that ticket was used?

Mr. GRAY. No, sir.

Mr. MOORE. You do have also the immigration records covering the time period of the 87th and 88th Congress, I understand?

Mr. GRAY. They would be available. We haven't examined them for that period.

Mr. MOORE. I understand the gentleman from Florida, he would like to have separated from the total figure in excess of $23,000, as much as is possible, to separate the number of trips that came out of New York, Washington, to the Miami area. Can you do that?

Mr. GRAY. We can do that on the basis of ticket purchases; yes, sir.

Mr. CORMAN. Mr. Chairman?

Chairman CELLER. Mr. Corman.

Mr. CORMAN. I would like to ask the witness if you can separate out the figures of airline travel where the traveler stayed overnight outside of Washington, and did not claim per diem expenses. Would those figures be available for the 89th Congress?

Mr. GRAY. Yes, sir; I believe that most of those are reported in the Hays report now, sir.

Mr. CORMAN. Thank you. I would like a tabulation of the total cost of those tickets from you, if we may.

Mr. GRAY. We will do that.

(The document referred to is as follows:)

Committee on Education and Labor—Number and dollar amount of trips for which no claim for subsistence was made, 89th Cong.

Name of traveler	Miami travel		Other travel		Total	
	Number of trips [1]	Amount	Number of trips [1]	Amount	Number of trips [1]	Amount
Aldrich, Carol T.	2	$153.72	0	$ 0	2	$153.72
Anderson, Donald	0	0	14	328.97	14	328.97
Berens, Donald T	1	99.12	2	36.00	3	135.12
Calabrese, Teresa	0	0	5	82.45	5	82.45
Clark, Odell	9	717.98	41	991.27	50	1,709.25
Dargans, Louise	0	0	1	18.00	1	18.00
Derrickson, Russell	0	0	26	462.85	26	462.85
Givens, Sylvia [2]	2	149.07	0	0	2	149.07
Harris, Aurora	4	307.44	3	54.00	7	361.44
Henderson, Will	0	0	4	599.71	4	599.71
Himes, Dorothy W	3	230.58	6	108.85	9	339.43
Huff, Corrine A	1	56.28	9	180.25	10	236.53
Lewis, Cleomine B	11	940.17	11	199.95	22	1,140.12
Powell, Adam C	16	1,289.40	49	1,190.02	65	2,479.42
Schwartz, Michael	2	153.72	1	18.00	3	171.72
Stone, C. Sumner	8	584.85	59	1,159.75	67	1,744.60
Swann, Emma, T	17	1,316.90	22	412.84	39	1,729.74
Vidal Chacon, Alfredo	0	0	3	96.74	3	96.74
Warren, John E	6	491.40	8	146.54	14	637.94
Total	82	$6,490.63	264	$6,086.19	346	$12,576.82

[1] One-way travel tabulated as 1 trip; round trip travel tabulated as 2 trips.
[2] Adam C. Powell made personal reimbursement of $92.68.

Mr. CORMAN. I understand that those facts would not be available for the 88th and 87th Congress, because there is no record of when the tickets were used?

Mr. GRAY. That is right, sir.

Mr. CORMAN. Thank you.

Chairman CELLER. Yes, Mr. Jacobs?

Mr. JACOBS. Mr. Chairman, I should like to ask Mr. Gray, in response to a question propounded by Mr. Patterson to you, you said that there were several instances in which trips charged to the Committee on Education and Labor were not made to further the business of that committee, and subsequently the questioning indicated that you are unable to match trips to Miami with trips to Bimini in point of time.

On what did you base your conclusion that trips have been made on business other than committee business, and then charged to that committee.

Mr. GRAY. I believe, sir. this schedule would show in certain instances, that there was practically no time elapsed from the time a traveler would arrive in Miami and depart for Bimini and come back into Miami from Bimini, and I say it appeared that no official business probably was conducted at that time.

Mr. JACOBS. Then the facts on which you base your conclusion were not facts as to when the tickets were purchased, but when they were used?

Mr. GRAY. Yes, sir; in this schedule, it is all based on actual usage of tickets.

Mr. JACOBS. During the 89th Congress?

Mr. GRAY. Yes, sir.

Mr. JACOBS. During the 89th Congress there is data with reference to the time the travel was actually done?

Mr. GRAY. Yes, sir.

Mr. THOMSON. Will the gentleman yield?

Mr. Gray, can you furnish us a list of the committee personnel who have been named in this inquiry today, if those names are shown on the immigration manifests for time leaving for Bimini and time returning from Bimini during the 87th and 88th Congress.

Mr. GRAY. I think I understand you, sir. You mean just from immigration records as to times of arrival and departure by anyone on the committee, is that right, without relating it to the usage of airline tickets?

Mr. THOMSON. It would be better if it could be related, but it might be helpful if you could supply the list of committee personnel who—or any of the names that are listed on your sheets here today, who went to Bimini and returned to Miami during the 87th and 88th Congresses.

Mr. GRAY. Yes, sir; we can get that for you, if the immigration records run back that far, and I am certain they must.

Chairman CELLER. Mr. Geoghegan.

Mr. GEOGHEGAN. Mr. Gray, has Mr. Powell reimbursed the House for any of the travel shown on the schedule which has been received in evidence today as Gray exhibit No. 2?

Mr. GRAY. Yes, sir; the last entry on that schedule, Sylvia J. Givens, Mr. Powell has reimbursed the House for Miss Givens' trip from Washington to New York to Miami, but has not reimbursed for Miss Givens' return flight from Miami to the District of Columbia.

Mr. GEOGHEGAN. In connection with that same trip or trips about that time, did Mr. Powell reimburse the committee for any of his travel or for any persons traveling with him? Does the Hays subcommittee report indicate that?

Mr. GRAY. The report shows specific reimbursement. I think Mr. Powell, at the time he reimbursed for Miss Givens, paid for about $900-some worth of travel.

Mr. GEOGHEGAN. Which had been previously charged to the committee?

Mr. GRAY. Which had been previously charged to the committee; yes, sir.

Mr. GEOGHEGAN. These repayments were made after the Hays subcommittee commenced its investigation?

Mr. GRAY. Yes, sir.

Mr. CORMAN. May I inquire—the only one that was reimbursed by the Member-elect that is shown on this schedule is the one that you mentioned, the last one, that is the only one that he has reimbursed for?

Mr. GRAY. Yes, sir.

Chairman CELLER. Mr. Moore.

Mr. MOORE. Mr. Chairman, may I inquire of Mr. Gray whether or not consideration of the Gray exhibit No. 2, which is three sheets, whether or not you have been able to arrive at a dollar value with respect to the travel reflected upon that exhibit?

Mr. GRAY. We certainly can, sir. We have worked on this until 11 o'clock last night with the information that we got yesterday from the flying services, and we can very easily assess a dollar amount.

Mr. MOORE. Mr. Chairman, I think we ought to have that.

Chairman CELLER. Will you supply that to the committee, please?

Mr. GRAY. Yes, sir.

(The document follows:)

Committee on Education and Labor—Number of trips and total dollar value of travel for persons appearing on the analysis of Miami travel schedule (Gray exhibit No. 2), 89th Cong.

	Miami travel	
	Number of trips[1]	Amount
Aldrich, Carol	2	$153.72
Berens, Donald	1	99.12
Clark, Odell	9	717.98
Givens, Sylvia[2]	2	149.07
Harris, Aurora	4	307.44
Himes, Dorothy	3	230.58
Huff, Corinne	1	56.28
Lewis, Cleomine B	11	940.17
Powell, Adam C., Jr	16	1,289.40
Schwartz, Michael	2	153.72
Stone, C. Sumner	8	584.85
Swann, Emma T	17	1,316.90
Warren, John E	6	491.40
Total	82	6,490.63

[1] 1-way travel tabulated as 1 trip; roundtrip travel tabulated as 2 trips.
[2] Adam C. Powell made personal reimbursement of $92.68.

Chairman CELLER. Any other questions?

Thank you very much, Mr. Gray. I want to compliment you and your staff on the very fine piece of work.

Mr. GRAY. Thank you, sir.

Chairman CELLER. Our next witness is Mr. Ford, of Barclays Bank, in New York City.

Mr. Ford?

(Whereupon, Dennis Ford was duly sworn.)

TESTIMONY OF DENNIS FORD, SUBMANAGER, BARCLAYS BANK, D.C.O.

Mr. GEOGHEGAN. Please be seated, Mr. Ford.

For the record, will you give your full name?

Mr. FORD. Dennis John Ford.

Mr. GEOGHEGAN. And you are associated with Barclays Bank in New York?

Mr. FORD. Yes, sir; I am submanager.

Mr. GEOGHEGAN. Give us your position?

Mr. FORD. Submanager.

Mr. GEOGHEGAN. And where is Barclays Inc.?

Mr. FORD. In the United Kingdom.

Mr. GEOGHEGAN. Will you give the full name of the bank or correct name?

Mr. FORD. Barclays Bank, D.C.O., 54 Lombard Street, London.

Mr. GEOGHEGAN. Mr. Ford, do Barclays have branches in New York City?

Mr. FORD. It does; yes, sir.

Mr. GEOGHEGAN. How many?

Mr. FORD. Two.

Mr. GEOGHEGAN. Where are they located?

Mr. FORD. 300 Park Avenue and 120 Broadway.

Mr. GEOGHEGAN. Is it in one of these banks where your office is?

Mr. FORD. Yes, sir.

Mr. GEOGHEGAN. Which one is that?

Mr. FORD. 120 Broadway.

Mr. GEOGHEGAN. Does Barclays have any bank branches in the Bahama Island group?

Mr. FORD. Yes, sir.

Mr. GEOGHEGAN. Where are they located?

Mr. FORD. In Nassau.

Mr. GEOGHEGAN. What is the address?

Mr. FORD. We have a number of branches there. The principal one is Bay Street, Nassau.

Mr. GEOGHEGAN. And again the full name of the bank is?

Mr. FORD. Barclays Bank, DCO.

Mr. GEOGHEGAN. Now did you or any person identified or associated with Barclays in New York receive a subpena to produce certain account records in the name of Adam Clayton Powell and Huff Enterprises, Ltd.?

Mr. FORD. Yes, sir.

Mr. GEOGHEGAN. Do you have a copy of that subpena with you?

Mr. FORD. No. I don't. It is in my office in New York.

Mr. GEOGHEGAN. Do you have any records to produce with respect to that subpena?

Mr. FORD. No, not with me. We searched our records and couldn't find any.

Mr. GEOGHEGAN. What records did you search?

Mr. FORD. Searched current accounts, savings deposit accounts.

Mr. GEOGHEGAN. Where.

Mr. FORD. In the two New York offices.

Mr. GEOGHEGAN. Did you make any effort to determine whether accounts in these names were located in the branch or any of the branches in the Bahamas?

Mr. FORD. No. There was nothing to indicate on the subpena.

Mr. GEOGHEGAN. I didn't understand your answer.

Mr. FORD. We did not, but there was nothing on the subpena to indicate that we should endeavor to get this information from our branches abroad.

Mr. GEOGHEGAN. Would you do that, please?

Mr. FORD. Well, we will endeavor to do so, although I do believe that this is not within our power to do so.

Mr. GEOGHEGAN. Mr. Ford, certainly the committee does not wish to in any way appear to be overbearing with respect to you.

I understand you are undoubtedly carrying out your instructions, but I think it would be best if you or your attorneys representing the bank contacted counsel for the committee because we are interested in having you respond to the subpena and having the bank respond to the subpena and produce the accounts of records in any of its branches in the names of Adam C. Powell and Huff Enterprises, Ltd.

And I would like to say further that counsel for Barclays was in contact with counsel for the Select Committee, Mr. Robert Patterson, Jr., on Friday, and your counsel was advised by Mr. Patterson that we were interested in having you produce the records of accounts in these names indicated in your branches in the Bahamas.

Mr. FORD. Our legal adviser did tell us this later on Friday evening, but he said he thought the records in the Bahamas were beyond your jurisdiction.

Mr. GEOGHEGAN. Then is it Barclays' position you are not responding to the subpena by reason of the fact that this committee lacks the power to subpena those records in the Bahamas?

Mr. FORD. As I see it, partially, yes, sir.

Mr. MOORE. Are you a lawyer, sir?

Mr. FORD. No.

Chairman CELLER. Were you so advised by your counsel?

Mr. FORD. Yes, sir.

Chairman CELLER. You were advised, I believe, that you could have counsel present with you. Why isn't your counsel present with you?

Mr. FORD. We were only told of this meeting late on Friday evening. We consulted our legal adviser then and he suggested that we send you a telegram advising that we had no records in New York and I haven't had a chance to meet him again since then.

Mr. GEOGHEGAN. We did receive that telegram which I will read into the record.

Reference your subpena duces tecum dated February 9, 1967, we respectfully advise our investigation indicates neither of our New York branches has any account or any records relating to Adam Clayton Powell or other person or entities named therein.

None of the staff of either of our branches has any information in the foregoing premises. Stop. Under these circumstances, we assume you will agree we cannot make any effective response with respect thereto beyond this telegraph. Stop. Barclays Bank D.C.O.

That telegram was dated February 11.

Chairman CELLER. The committee will keep you under call as a witness, sir.

Mr. MOORE. Mr. Chairman, because of the response of the witness that is here at the present time, I find some conflict in the telegraph as opposed to the observations which the witness has volunteered. And I understood that he said to us that he could not or did not respond to the submission of records of either of the two specific inquiries, Mr. Powell or Huff Enterprises, by reason of the fact that the subpena itself did not demand that such production be made.

Now, I take it that the telegraph in response over the signature of Barclays Bank, is a restatement substantially of the fact that you are not going to respond simply because the subpena did not command you to respond with respect to any accounts in the Bahamas or is it the bank's position that this is outside of the jurisdiction of this committee to command you to respond in that regard?

Mr. FORD. The subpena was addressed to our two New York offices and the reply relates to them.

There is no record in those offices. And a subsequent telephone call, I do believe our legal adviser was told that you were more interested in our business in the Bahamas.

Mr. MOORE. Do the Barclays have any other operating entities within the United States other than those two which you have identified as being in New York?

Mr. FORD. We also have a branch in the U.S. Virgin Islands.

Mr. MOORE. Beyond that, are there any others operating?

Mr. FORD. Within our group, we have another bank in California, Barclays Bank of California, which is a separate legal entity.

Mr. MOORE. I understand that you are the submanager of Barclays?

Mr. FORD. Yes, sir.

Mr. MOORE. In New York?

Mr. FORD. Yes, sir.

Mr. MOORE. Can you tell us whether or not there is carried by Barclays, either of the two Barclays Banks of which you have specific knowledge in New York, any accounts which might be called foreign accounts, or accounts that either are from citizens of the United States, reflecting deposits in Barclays banking identity in a foreign country or by the reverse, any foreign citizen that is depositing to Barclays accounts in New York.

Mr. FORD. Yes, sir. Our principal business entails nonresidents in the United States.

Mr. MOORE. Does it also show individuals that are residents of the United States doing business with Barclays in any one of a number of foreign countries?

Mr. FORD. No.

Mr. MOORE. It does not?

Mr. FORD. No.

Mr. MOORE. It would appear then that Barclays take the positions they have committed themselves for limited banking practices in the United States of America, that by reason of your answers, that seemingly thus far, we cannot touch any information which may be available in the indexes of Barclays banking facilities in any one of your

foreign operations or operations outside the continental limits of the United States?

Mr. FORD. This would be so, yes, sir.

Chairman CELLER. Mr. Corman.

Mr. CORMAN. Mr. Chairman, I would like to inquire, if I presented what purported to be draft on Huff Enterprises, Ltd., at your New York office, how would you ascertain whether the draft was good and how long would it take you to do it?

Mr. FORD. We would mail it down, this is a check drawn on another branch of our bank.

Mr. CORMAN. Yes, sir, your branch in the Bahamas?

Mr. FORD. We would mail it down to that branch. We could in fact telephone them.

Mr. CORMAN. If you were in a hurry, how would you find out?

Mr. FORD. We would telephone the branch and ask them.

Mr. CORMAN. You have no records in New York to assist you in any way?

Mr. FORD. No.

Mr. CORMAN. You can find out by telephone calls to your branch in the Bahamas whether it is good or not?

Mr. FORD. Yes.

Mr. CORMAN. Would you honor the check by virtue of the information received in the telephone call, assuming that it was favorable?

Mr. FORD. It is hard to give a categoric answer to this. I mean we wouldn't know whether the signatures were genuine or forged, it would depend upon the standing of the person presenting it and amount concerned.

Mr. CORMAN. You would be able to ascertain whether there was an account in that name and what the balance was by a telephone call?

Mr. FORD. Yes, sir.

Mr. GEOGHAGEN. Mr. Ford, would you identify the name of your counsel in New York City with whom Barclays has been discussing the matter of this subpena.

Mr. FORD. His personal name is Mr. McCulloch of Appelton, Rice & Perry.

Mr. MACGREGOR. Mr. Ford, you have identified Barclays Bank of California, which although a separate legal entity, is associated in some fashion with Barclays Bank, D.C.O.

Are there any other banking entities physically located within the United States of America which are in any way affiliated with Barclays Bank D.C.O.?

Mr. FORD. No.

Mr. PATTERSON. There is a bank, isn't there, Mr. Ford, Barclays Bank, Ltd.?

Mr. FORD. That is the principal company in the United Kingdom. It doesn't have an office here, it does have a representative.

Mr. PATTERSON. But affiliated?

Mr. FORD. It owns Barclays Bank, D.C.O.

Mr. PATTERSON. And has an address on Park Avenue, New York City?

Mr. FORD. Yes, sir. But there is only an individual there. There is no bank.

Mr. PATTERSON. They don't conduct any banking business?

Mr. FORD. No.

Chairman CELLER. Mr. Ford, you are not dismissed as a witness. You are still under call under the subpena awaiting further action by this committee. You are temporarily free to leave.

Mr. GEOGHEGAN. Mr. Ford, are your branches separate corporations or are they all part of one corporation formed in the United Kingdom?

Mr. FORD. That is not an easy question to answer. There are a number of companies within the Barclays group. And Barclays Bank D.C.O. has some 1,500 branches in different countries.

Mr. GEOGHEGAN. And New York branches and branches in the Bahamas are part of the same corporate entity?

Mr. FORD. Yes, sir.

Mr. GEOGHEGAN. I have nothing further.

Mr. MOORE. Mr. Chairman, may I inquire of Mr. Ford, would you accept deposits to any one of a number of foreign accounts at your New York office or your New York banking facility to any one of the accounts which may be carried by Barclays throughout the world?

Mr. FORD. Not deposits per se. If you came in and asked us to transfer money to your account in another branch of the bank, this we would do.

Mr. MOORE. But it would be necessary for you to have an account, an outstanding account at Barclays, let's say, New York facility and this is simply a request of a paper transaction.

You would not take direct deposits in New York to your Nassau facility?

Mr. FORD. If you came in and gave us a deposit, we would ask you to fill out the particulars on a transfer form and we would transfer the money for you, as we would whether you had an account or not.

Mr. MOORE. In other words, if I did not have an account at your New York banking facility, and I wanted to make a deposit to your Nassau facility, I could do that through your New York office?

Mr. FORD. Yes, sir. You could in fact do it, I think, through almost any American bank too.

Mr. MOORE. We are particularly interested in the banking system at Barclay.

Mr. FORD. The point is that this is not a particular function. It is something which is done for anyone who comes into the bank.

Mr. MOORE. The question of course in its unrefined way, is whether or not you will receive funds and a request being made that they be credited to an account in one of your other banking facilities in any one of the other nations of the world where you operate and the answer to the question is yes, you would?

Mr. FORD. Yes, sir.

Mr. MOORE. And yet you would not at the same time, respond to a subpena of this Congress that would cause you to present to us any records that would reflect such transfers?

Mr. FORD. We would, if such transfers were effected on our books, yes, sir.

Mr. MOORE. But I meant, in the name of the submatter of this inquiry, Mr. Powell or Huff Enterprises, you wouldn't consider it unless there was a deposit, that you could not produce any records in

any one of your other facilities concerning either of those two particular individuals.

Mr. FORD. If somebody had come to us during the last 6 years and asked us to do so, we would have done so and we made a preliminary investigation to see if this in fact has happened.

It hasn't been possible to find if there has been any in any of the transfers made over the past few years.

Mr. MOORE. Do you operate under some sort of reciprocal arrangement between Her Majesty's Government and the United States here in the United States or must you make specific application to the holder of the currency or appropriate banking officials of our Government for a right to do business in the United States?

Mr. FORD. I think we made a specific application to do this.

Chairman CELLER. What is your answer?

Mr. MOORE. They made specific application.

Chairman CELLER. Did you make your application to the New York State superintendent of banks, or did you make your application to the Comptroller of Currency in Washington?

Mr. FORD. I am not quite sure. This happened before I arrived in the United States myself.

Chairman CELLER. Is it a domestic corporation that owns Barclays Bank of New York? You said no. Now, in other words, before you operated in New York, before Barclays Bank operated in New York, they had to go to some authority to get permission. Was your application directly to the State superintendent of banks or to the Comptroller of the Currency?

Mr. FORD. I think to the State superintendent of banks, but I do not know exactly.

Chairman CELLER. And to obtain a branch you also had to go to the State superintendent of banks; is that correct?

Mr. FORD. I believe so; yes, sir.

Chairman CELLER. Does the State superintendent of banks know that you do not respond to a subpena of the type that has been served on Barclays Bank on the score that a place like the Bahamas is outside the United States and you will not produce those records?

Does the superintendent of banks of the State of New York know that?

Mr. FORD. I don't think we have been specifically subpenaed.

Chairman CELLER. What is that?

Mr. FORD. I do not think your subpena specifically asked us on the documents to produce books which are domiciled outside the United States.

Chairman CELLER. What I am driving at is this: this outfit has the rare privilege of doing business in the State of New York, and now is not cooperative in responding to a subpena issued by a select committee of the House of Representatives.

I think the superintendent of banks ought to be apprised of this situation. And I am going to ask counsel to communicate with the State superintendent of banks.

The Chair will now direct you, as a responsible officer of Barclays Bank, to produce the records that were mentioned in the subpena served.

Do you get that clearly?

Mr. FORD. Yes, sir.

Chairman CELLER. Especially including the records that are in the Bahamas. Do you understand that?

Mr. FORD. Yes, sir.

Chairman CELLER. Now, you are not dismissed, as I stated before, you are still under call awaiting further action by this committee.

Mr. GEOGHAGEN. May I make a suggestion to the witness that he keep in contact with counsel for the committee.

Mr. FORD. Yes, sir.

(Witness temporarily excused.)

Chairman CELLER. Our next witness is Miss Corinne Huff.

Is anybody here representing Miss Huff?

Will counsel relate the efforts that have been made to serve Miss Corinne Huff with a subpena.

Mr. GEOGHEGAN. Mr. Chairman, the select committee issued a subpena directing Corinne Huff to appear before the select committee at 10 o'clock this morning. We asked the cooperation of the State Department to serve Miss Huff in the Bahamas and we have received from the State Department the following communication. This is from the American consulate in Nassau.

To the Honorable Emanuel Celler, Chairman of the Select Committee, House of Representatives. Subpena issued pursuant to House Resolution 1, 90th Congress was delivered to Corinne Huff at 3:30 p.m., February 11, by Bahamian attorney. Signed/ Reynolds, American Counsel, Nassau.

Chairman CELLER. The record will state that Miss Corinne Huff did not respond when her name was called as a witness.

The Chair now announces the committee will adjourn subject to the call of the Chair.

(Whereupon, at 12:23 p.m., the committee was adjourned subject to the call of the Chair.)

IN RE ADAM CLAYTON POWELL

THURSDAY, FEBRUARY 16, 1967

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

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

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

Committee staff members present: William A. Geoghegan and R. Patterson, Jr.

Chairman CELLER. We will come to order. Will the attorneys for Mrs. Powell identify themselves for the record.

Mr. RAUH. My name is Joseph L. Rauh, Jr. and my associate will identify himself.

Mr. PANIAGUA. My name is Reinaldo Paniagua.

Chairman CELLER. Is there any counsel here this morning representing Mr. Powell?

Mrs. Powell, will you rise please, put your hand on the Bible and raise your right hand?

Do you solemnly swear in these proceedings to tell the truth, the whole truth and nothing but the truth, so help you God?

Mrs. POWELL. I do.

Chairman CELLER. You may be seated.

Will the officers close the door, please. The chair wishes to say to counsel the following: Counsel is advised the select committee is proceeding in accordance with rule XI, paragraph 26, of the Rules of the House of Representatives which provide among other things that witnesses may be accompanied by counsel for the purpose of advising them concerning their constitutional rights.

Hearings conducted by the select committee are open to the public unless the select committee by majority vote orders an executive session. Does the witness request that we proceed in executive session? If so we will consider the request. The answer is "No" for the record.

Mr. RAUH. We have no such request.

TESTIMONY OF YVETTE DIAGO POWELL, ACCOMPANIED BY JOSEPH L. RAUH, JR., AND REINALDO PANIAGUA, COUNSEL

Mr. GEOGHEGAN. Will the witness identify herself and state her name for the record?

Mrs. POWELL. Yvette Diago Powell.

Mr. GEOGHEGAN. Are you also known as Yvette Marjorie Flores?

Mrs. POWELL. Yes.

Mr. GEOGHEGAN. You are the wife of Adam Clayton Powell?

Mrs. POWELL. Yes, sir.

Mr. GEOGHEGAN. When were you and Mr. Powell married?

Mrs. POWELL. December 1960.

Mr. GEOGHEGAN. Where were you married?

Mrs. POWELL. In San Juan, P.R.

Mr. GEOGHEGAN. When did you first commence to work for Mr. Powell?

Mrs. POWELL. It was in 1958 here in Washington.

Mr. GEOGHEGAN. Did you work on congressional payroll at that time?

Mrs. POWELL. Yes, sir; I did.

Mr. GEOGHEGAN. Do you recall where your office was?

Mrs. POWELL. Yes, it was in the Old House Office Building.

Mr. GEOGHEGAN. Two years after you commenced to work with Mr. Powell you were married to him?

Mrs. POWELL. That is correct.

Mr. GEOGHEGAN. Where did you make your home after your marriage?

Mrs. POWELL. Right here in Washington.

Mr. GEOGHEGAN. Do you recall the address?

Mrs. POWELL. Yes. It was 16 Gessford Court, SE.

Mr. GEOGHEGAN. For how long did you live with Mr. Powell at that address?

Mrs. POWELL. About a year.

Mr. GEOGHEGAN. Then what did you do thereafter?

Mrs. POWELL. We went to Puerto Rico just for a couple of weeks on vacation but then I was pregnant and had to stay in bed because of the doctor's instructions and then I stayed in San Juan, P.R.

Mr. GEOGHEGAN. And you have made your residence in San Juan since that time?

Mrs. POWELL. Yes.

Mr. GEOGHEGAN. At what address or addresses have you lived in the San Juan area?

Mrs. POWELL. It is in the outskirts of San Juan, San Ordo area in Catano.

Mr. GEOGHEGAN. For how long did you continue on the congressional office payroll of Mr. Powell.

Mrs. POWELL. As far as I know, until December of last year.

Mr. GEOGHEGAN. Until December 1966?

Mrs. POWELL. Yes.

Mr. GEOGHEGAN. Now, during this period in 1961 when you returned to Puerto Rico and December 1966 did you have occasion to come back to Washington?

Mrs. POWELL. Oh yes, I tried to. I mean I wanted to but——

Mr. GEOGHEGAN. Approximately how many visits back to Washington did you make during that 5-year period?

Mrs. POWELL. Oh, I was only here twice.

Mr. GEOGHEGAN. Now, how long did you stay on those visits?

Mrs. POWELL. Once I was here about a week and the last time only about 3 days.

Mr. GEOGHEGAN. Did you visit New York City at any time during that period?

Mrs. POWELL. Yes; one occasion.

Mr. GEOGHEGAN. For how long were you there?

Mrs. POWELL. For about a month.

Mr. GEOGHEGAN. Was that in connection with one of these two visits to Washington?

Mrs. POWELL. Yes; it was at the same time when I came to Washington.

Mr. GEOGHEGAN. When was this?

Mrs. POWELL. This was in 1964, around the summer, July or something like that.

Mr. GEOGHEGAN. You spent approximately a month in New York at that time?

Mrs. POWELL. Yes.

Mr. GEOGHEGAN. Where did you stay, if you recall?

Mrs. POWELL. I stayed with some friends of mine in Long Island.

Mr. GEOGHEGAN. Was Mr. Powell with you?

Mrs. POWELL. No.

Mr. GEOGHEGAN. Were you doing any work in connection with his congressional office at that time?

Mrs. POWELL. No.

Mr. GEOGHEGAN. Now did you perform any services in connection with the operation of Mr. Powell's congressional office during this period of time beginning in 1961 when you returned to San Juan?

Mrs. POWELL. Well, I did at the beginning, after our son was born, he kept sending me mail and work to do back in Puerto Rico and it was, well I feel it was full-time job at that time with the amount of work he would send and——

Mr. GEOGHEGAN. What would you do with the mail?

Mrs. POWELL. Mostly translations and answer the people and make appointments——

Mr. GEOGHEGAN. For the most part this was mail that was received by Mr. Powell in Spanish?

Mrs. POWELL. Yes, most of it.

Mr. GEOGHEGAN. Did you translate it into English or was this mail that was received in English and required a translation into Spanish, or both?

Mrs. POWELL. No; it was usually from English to Spanish—I mean—I am sorry—from Spanish to English so he could understand it.

Mr. GEOGHEGAN. Now you were doing this during the period of the 87th Congress which ran from January of 1961 until late in 1962. Can you tell us approximately how many hours per week you would have to devote to this work?

Mrs. POWELL. It is hard to figure. I would probably say about 5 or 6 hours a day.

Mr. GEOGHEGAN. A day, during this period of time?

Mrs. POWELL. Yes.

Mr. GEOGHEGAN. Now, did you continue to perform services at that level during the 88th Congress which began in January of 1963?

Mrs. POWELL. Well, yes; I continued to but I started—started receiving less work.

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?

Mr. POWELL. About the summer of 1965; June, July, something like that.

Mr. GEOGHEGAN. When was the last time you saw Mr. Powell?

Mrs. POWELL. That was September 1965.

Mr. GEOGHEGAN. Have you talked to him on the telephone at any time since then?

Mrs. POWELL. No, sir.

Mr. GEOGHEGAN. Have you had any conversations with any members of his office staff, congressional office staff or the staff of the Committee on Labor and Education since that time?

Mrs. POWELL. Yes. I have on several occasions.

Mr. GEOGHEGAN. Would you tell me whether or not those conversations related to any official work of those offices or were they personal in nature?

Mrs. POWELL. They were personal.

Mr. GEOGHEGAN. When was this last telephone conversation that you had with Mr. Powell?

Mr. RAUH. I think the question isn't clear. Mrs. Powell testified she saw him on September 1965 and there were no conversations since then. I think that is the answer she gave you before. The question, therefore, is not clear.

Mr. GEOGHEGAN. Where was it you last saw Mr. Powell in September of 1965?

Mrs. POWELL. In Puerto Rico.

Mr. GEOGHEGAN. Did he visit you at your home?

Mrs. POWELL. Yes.

Mr. GEOGHEGAN. Since that date you have not seen him nor have you spoken to him?

Mrs. POWELL. No; I have not.

Mr. GEOGHEGAN. Is this still your home?

Mrs. POWELL. Puerto Rico?

Mr. GEOGHEGAN. Yes.

Mrs. POWELL. Yes.

Mr. GEOGHEGAN. Can you tell me when was the last time you received any congressional mail, either directed to Mr. Powell's office or directed to the committee which was referred to you for reply?

Mrs. POWELL. From the committee, I don't remember ever receiving any work or any mail, but the office, I would say it was around that same time, that summer of 1965, June, July.

Mr. GEOGHEGAN. Have you been to Washington since September 1965 prior to this visit.

Mrs. POWELL. Yes. I came over to Washington August 1966, last year.

Mr. GEOGHEGAN. You didn't see Mr. Powell on this occasion?

Mrs. POWELL. No; I couldn't. I tried but I couldn't.

Mr. GEOGHEGAN. Where did you stay on that trip.

Mrs. POWELL. I stayed at the Sheraton-Park Hotel.

Mr. GEOGHEGAN. Were you attempting to contact Mr. Powell with respect to your role as a clerk on his staff?

Mrs. POWELL. And also our personal life.

Mr. GEOGHEGAN. Well what efforts did you make to contact Mr. Powell at that time?

Mrs. POWELL. Well I—previously to my coming down I wrote him several letters to which I didn't get any answer so finally I decided I had to see him and sent him another letter and said I was coming down and as soon as I got in Washington I called his office and said I was here with our son and wanted to—wanted him to see what the situation was.

Mr. GEOGHEGAN. To whom did you talk to in the office?

Mrs. POWELL. Mr. Chuck Stone.

Mr. GEOGHEGAN. Do you know whether or not Mr. Powell was in Washington at the time?

Mrs. POWELL. Yes; he was.

Mr. GEOGHEGAN. He declined to see you?

Msr. POWELL. That is right.

Mr. GEOGHEGAN. Mrs. Powell, could you recall when the last time was that you received a check drawn on the U.S. Treasury for payment for services rendered as a member, as part of your assignment to that office staff. Let me repeat the question.

Do you recall the last time you received a check from the U.S. Treasury in payment of salary as a clerk to Mr. Powell?

Mrs. POWELL. Yes; actually there were only two checks that I ever received. That was November and December of 1966.

Mr. GEOGHEGAN. Now during the period 1961 to November 1966, what was the practice followed with respect to your salary checks?

Mrs. POWELL. I didn't get them.

Mr. GEOGHEGAN. They were, to the best of your knowledge, delivered to Mr. Powell?

Mrs. POWELL. I think so.

Mr. RAUH. Mrs. Powell wanted to make clear—and I think you ought to give her a chance—that she has no firsthand knowledge of what happened, and your question would imply and her answer, I think, that she did.

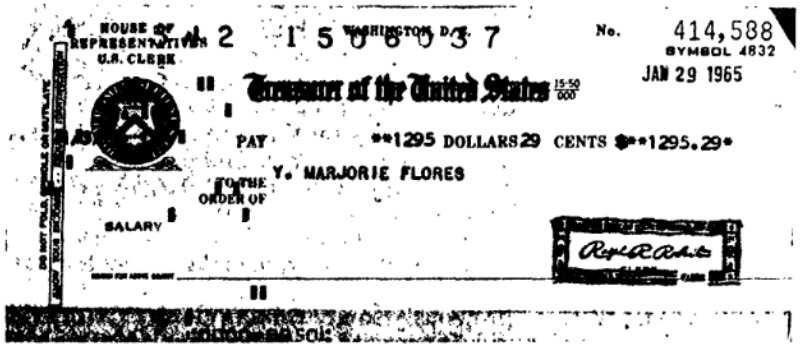
I think she would like to make clear that she has no firsthand knowledge of what occurred on these checks.

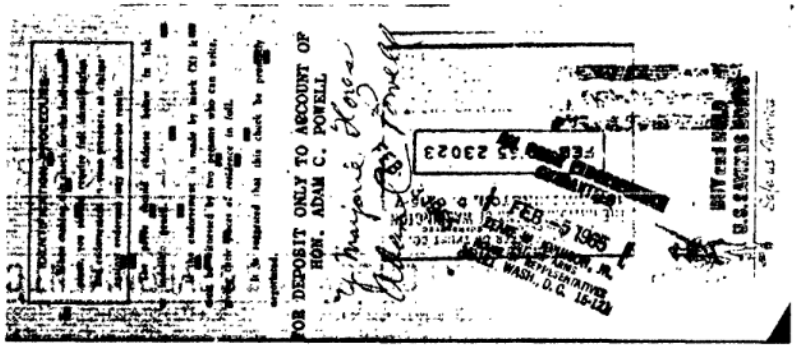
Mr. GEOGHEGAN. We hope she will be able to make that clear.

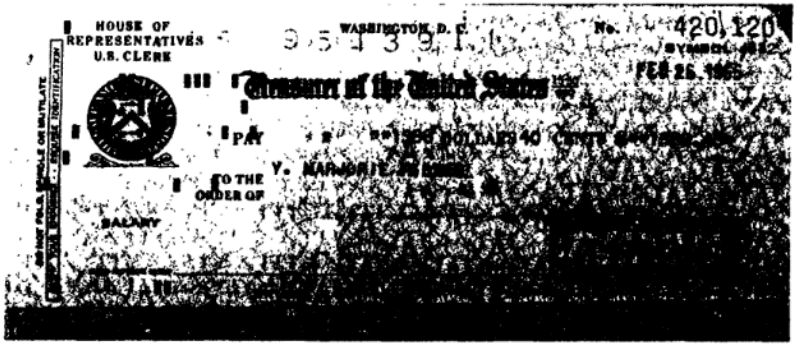
Will the reporter mark the series of salary checks payable to Y. Marjorie Flores, one for each month, beginning January 1965 until either July or August of 1966. Mark those for identification "Mrs. Powell's No. 1."

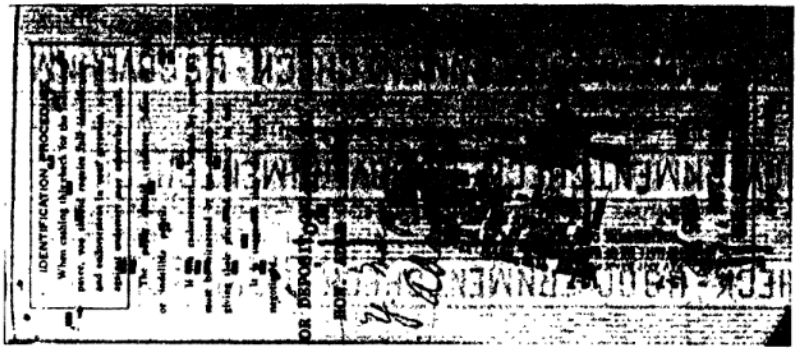
(The documents referred to were marked for identification as Mrs. Powell's exhibit No. 1 and inserted into the record at this point:)

MRS. POWELL EXHIBIT NO. 1


HOUSE OF REPRESENTATIVES
U.S. CLERK
WASHINGTON, D.C.
No. 414,588
SYMBOL 4832
JAN 29 1965
Treasurer of the United States
PAY **1295 DOLLARS 29 CENTS $**1295.29*
TO THE ORDER OF Y. MARJORIE FLORES
SALARY


FOR DEPOSIT ONLY TO ACCOUNT OF HON. ADAM C. POWELL
FEB 5 1965


HOUSE OF REPRESENTATIVES
U.S. CLERK
WASHINGTON, D.C.
No. 420,120
FEB 25 1965
Treasurer of the United States
PAY
TO THE ORDER OF
SALARY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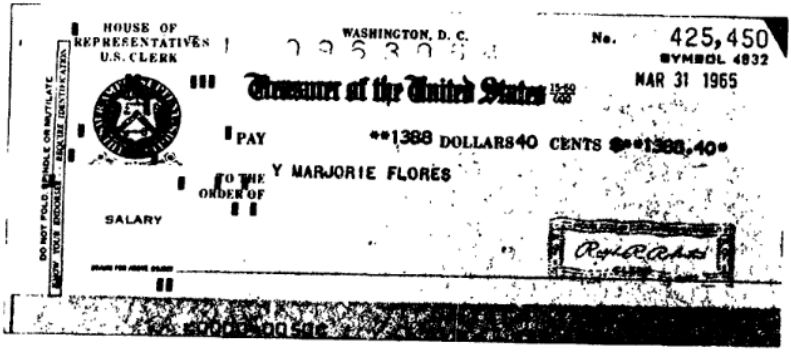
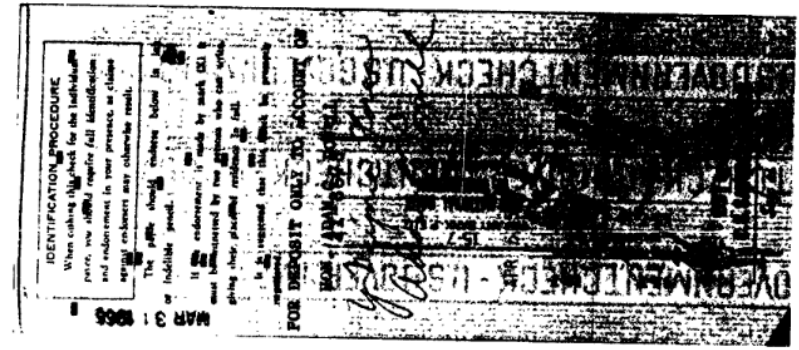
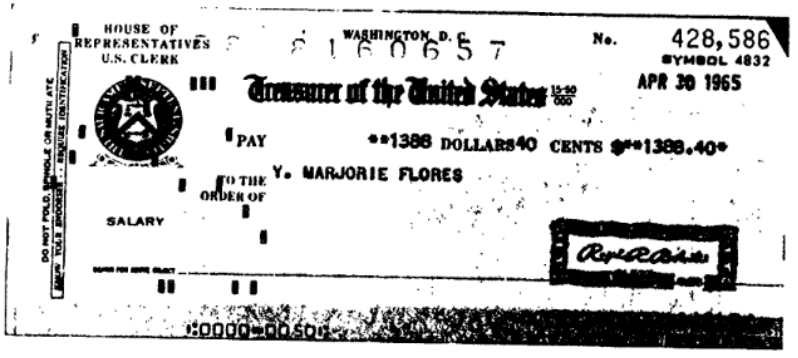
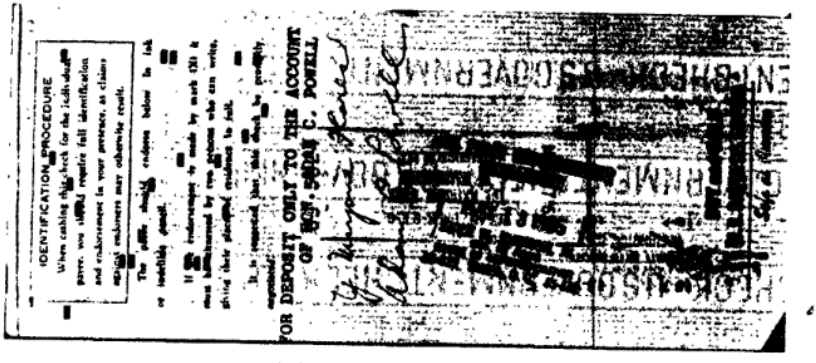
FOR DEPOSIT


HOUSE OF REPRESENTATIVES
U.S. CLERK
WASHINGTON, D. C.
No. 425,450
SYMBOL 4832
Treasurer of the United States
MAR 31 1965
PAY **1388 DOLLARS40 CENTS $**1388.40*
TO THE ORDER OF Y MARJORIE FLORES
SALARY
DO NOT FOLD, STAPLE OR MUTILATE
IDENTIFICATION PROCEDURE
When cashing this check for the individual payee, you should require full identification and endorsement in your presence, as claims against endorsers may otherwise result.
FOR DEPOSIT ONLY TO ACCOUNT




HOUSE OF REPRESENTATIVES
U.S. CLERK
WASHINGTON, D. C.
No. 428,586
SYMBOL 4832
Treasurer of the United States
APR 30 1965
PAY **1388 DOLLARS40 CENTS $**1388.40*
TO THE ORDER OF Y. MARJORIE FLORES
SALARY
DO NOT FOLD, STAPLE OR MUTILATE
IDENTIFICATION PROCEDURE
When cashing this check for the individual payee, you should require full identification and endorsement in your presence, as claims against endorsers may otherwise result.
FOR DEPOSIT ONLY TO THE ACCOUNT OF HON. ADAM C. POWELL



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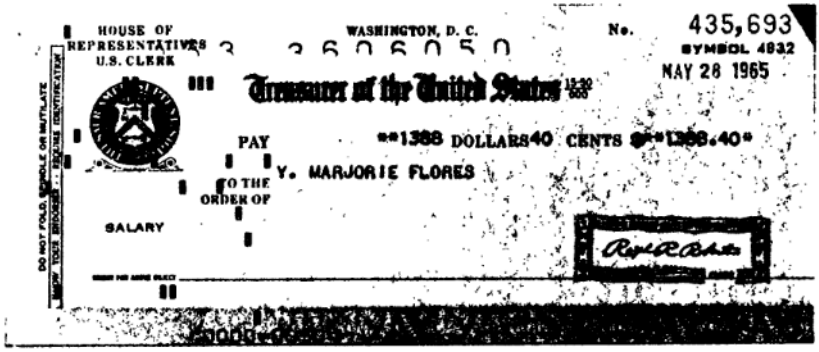
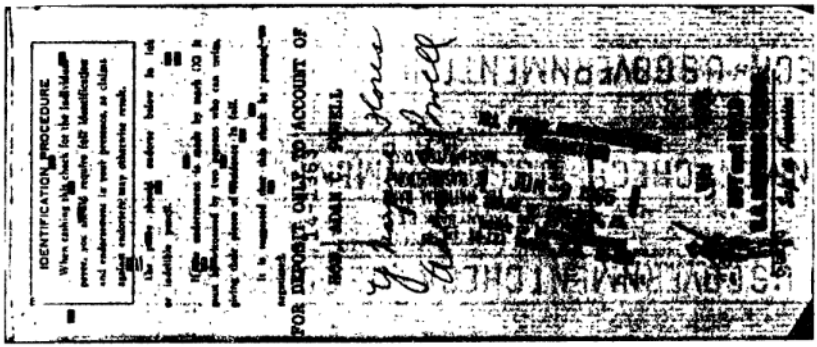
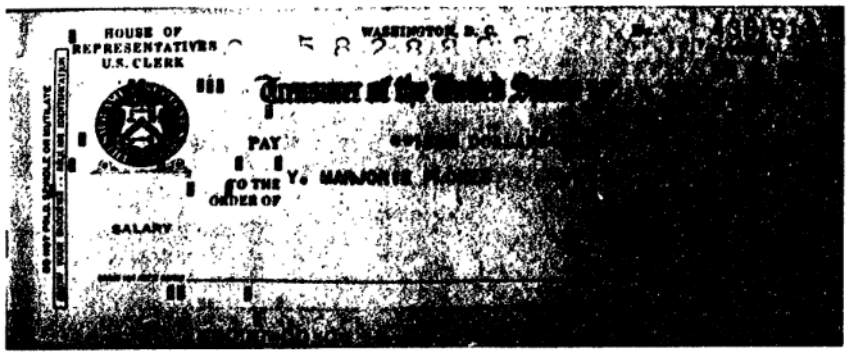

HOUSE OF REPRESENTATIVES
U.S. CLERK
WASHINGTON, D. C.
No. 435,693
SYMBOL 4832
MAY 28 1965
Treasurer of the United States
PAY **1388 DOLLARS40 CENTS $**1388.40*
TO THE ORDER OF Y. MARJORIE FLORES
SALARY
DO NOT FOLD, STAPLE OR MUTILATE
MARK YOUR BROOKES - USE INK, DESTINATION


IDENTIFICATION PROCEDURE
When cashing this check for the individual payee, you MUST require full identification and endorsement in your presence, as chiefs signed endorse(s) may otherwise result.
FOR DEPOSIT ONLY TO ACCOUNT OF ADAM C. POWELL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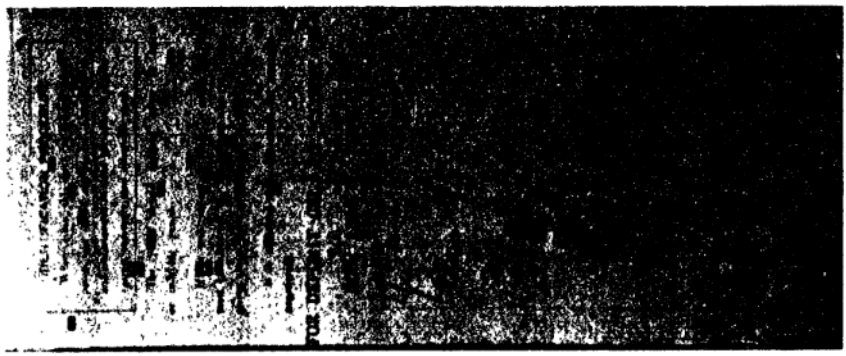
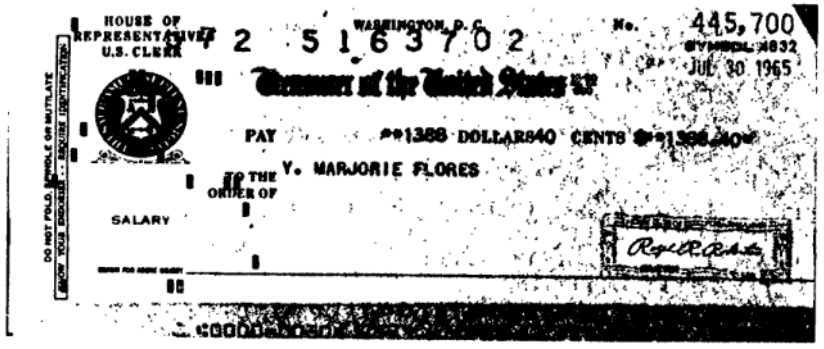
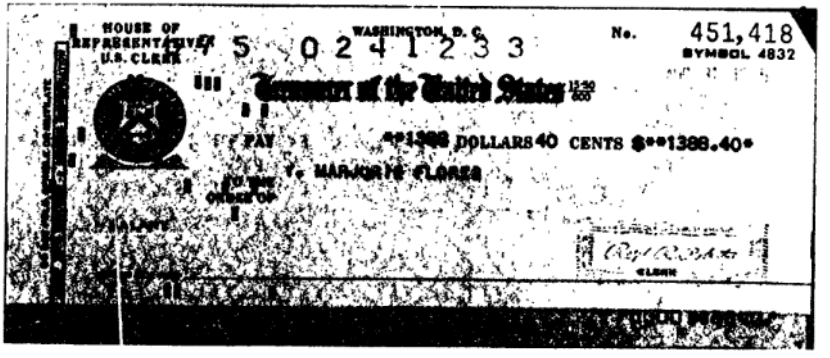
U.S. CLERK
WASHINGTON, D. C.
PAY
TO THE ORDER OF Y. MARJORIE FLORES
SALARY




HOUSE OF REPRESENTATIVES
U.S. CLERK
WASHINGTON, D. C.
No. 445,700
SYMBOL 4832
Jul. 30 1965
Treasurer of the United States
PAY **1388 DOLLARS 40 CENTS $**1388.40*
TO THE ORDER OF Y. MARJORIE FLORES
SALARY
DO NOT FOLD, MUTILATE OR STAPLE
IDENTIFICATION PROCEDURE


HOUSE OF REPRESENTATIVES
U.S. CLERK
WASHINGTON, D. C.
No. 451,418
SYMBOL 4832
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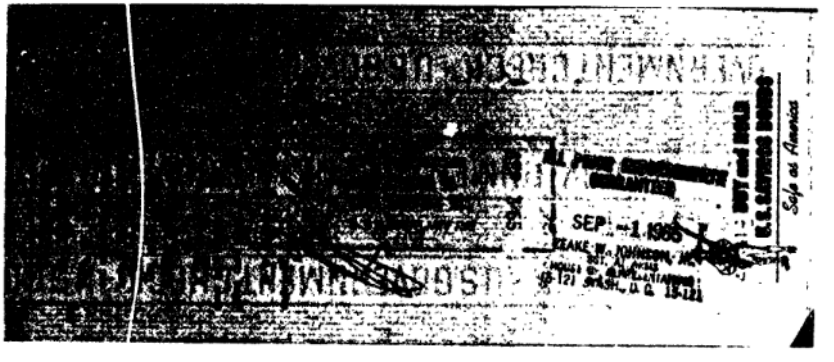
PAY **1388 DOLLARS 40 CENTS $**1388.40*
TO THE ORDER OF Y. MARJORIE FLORES
SALARY
CLERK


SEP -1 1965

HOUSE OF REPRESENTATIVES U.S. CLERK

WASHINGTON, D.C.

No. 458,317

SYMBOL 4832

SEP 30 1965

Treasurer of the United States $\frac{15\text{-}50}{000}$

PAY **1388 DOLLARS 40 CENTS $**1388.40*

TO THE ORDER OF Y. MARJORIE FLORES

SALARY

CLERK

DO NOT FOLD, SPINDLE OR MUTILATE

⑆0000138840⑆

FOR DEPOSIT ONLY TO THE ACCOUNT OF HON. ADAM C. POWELL

PRIOR ENDORSEMENTS GUARANTEED

OCT -4 1965

BUY and HOLD U.S. SAVINGS BONDS

HOUSE OF REPRESENTATIVES U.S. CLERK

WASHINGTON, D.C.

No. 462,552

SYMBOL 4832

OCT 29 1965

Treasurer of the United States $\frac{15\text{-}50}{000}$

PAY **1388 DOLLARS 40 CENTS $**1388.40*

TO THE ORDER OF Y. MARJORIE FLORES

SALARY

CLERK

DO NOT FOLD, SPINDLE OR MUTILATE

⑆0000138840⑆

⑆0000⑈0050⑆

FOR DEPOSIT ONLY TO THE ACCOUNT OF

15-7 15-7

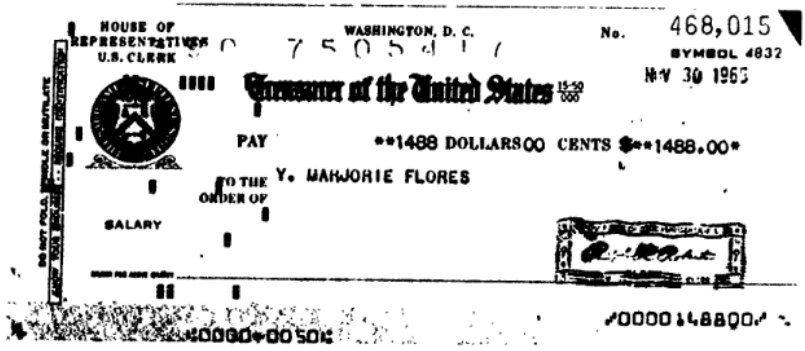
PAY ANY BANK P.E.G.

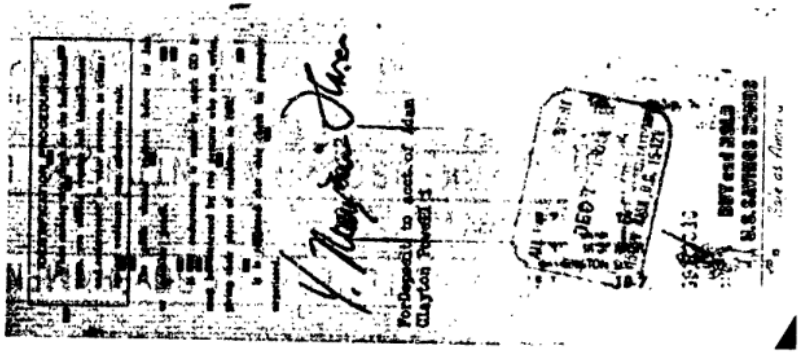
THE NAT'L BANK OF WASH.

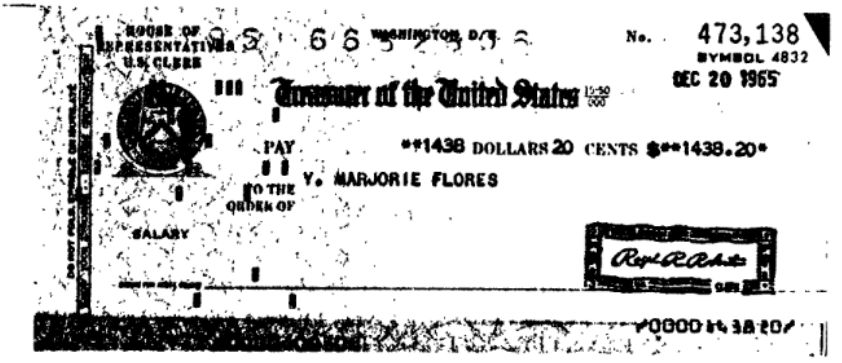
WASHINGTON, D.C.

15-7 15-7

BUY and HOLD U.S. SAVINGS BONDS


HOUSE OF REPRESENTATIVES
U.S. CLERK
WASHINGTON, D. C.
No. 468,015
SYMBOL 4832
NOV 30 1965
Treasurer of the United States
PAY **1488 DOLLARS 00 CENTS $**1488.00*
TO THE ORDER OF Y. MARJORIE FLORES
SALARY
⑈0000468800⑈
⑆0000⑆00 50⑆


For Deposit to credit of Adam Clayton Powell
DEC 7 1965
DEC 10
DEPT of the TREASURY U.S. SAVINGS BONDS


HOUSE OF REPRESENTATIVES
U.S. CLERK
WASHINGTON, D.C.
No. 473,138
SYMBOL 4832
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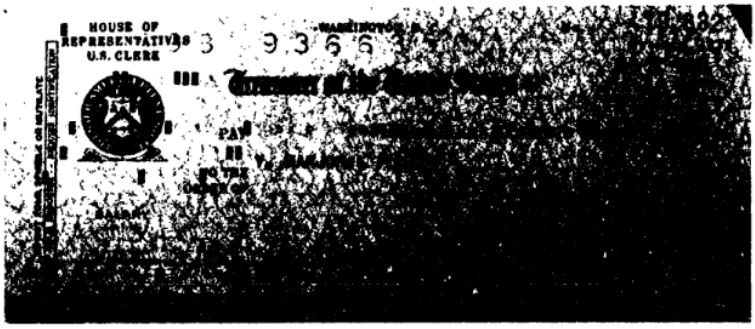
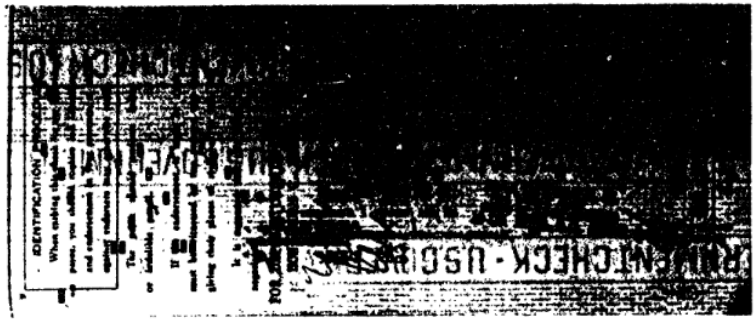
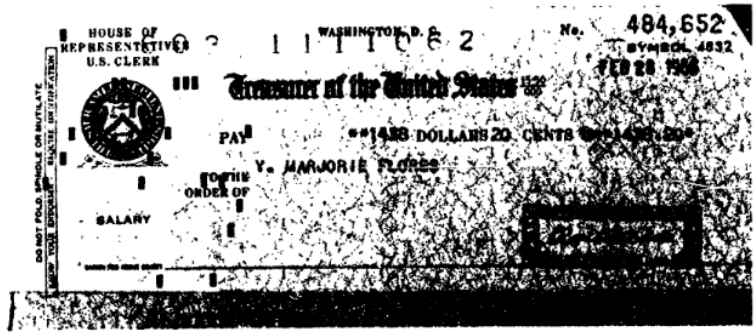
Treasurer of the United States
PAY **1438 DOLLARS 20 CENTS $**1438.20*
TO THE ORDER OF Y. MARJORIE FLORES
SALARY
⑈0000473820⑈


JAN 10 1966
DEPT of the TREASURY U.S. SAVINGS BONDS







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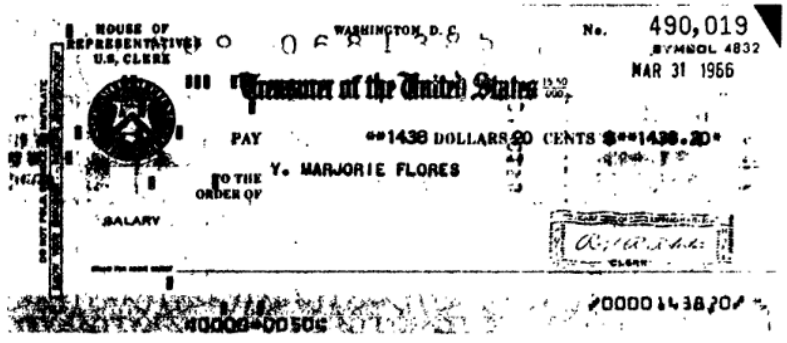
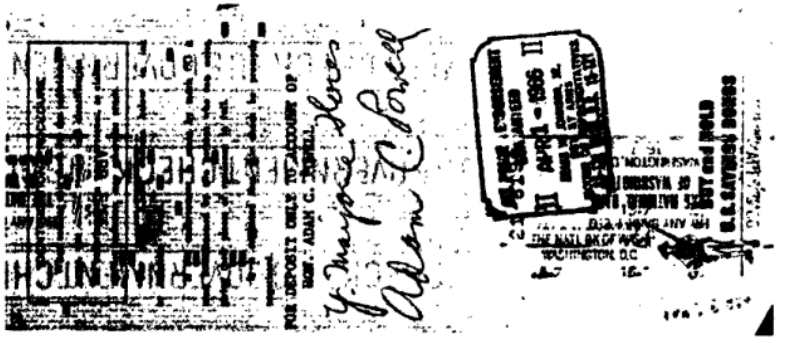
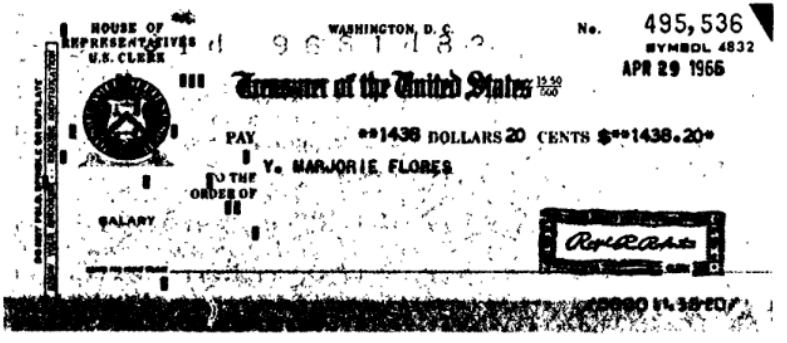
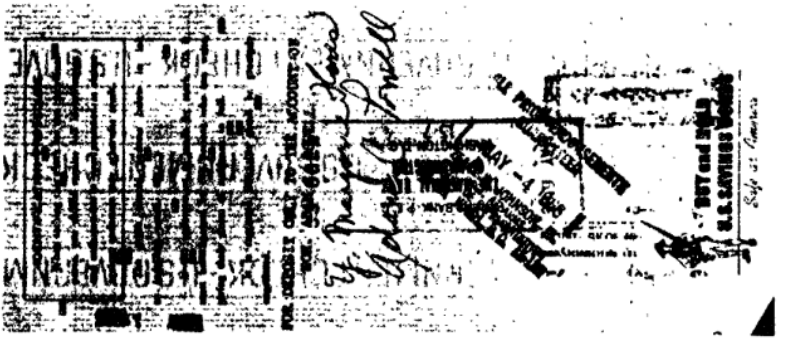
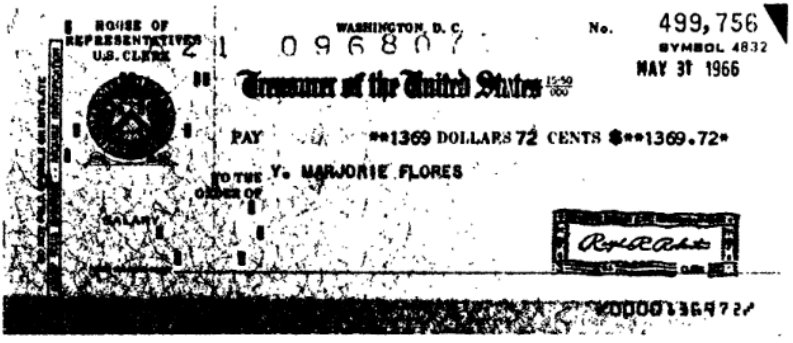
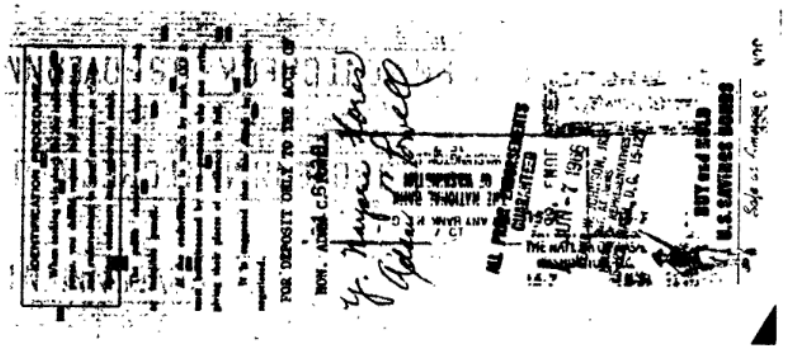

HOUSE OF REPRESENTATIVES
U.S. CLERK
WASHINGTON, D.C.
No. 490,019
SYMBOL 4832
MAR 31 1966
Treasurer of the United States
PAY **1438 DOLLARS 20 CENTS $**1438.20*
TO THE ORDER OF Y. MARJORIE FLORES
SALARY
CLERK
⑈00000 1438 20⑈
⑆00000*00505⑆

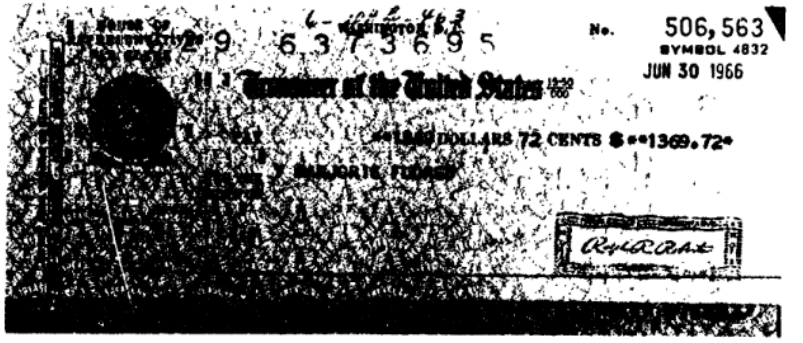

FOR DEPOSIT ONLY TO ACCOUNT OF HON. ADAM C. POWELL
Y. Marjorie Flores
Adam C. Powell
APR 1 1966
THE RIGGS NATIONAL BANK OF WASHINGTON, D.C.
U.S. SAVINGS BONDS
BUY and HOLD


HOUSE OF REPRESENTATIVES
U.S. CLERK
WASHINGTON, D.C.
No. 495,536
SYMBOL 4832
APR 29 1966
Treasurer of the United States
PAY **1438 DOLLARS 20 CENTS $**1438.20*
TO THE ORDER OF Y. MARJORIE FLORES
SALARY
CLERK
⑈00000 1438 20⑈


FOR DEPOSIT ONLY TO THE ACCOUNT OF HON. ADAM C. POWELL
Y. Marjorie Flores
Adam C. Powell
U.S. POSTAL SERVICE
MAY - 4 1966
WASHINGTON, D.C.
BUY and HOLD
U.S. SAVINGS BONDS
Safe as America


HOUSE OF REPRESENTATIVES
U.S. CLERK
WASHINGTON, D. C.
No. 499,756
SYMBOL 4832
MAY 31 1966
Treasurer of the United States
PAY **1369 DOLLARS 72 CENTS $**1369.72*
TO THE ORDER OF Y. MARJORIE FLORES
SALARY


FOR DEPOSIT ONLY TO THE ACCT. OF
Y. Marjorie Flores
JUN 7 1966
BUY and HOLD U.S. SAVINGS BONDS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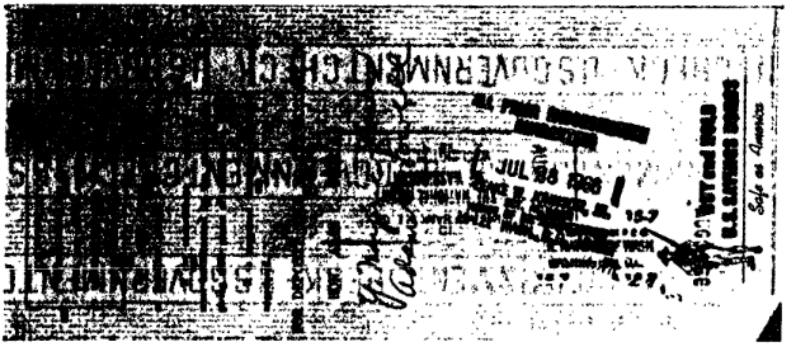
1369 DOLLARS 72 CENTS $1369.72*
MARJORIE FLORES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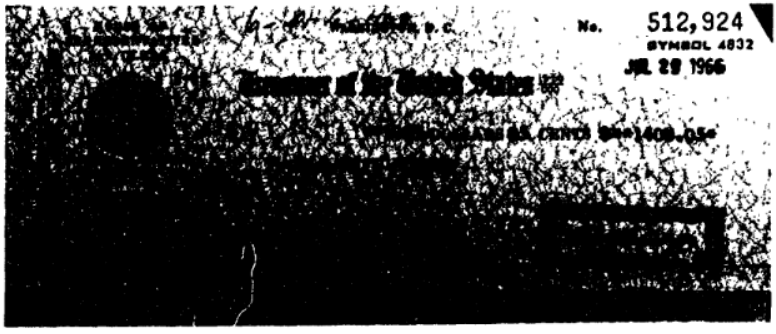
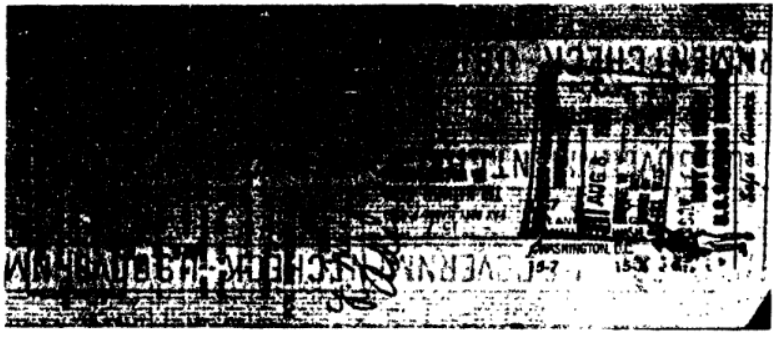




Mr. GEOGHEGAN. Will the reporter hand those checks to the witness?

I would like to ask the witness to look at these checks which are all drawn on the U.S. Treasury payable to Y. Marjorie Flores and examine the endorsement of that name on the back and tell us if the endorsement in any instance represents her own signature.

Mr. RAUH. Would you just give us a moment, please.

Mr. GEOGHEGAN. Surely.

Mr. RAUH. Would repeat the question?

Mr. GEOGHEGAN. Could the witness tell us whether or not the endorsement on the back of those checks, Y. Marjorie Flores, is in her handwriting?

Mrs. POWELL. No, it isn't.

Mr. GEOGHEGAN. In no one instance it is in your handwriting?

Mrs. POWELL. No.

Mr. GEOGHEGAN. Do you recognize the handwriting?

Mrs. POWELL. I had never seen these checks until last year in October when the Secret Service agent took them over to me, copies, and showed them to me. It is not my handwriting.

Mr. GEOGHEGAN. Prior to your marriage to Mr. Powell and while you were working in his congressional office staff did you then receive your salary check?

Mrs. POWELL. Yes.

Mr. GEOGHEGAN. You cashed them?

Mrs. POWELL. Yes.

Mr. GEOGHEGAN. And it was only subsequent to your marriage that you stopped receiving the checks yourself?

Mrs. POWELL. Yes.

Chairman CELLER. Do you know the name or could you identify the person who signed your name on the back of those checks? Can you recognize it?

Mrs. POWELL. Well, I am not an expert in handwriting. It does look familiar to me but—the handwriting in some of them—but I couldn't very well—I couldn't be absolutely sure.

Mr. GEOGHEGAN. Mrs. Powell, did you at any time in your writing or verbally authorize Mr. Powell to receive your checks, endorse them, and keep them?

Mrs. POWELL. No.

Mr. GEOGHEGAN. I believe you testified subsequent to your marriage you didn't receive a salary check?

Mrs. POWELL. That is right.

Mr. RAUH. Just one moment please.

Mr. Geoghegan, I think it may be that there is a slight inaccuracy here that Mrs. Powell would like to explain. There may have been one or two after the marriage before it was changed and there is no certainty that it immediately was changed.

We are trying to make this as exact as possible.

Mr. GEOGHEGAN. Do you adopt the statement of your counsel as your own?

Mrs. POWELL. Yes, that is correct. There were a few right after our marriage that I did receive.

Mr. GEOGHEGAN. Now, Mrs. Powell, during the period January 1965 to December 31, 1966, did you receive any financial support from Mr. Powell? I am not asking you the amount but did you receive any?

Mrs. POWELL. I received some.

Mr. GEOGHEGAN. Now, how is that support received? Was it by check?

Mrs. POWELL. Yes.

Mr. GEOGHEGAN. Could you tell us on what bank the checks were drawn.

Mrs. POWELL. Sergeant at Arms——

Mr. GEOGHEGAN. House of Representatives?

Mrs. POWELL. Yes.

Mr. GEOGHEGAN. Now if I told you the—strike that. Could you tell us what was the minimum amount of those checks? What was the smallest amount approximately in which any check was issued?

Mrs. POWELL. Well, over $200.

Mr. GEOHEGAN. If I told you that the records of the Sergeant at Arms Office in the account of Mr. Powell indicated that during this period 1965 and 1966, you received checks in excess of $200 totaling $6,850, would that represent approximately what you received in the way of financial support during that period from Mr. Powell?

Mrs. POWELL. Well, I would say that is about right.

Mr. GEOHEGAN. To the best of your recollection, during that period of time, you didn't receive any financial support in the form of checks drawn on any other bank account of Mr. Powell's?

Mrs. POWELL. No, I have never received——

Mr. GEOHEGAN. To the best of your knowledge, whenever you did receive a check it was at least in the amount of $200?

Mrs. POWELL. Yes, sir.

Mr. GEOHEGAN. Now, did Mr. Powell provide any other form of support such as paying rent or utilities where you live?

Mrs. POWELL. He paid the utilities, light and all that.

Mr. GEOHEGAN. Do you know approximately how much they would run per month?

Mrs. POWELL. Oh, all together probably about $75 or $80 a month.

Mr. GEOHEGAN. Did he provide any support to anyone else for the care of your son?

Mrs. POWELL. No.

Mr. GEOHEGAN. Can you tell us, to the best of your recollection when you received—what was the last time you received a check from Mr. Powell?

Mrs. POWELL. It was November or December—either the very end of November or December 1 of last year.

Mr. GEOHEGAN. Prior to that time, could you tell us when you last received a check from Mr. Powell?

Mrs. POWELL. Prior to that time——

Mr. GEOHEGAN. Prior to November of 1966, going back beyond that, when was the last check received?

Mrs. POWELL. I think I received about three or four checks in 1966 from him.

Mr. GEOHEGAN. And can you give us any idea as to the approximate dates? Would it refresh your recollection if I told you the records of the Office of the Sergeant at Arms indicated you received one in July 1966 in the amount of $600?

Mrs. POWELL. Yes. That is correct. July.

Mr. GEOHEGAN. And January 24, 1966, in the amount of $500?

Mrs. POWELL. That might be right.

Mr. GEOGHEGAN. Do you have any recollection of receiving any other checks than the three we have noted during 1966? That is, the one in January in the amount of $500, the one in July in the amount of $600. And there is another you say you received in November?

Mrs. POWELL. Yes, I think I received some checks in October and November.

Mr. GEOGHEGAN. These were checks that were payable directly to you drawn on Mr. Powell's account at the Sergeant at Arms?

Mrs. POWELL. The last—this month I had been talking about, October and November, I didn't get a check. It was deposited on an account in Washington and they sent me the slip that the money had been deposited in an account that I have in Washington, so I couldn't be sure if the check was made, you know, to my name or how but they did deposit the money——

Mr. GEOGHEGAN. You have an account with a bank here in Washington?

Mrs. POWELL. Yes.

Mr. GEOGHEGAN. In your name?

Mrs. POWELL. Yes.

Mr. GEOGHEGAN. Is anybody else involved in that account?

Mrs. POWELL. No.

Mr. GEOGHEGAN. Where is that account, please?

Mrs. POWELL. National Bank of Washington.

Mr. GEOGHEGAN. You did receive a deposit slip indicating that Mr. Powell had made a deposit for you in that account sometime during 1966?

Mrs. POWELL. Yes. I think about two or three times in 1966.

Mr. GEOGHEGAN. He made deposits into that account?

Mrs. POWELL. Instead of sending a check, yes.

Mr. GEOGHEGAN. Can you tell us what was the approximate amount of those checks?

Mrs. POWELL. $600 each time.

Mr. GEOGHEGAN. Did you have any understanding with Mr. Powell with respect to these checks that he was sending to you?

Mr. RAUH. I don't think the question was understood, Mr. Geoghegan.

Mr. GEOGHEGAN. Could counsel come forward please.

(Mr. Geoghegan confers with Mr. Rauh.)

Mr. GEOGHEGAN. Mrs. Powell, I would like to ask you: Is there any separation agreement, verbal or in writing, in effect between you and Mr. Powell?

Mrs. POWELL. No, sir.

Mr. GEOGHEGAN. Now were these checks that you received from him compensation for services or for your support and that of your child?

Mrs. POWELL. For support.

Mr. GEOGHEGAN. I don't believe we identified for the record the name of your child.

Mrs. POWELL. It is Adam Clayton Powell Diago.

Mr. GEOGHEGAN. How old is he?

Mrs. POWELL. Four and and half.

Mr. GEOGHEGAN. Now, going back to the period of the 88th Congress, which is generally the years 1963 and 1964, can you give us any indication as to the amount of support you received from Mr. Powell?

Mrs. POWELL. Well, when I came over to Washington, you know in 1966 and couldn't see him, after that I got those checks and during 1965 I don't remember exactly, but I believe I got about two checks from him for the period of 1965 and 1964. It was irregular. It is hard to figure exactly the amount.

Mr. GEOGHEGAN. Do you have any records of the amount of support that you received from Mr. Powell beginning, say, when you returned to San Juan in 1961 to date?

Mrs. POWELL. No; I don't believe—I could figure it out, but I don't have it here.

I remember 1966 and I remember 1965 because in 1965 I got only about two checks for the whole year.

Mr. GEOGHEGAN. Did you file for the year 1965 a joint income tax return with Mr. Powell? If you would like to confer with your counsel, if they can help you——

Mrs. POWELL. I couldn't tell for sure. He always handled the taxes and forms. I would suppose they are joint returns but he always handled that and I never even saw them.

Mr. GEOGHEGAN. Have you paid any income tax returns either to the United States or filed any tax returns in the Commonwealth of Puerto Rico separate and alone from Mr. Powell?

Mrs. POWELL. No. I haven't.

Mr. GEOGHEGAN. Did you have any conversations with Mr. Powell concerning the fact that you were listed on the congressional office payroll and weren't performing any services.

Mr. POWELL. Yes; I did. Many, many occasions.

Mr. GEOGHEGAN. Would you tell us about those conversations, when they occurred, what was their nature?

Mrs. POWELL. Well, as I told you, when I was pregnant I had to stay in bed most of the time and after the baby was born and he was about 2 months old, I didn't see any need for my staying back in Puerto Rico, and I wanted to come back with him so that is about the first time I mentioned it and I thought we had an agreement that as soon as the child was born I would come back, so I started telling him that I thought I should come back to work.

There was nothing to hold me back in Puerto Rico any longer and I felt I could do a lot more here anyway and he said "No", he thought the baby was too small and he would think it over.

So every time he would come back to Puerto Rico I would talk to him about the same and insist that I wanted to come back and he never allowed me to. He was always giving different reasons why I shouldn't be back.

Mr. GEOGHEGAN. You had more than one conversation to this effect?

Mrs. POWELL. Oh, yes. I had many.

Mr. GEOGHEGAN. These of course all occurred prior to August or September of 1965 when you testified that was the last time you conferred with Mr. Powell, conversed with Mr. Powell, or saw him?

Mrs. POWELL. Yes. This was prior—ever since 1962 and after the last time I saw him I wrote him several letters telling him I think I should come over and I never got an answer.

Mr. GEOGHEGAN. Do you have copies of those letters?

Mrs. POWELL. No.

Mr. CORMAN. As nearly as you can recall, when was the last time you performed substantial services as a congressional staff employee for Mr. Powell?

Mrs. POWELL. Around the summer of 1965.

Mr. CORMAN. And some period shortly after your marriage, you ceased getting paychecks and signing them yourself. Did you know at that time Mr. Powell was signing your paychecks, or do you know if he was signing your paychecks? Do you know—at that time, what did you think was happening to your congressional pay?

Mrs. POWELL. Well, actually, I thought he was getting them or something, but I couldn't tell for sure, because he never wanted to talk to me, you know about finances or anything. He always handled them and said, after we were married: "I will take care of all the finances and all that." He never discussed anything with me. I never saw his accounts either.

Mr. CORMAN. You had no clear understanding at that time then as to whether the checks were being made out to you and deposited by him in his account?

Mrs. POWELL. No.

Mr. CORMAN. I have no other questions.

Mr. MOORE. If I may inquire: Mrs. Powell, the home that you occupy in Puerto Rico, is that the home which is either owned by

yourself or by Mr. Powell individually or jointly, or is it a rented property?

Mrs. POWELL. It is rented.

Mr. MOORE. Did you pay the monthly rentals on that property, or is that an additional item that Mr. Powell has paid during the various times you have been in Puerto Rico?

Mrs. POWELL. Well, he is supposed to be paying it. I couldn't tell because I don't see the accounts or anything, so I don't know.

Mr. MOORE. No demands have been made upon you by the apparent owner of the property for rentals, is that correct?

Mrs. POWELL. That is correct.

Mr. MOORE. You have not been bothered in that respect?

Mrs. POWELL. No.

Mr. MOORE. Do you know what the amount of that rent is?

Mrs. POWELL. Not exactly, but I think it was something around $200 a month.

Mr. MOORE. I see.

Would you state for the record, if you know, who the owner of the home is that you are presently occupying as a renter?

Mrs. POWELL. Yes. It is Mr. Gonzalo Diego.

Mr. MOORE. May I inquire whether or not that would be a relative of yours, or any member of your family?

Mrs. POWELL. Yes, it's my uncle.

Mr. MOORE. It is a home which is owned by your uncle?

Mrs. POWELL. That's right.

Mr. MOORE. I would assume that you have had no discussions with your uncle with respect to any rent that might be due which may not have been paid?

Mrs. POWELL. No.

Mr. MOORE. Mrs. Powell, during the period of your marriage to Adam Clayton Powell, did he, at any time, or anybody acting in the capacity of his accountant, ever present to you for your signature a U.S. income-tax return?

Mrs. POWELL. No, sir.

Mr. MOORE. And I would assume, if I were to phrase that question and limit it to the New York State income-tax return, that your answer would be the same?

Mrs. POWELL. That is right.

Mr. MOORE. Thank you.

Mrs. POWELL. I would like to clarify that. I might have signed some kind of income tax return form or something a few years back, maybe—I don't remember right now—but I am pretty sure within the last 2 years I haven't done it, but before that it's just possible that I was given something by Adam to sign, and I would sign it.

Mr. MOORE. Mrs. Powell, the home that you are presently occupying in Puerto Rico, to your knowledge, was this home ever owned by your husband?

Mrs. POWELL. Yes, it was. We built it.

Mr. MOORE. You built this home together?

Mrs. POWELL. Yes.

Mr. MOORE. Is this the home that perhaps is the subject matter of some litigation in the State of New York?

Mrs. POWELL. Yes.

Mr. MOORE. And its subsequent transfer?

Mrs. POWELL. Yes, it is.

Mr. MOORE. Could you, if the same may have occurred, could you recite for the benefit of the committee any bills either in the nature of support for you and your child, or any sums of money that may have inured to your benefit as a result of your being the wife of Adam Clayton Powell that may have been paid by him, other than those—and I am thinking of any substantial amount—other than those to which you have testified here today?

Mrs. POWELL. For the last 2 years, I have been sending him bills, you know, like car repairs and doctors when the child has been sick, and he has paid a few of them, but I wouldn't say anything substantial. This would be very small bills, and the larger ones, I understand are still unpaid.

Mr. MOORE. Would these larger ones be perhaps bills for your own wearing apparel, or department store bills, or things of that nature?

Mrs. POWELL. Oh, you know, running the house, expenses, and our son, the illnesses and the nurse, or anything like that.

Mr. MOORE. Your son is not old enough presently to be attending any sort of kindergarten or school——

Mrs. POWELL. Yes, he is attending kindergarten.

Mr. MOORE. Who pays for whatever tuition may be required for that attendance?

Mrs. POWELL. I have been paying for it.

Mr. MOORE. Mrs. Powell, do you have any specific knowledge of the corporation which is referred to as Huff Enterprises?

Mrs. POWELL. No, sir, I don't.

Mr. MOORE. Are you the owner of any property in Washington, D.C.?

Mrs. POWELL. Yes.

Mr. MOORE. Presently?

Mrs. POWELL. Yes.

Mr. MOORE. Where is that property located?

Mrs. POWELL. In Southeast Washington.

Mr. MOORE. Who occupies that property at the present time?

Mrs. POWELL. I don't know, because——

Mr. MOORE. Who handles the rental of the property, if the property is rented?

Mrs. POWELL. Adam.

Mr. MOORE. Mr. Powell?

Mrs. POWELL. Yes.

Mr. MOORE. Have you at any time received any rentals for this property?

Mrs. POWELL. No, sir.

Mr. MOORE. Do you know what the monthly rental is for your property?

Mrs. POWELL. I really don't know exactly what it is.

Mr. MOORE. May I ask you to describe the home? Is this a two-bedroom home, three-bedroom home, or is it an apartment, or what type of——

Mrs. POWELL. It is two bedrooms, small house.

Mr. RAUH. Mr. Moore, I think Mrs. Powell wanted to explain about that property a little bit.

Mrs. POWELL. That is the house where we lived together when we got married.

Mr. MOORE. At the time of your marriage, was this home owned by your husband?

Mrs. POWELL. No, it was owned by me.

Mr. MOORE. You had purchased it?

Mrs. POWELL. Yes.

Mr. MOORE. This is the home which you lived in previous to your marriage to Mr. Powell?

Mrs. POWELL. Yes.

Mr. MOORE. And which you purchased previous to your marriage to Mr. Powell?

Mrs. POWELL. Yes, sir.

Mr. MOORE. Was this home, Mrs. Powell, ever in your husband's name.

Mrs. POWELL. Yes.

Mr. MOORE. But you—you may respond.

Mrs. POWELL. It was in his name originally, and he sold it to me before we got married. I don't know exactly, but I would believe it was around the middle of 1959.

Mr. MOORE. And when you say he sold it to you, did you receive—did you pay him in kind or cash for the home, or was this merely a paper transfer?

Mrs. POWELL. No, I did pay him for the house.

Mr. MOORE. Do you recall how much you paid him for the home?

Mrs. POWELL. I could get them, but the records are in Washington—I can't get to anything.

Mr. RAUH. Mrs. Powell says the records are here, and you could probably find out easier than she could. [Laughter.]

Mr. MOORE. May I say to counsel, there are a lot of records here, but they all go to a dead end.

Mr. RAUH. It was not a paper transaction. She did pay for it. She simply doesn't remember exactly what she paid for it. All the papers have been left here when she went to Puerto Rico, in that house, and she never had access to them.

Mr. MOORE. Is there more than one house involved in this transaction with your husband?

Mrs. POWELL. No.

Mr. MOORE. Does he own the property immediately to the right or left of the property that you purchased from him? Or did he?

Mrs. POWELL. He did, but I don't know if he still does.

Mr. MOORE. Mrs. Powell, just for purposes of clarification, I didn't quite understand your response to one of Mr. Geoghegan's questions. That was that you had never received any checks for payment of the services which you were supposed to have rendered either to the committee or the staff of the Congressman-elect, with the exception of either October or November 1966, is that correct?

Mrs. POWELL. That's correct. November and December, that's right.

Mr. MOORE. These were checks drawn on the Treasury of the United States on the Sergeant at Arms Office?

Mrs. POWELL. Yes.

Mr. MOORE. Do you recall the amounts of those checks?

Mrs. POWELL. I think they were $1,405, or something like that, each one, and I got those two to pay for some of his bills.

Mrs. RAUH. Representative Moore, Mrs. Powell would like to expand on that a little bit, if she may.

Mr. MOORE. Would you proceed, please?

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.

Mr. MOORE. Then is it fair to interpret your statement to us in that respect that you used these funds that were transmitted to you in the form of checks payable to yourself for your own personal family problems, together with—in some instances, perhaps—the payment of bills which were the business of Mr. Powell?

Mrs. POWELL. That is correct.

Mr. MOORE. I want it specifically understood I was only talking about the last two checks which were in November and December.

Mrs. POWELL. Yes, those were the only ones.

Mr. MOORE. Do I understand you to say that you felt these checks came to you because of your demand upon one of the officers of the House of Representatives, and not through any specific direction of your husband?

Mrs. POWELL. Yes.

Mr. MOORE. This was the letter that you had addressed to the Clerk of the House of Representatives, I believe?

Mrs. POWELL. That's right.

Mr. MOORE. Mrs. Powell, I may not have—and I realize this has been a most difficult appearance for you, and I don't want to unduly delay the questions of other individuals, but I would want to finish my summation by saying for and on behalf of myself, and certainly this is the view of the rest of the committee—we are indeed grateful for your coming here in response to our subpena and testifying under most severe circumstances concerning matters of your personal life, and I for one want to thank you very much.

Chairman CELLER. Just one question, Mrs. Powell.

Your salary as secretary to Mr. Powell was $20,578 a year, was it not?

Mrs. POWELL. I think so.

Chairman CELLER. That is all. Any other questions?

Mr. MACGREGOR. I have, for the last few moments, been examining the checks that you and your attorneys were examining somewhat earlier in your testimony.

Do I understand that you have looked at each and every one of these 19 checks, and are testifying here that none of them bear your signature in endorsement?

Mrs. POWELL. That's right.

Mr. MACGREGOR. And these checks that I have asked the clerk to bring to me from the counsel table are checks that run from the end of January 1965, at monthly intervals, through the end of July 1966. These are the same checks you were examining?

Mrs. POWELL. Yes.

Mr. RAUH. I must say I didn't look at the dates. You will have to give them back to us for that purpose. We looked at the back, and if we are to answer that, we will have to see them again. I apologize.

There are 19 checks here. They are all for the years 1965 and 1966, and now, would you address your question to Mrs. Powell based on that?

Mr. MACGREGOR. Thank you, counsel. I appreciate Mrs. Powell had only a very limited amount of time earlier to examine each and every check, and now that you have had a further opportunity to do so:

Did you note that the checks run in monthly amounts from the minimum sum of $1,295.29 to a maximum of $1,488, on a monthly basis?

Mr. RAUH. We didn't look at it for that. [Laughter.]

If you want us to look at that, we will, but we have decided to be precise, and we are going to be, Congressman MacGregor.

Mr. MACGREGOR. The only intent here is to have a proper record.

Mr. RAUH. For those 19 that are dated through 1965 and 1966, the 19 you hold in your hand, Mrs. Powell has examined the endorsement on each one and can answer any question about those 19 as to the endorsement.

Mr. MACGREGOR. I can certify to you that my statement with respect to the amount of the checks is accurate, taken from the face of the checks.

Mrs. Powell, as we understand your earlier testimony, at no time did you give written or spoken authority to Adam Clayton Powell to endorse these checks, is that correct?

Mrs. POWELL. That's right.

Mr. MACGREGOR. Or any of these checks, is that correct?

Mrs. POWELL. That is correct.

Mr. MACGREGOR. Did you, at any time, Mrs. Powell, give spoken or written authority to anyone to endorse these checks made payable to you and drawn on the Treasury of the United States?

Mrs. POWELL. No, sir.

Mr. MACGREGOR. Mrs. Powell, did you, at any time, have authority to draw funds from the account of Adam Clayton Powell with the Sergeant at Arms of the House of Representatives?

Mrs. POWELL. No.

Mr. MACGREGOR. And of course, having no authority, you at no time have drawn funds from that account?

Mrs. POWELL. No.

Mr. MACGREGOR. Did you, at any time, to your knowledge, Mrs. Powell, execute—that is, sign—a power of attorney or a written authority for someone acting in your behalf to handle these salary checks that we have been discussing?

Mrs. POWELL. No, sir.

Mr. MACGREGOR. Have you, to your knowledge, at any time, issued any general power of attorney, signed any document giving someone legal authority to act in your behalf?

Mrs. POWELL. No, sir.

Mr. MACGREGOR. Mrs. Powell, you indicated earlier that in 1964, for a period of approximately a month, you visited in New York State, in Long Island—I think you indicated Jackson Heights—and were in Washington for a few days. You have further testified that the only other trip you have made since then to Washington was in August of 1966. Do I understand that correctly?

Mrs. POWELL. That's correct.

Mr. MACGREGOR. Have you, at any time since you visited the State of New York in the summer of 1964, returned to the State of New York?

Mrs. POWELL. No, I haven't.

Mr. MACGREGOR. Am I correct in thinking that when you were in New York in 1964, you did no work in Mr. Adam Clayton Powell's office in his congressional district or elsewhere in the State of New York?

Mrs. POWELL. That's correct.

Mr. MACGREGOR. And when you were in Washington, Mrs. Powell, in 1964, and again for a few days in August of 1966, did you do any official work at that time in connection with your listing by Mr. Powell as a clerk in his office?

Mrs. POWELL. No, I didn't. I couldn't even reach him.

Mr. MACGREGOR. Mrs. Powell, I join with Mr. Moore, and I am sure others on this committee, in thanking you most sincerely for your appearance and the manner of your testimony here today.

Mr. THOMSON. I would like to inquire of Mrs. Powell if the address of her home in Washington, D.C. is 16 Gessford Court, SE?

Mrs. POWELL. Yes, that is the address of the house.

Mr. THOMSON. Do you know a Mr. Odell Clark?

Mrs. POWELL. I have met him.

Mr. THOMSON. Is he a former staff member on the Committee on Education and Labor?

Mrs. POWELL. I understand he worked—I couldn't say for sure whether it was with the committee or the congressional office or where.

Mr. THOMSON. Did you know he is listed in the telephone directory as having a telephone in your home at 16 Gessford Court?

Mrs. POWELL. No, I don't know that.

Mr. THOMSON. In relation to the checks in the amount of about $200 that you said Mr. Powell gave you prior to 1965——

Mr. RAUH. I don't think, sir, that the question is relevantly related to things she said. The only question that used the word "$200"

was: Were all checks in excess of $200, because that was all that was checked. I think the figure she used was higher than that.

Mr. THOMSON. Well, my question is: Were those checks paid to you or sent to you on a monthly basis, or were they during irregular periods of time?

Mrs. POWELL. Oh, they were not monthly. Irregular, I would say.

Mr. THOMSON. They came whenever you could get them delivered, it that it?

Mrs. POWELL. Yes.

Mr. THOMSON. Thank you very much.

Chairman CELLER. The Chair wishes to state that, Mrs. Powell, you and your counsel have indeed been most helpful and most cooperative. We are grateful for that.

Mr. RAUH. Mr. Chairman, if the committee is about to conclude, Mrs. Powell has asked me if I would ask you if she could make a short additional statement.

Chairman CELLER. Yes, we will allow her to make a statement.

Mrs. POWELL. I have testified in full this morning because I believe it is my duty to cooperate with a committee of Congress. I have answered every question put to me truthfully and to the best of my knowledge and ability. It is possible that some of my answers may be construed as adverse to my husband. I didn't intend it that way. Although we have not been together for some time, Adam is my husband and the father of my child. It is my fervent wish that he may continuue his career in the service of our country. I know this committee wants to be fair, and I hope its report will be favorable to my husband.

That is all.

Chairman CELLER. Thank you again, Mrs. Powell. Thank you.

Mr. GEOGHEGAN. Mr. Chairman, I would like at this time to offer into the record the checks which have been identified as Mrs. Powell's exhibit No. 1, with the statement that these are the same checks that were introduced in evidence during the Hays subcommittee hearings concerning which Mrs. Dargans testified under oath the endorsement on the back thereof, with three exceptions, were made by her (Mrs. Dargans) at the direction of Congressman Powell.

Chairman CELLER. Accepted.

Mr. GEOGHEGAN. I would also like to offer in evidence at this time the records of the House of Representatives Disbursing Office for the years beginning 1958 through 1966 in the name of Y. Marjorie Flores.

Chairman CELLER. That would be accepted.

(Whereupon, the documents referred to above were marked as Mrs. Powell's exhibit No. 2, and received into evidence.)

MRS. POWELL EXHIBIT NO. 2

POWELL, ADAM C., JR.
18th, N.Y.

1966
House of Representatives
DISBURSING OFFICE

CARRIER CONTROL No. 3351160

INDIVIDUAL PAY CARD

ENROLLMENT CODE No. 104

NAME Y. MARJORIE FLORES
ADDRESS 2360 ... 2161 R.F.D. Wash. D.C. c/o Garcia P.O. Box 321 Central San Vicente Puerto Rico
CITY AND STATE New York, N.Y. 10030
SOCIAL SECURITY No. 582 03 0169

Effective date	Tax code	Basic annual salary	Gross monthly salary	Retirement	Withholding tax	Insurance: Group life	Insurance: Group hosp.	Insurance: Govt. contr.	Savings bonds	Net monthly salary
	1	7500	1666.54		225.52	waiver	2.82	2.82		1438.20
	1-M	7500	1666.54		294.00	waiver	2.82	2.82		1369.72
	1-M	7500	1714.87		304.00	waiver	2.82	2.82		1408.05

Basic annual rate	Gross: Monthly	Gross: Previous	Gross: Total to date	Retirement: Monthly	Retirement: Previous	Retirement: Total to date	Withholding tax: Monthly	Withholding tax: Previous	Withholding tax: Total to date	Insurance: Group life	Insurance: Group hosp.	Insurance: Govt. contr.	Savings bonds	Net monthly salary	Check No.	Date
7500	1666 54		1666 54				225 52		225 52		2 82	2 82		1438 20	473532	JAN 31 '66
7500	1666 54	1666 54	3333 08				225 52	225 52	451 04		2 82	2 82		1438 20	484652	FEB 28 '66
7500	1666 54	3333 08	4999 62				225 52	451 04	676 56		2 82	2 82		1438 20	490019	MAR 31 '66
7500	1666 54	4999 62	6666 16				225 52	676 56	902 08		2 82	2 82		1438 20	495536	APR 29 '66
7500	1666 54	6666 16	8332 70				294 00	902 08	1196 08		2 82	2 82		1369 72	499756	MAY 31 '66
7500	1666 54	8332 70	9999 24				294 00	1196 08	1490 08		2 82	2 82		1369 72	506563	JUN 30 '66
7500	1714 87	9999 24	11714 11				304 00	1490 08	1794 08		2 82	2 82		1408 05	512824	JUL 29 '66
7500	1714 87	11714 11	13428 98				304 00	1794 08	2098 08		2 82	2 82		1408 05	519543	AUG 31 '66
7500	1714 87	13428 98	15143 85				304 00	2098 08	2402 08		2 82	2 82		1408 05	524581	SEP 30 '66
7500	1714 87	15143 85	16858 72				304 00	2402 08	2706 08		2 82	2 82		1408 05	530400	OCT 31 '66
7500	1714 87	16858 72	18573 59				304 00	2706 08	3010 08		2 82	2 82		1408 05	[illegible]	NOV 30 '66
7500	1714 87	18573 59	20288 46				304 00	3010 08	3314 08		2 82	2 82		1408 05	540225	DEC 20 '66

POWELL, ADAM C. JR.
18th, N. Y.

1965
House of Representatives
DISBURSING OFFICE

INDIVIDUAL PAY CARD

CARRIER CONTROL NO. 3351160

ENROLLMENT CODE NO. 104

NAME Y. MARJORIE FLORES

ADDRESS 2368 - 7th Avenue

CITY AND STATE New York, N. Y. 10030

SOCIAL SECURITY NO. 582 03 0149

EFFECTIVE DATE	TAX CODE	BASIC ANNUAL SALARY	GROSS MONTHLY SALARY	RETIREMENT	WITHHOLDING TAX	INSURANCE			SAVINGS BONDS	NET MONTHLY SALARY
						GROUP LIFE	GROUP HOSP.	GOVT CONTR.		
	1	5060	1113.96		148.15	Waiver	2.82	2.82		962.99
1/3/65	1	7500	1608.63		217.41	Waiver	2.82	2.82		1388.40
	1	7500	1666.54		225.52	Waiver	2.82	2.82		1438.20

BASIC ANNUAL RATE	GROSS			RETIREMENT			WITHHOLDING TAX			INSURANCE			SAVINGS BONDS	NET MONTHLY SALARY	CHECK NO.	DATE
	MONTHLY	PERIODS	TOTAL TO DATE	MONTHLY	PERIODS	TOTAL TO DATE	MONTHLY	PERIODS	TOTAL TO DATE	GROUP LIFE	GROUP HOSP.	GOVT CONTR.				
5060	74 26		74 26				9 90		9 90					64 36	411847	JAN 29'65
7500	1501 39	74 26	1575 65				203 28	9 90	213 18		2 82	2 82		1295 29	414588	JAN 29'65
7500	1608 63	1575 65	3184 28				217 41	213 18	430 59		2 82	2 82		138 1388 40	420120	FEB 26'65
7500	1608 63	3184 28	4792 91				217 41	430 59	648 00		2 2 82	2 82		1388 40	425450	MAR 31'65
7500	1608 63	4792 91	6401 54				217 41	648 00	865 41		2 82	2 82		1388 40	428586	APR 30'65
7500	1608 63	6401 54	8010 17				217 41	865 41	1082 82		2 82	2 82		1388 40	435693	MAY 28'65
7500	1608 63	8010 17	9618 80				217 41	1082 82	1300 23		2 82	2 82		1388 40	438913	JUN 30'65
7500	1608 63	9618 80	11227 43				217 41	1300 23	1517 64		2 82	2 82		1388 40	445700	JUL 30'65
7500	1608 63	11227 43	12836 06				217 41	1517 64	1735 05		2 82	2 82		1388 40	451418	AUG 31'65
7500	1608 63	12836 06	14444 69				217 41	1735 05	1952 46		2 82	2 82		1388 40	458317	SEP 30'65
7500	1608 63	14444 69	16053 32				21 217 41	1952 46	2169 87		2 82	2 82		1388 40	462552	OCT 29'65
7500	1724 45	16053 32	17777 77				233 63	2169 87	2403 50		2 82	2 82		1488 00	468015	NOV 30'65
7500	1666 54	17777 77	19444 31				225 52	2403 50	2629 02		2 82	2 82		1438 20	473138	DEC 30'65

POWELL, ADAM C JR.
18th, N.Y.

1964

House of Representatives
DISBURSING OFFICE

CARRIER CONTROL NO. 3351160

INDIVIDUAL PAY CARD

ENROLLMENT CODE NO. 104

EFFECTIVE DATE	TAX CODE	BASIC ANNUAL SALARY	GROSS MONTHLY SALARY	RETIREMENT	WITHHOLDING TAX	INSURANCE: GROUP LIFE	INSURANCE: GROUP HOSP	INSURANCE: GOV'T CONTR.	SAVINGS BONDS	NET MONTHLY SALARY
	1	5915	1109.11		189.64	waiver	2.82	2.82		916.65
2/1/64	1	5620	1062.88		[illegible]31.32	waiver	2.82	2.82		878.74
	1	5620	1062.88		141.60	waiver	2.82	2.82		919.06
	1	5620	1227.63		164.07	waiver	2.82	2.82		1060.74
9/1/64	1	5060	1113.96		148.15	waiver	2.82	2.82		962.99

NAME Y MARJORIE FLORES

ADDRESS ~~613 Borro Calle~~ 2368 7th Ave

CITY AND STATE ~~Santurce, Puerto Rico~~ New York, N.Y. 1003

Federal Tax Deduction with ... [illegible]

SOCIAL SECURITY NO. 582 03 0149

BASIC ANNUAL RATE	GROSS: MONTHLY	GROSS: PREVIOUS	GROSS: TOTAL TO DATE	RETIREMENT: MONTHLY	RETIREMENT: PREVIOUS	RETIREMENT: TOTAL TO DATE	WITHHOLDING TAX: MONTHLY	WITHHOLDING TAX: PREVIOUS	WITHHOLDING TAX: TOTAL TO DATE	INSURANCE: GROUP LIFE	INSURANCE: GROUP HOSP	INSURANCE: GOV'T CONTR.	SAVINGS BONDS	NET MONTHLY SALARY	CHECK NO.	DATE
5915	1109 11		1109 11*				189 64		189 64*		2 82	2 82		916 65*	357569	JAN 31 '64
5620	1062 88	1109 11	2171 99*				181 32	189 64	370 96*		2 82	2 82		878 74*	362120	FEB 28 '64
5620	1062 88	2171 99	3234 87*				141 00	370 96	511 96*		2 82	2 82		919 06*	366660	MAR 31 '64
5620	1062 88	3234 87	4297 75*				141 00	511 96	652 96*		2 82	2 82		919 06*	371234	APR 30 '64
5620	1062 88	4297 75	5360 63*				141 00	652 96	793 96*		2 82	2 82		919 06*	375851	MAY 28 '64
5620	1062 88	5360 63	6423 51*				141 00	793 96	934 96*		2 82	2 82		919 06*	380574	JUN 30 '64
5620	1062 88	6423 51	7486 39*				141 00	934 96	1075 96*		2 82	2 82		919 06*	386325	JUL 31 '64
5620	1392 38	7486 39	8878 77*				187 27	1075 96	1263 23*		2 82	2 82		1202 29*	391191	AUG 31 '64
5060	1113 96	8878 77	9992 73*				148 15	1263 23	1411 38*		2 82	2 82		962 99*	394918	SEP 30 '64
5060	1113 96	9992 73	11106 69*				148 15	1411 38	1559 53*		2 82	2 82		962 99*	298646	OCT 30 '64
5060	1113 96	11106 69	12220 65*				148 15	1559 53	1707 68*		2 82	2 82		962 99*	403334	NOV 30 '64
5060	1113 96	12220 65	13334 61*				148 15	1707 68	1855 83*		2 82	2 82		962 99*	409549	DEC 18 '64

POWELL, ADAM C. JR.
[illegible], N.Y.
18th.

1963

House of Representatives
Disbursing Office

INDIVIDUAL PAY CARD

Carrier Control No. 3351160
Enrollment Code No. 104

Effective Date	Tax Code	Basic Annual Salary	Gross Monthly Salary	Retirement	Withholding Tax	Insurance: Group Life	Insurance: Group Hosp.	Insurance: Govt. Contr.	Savings Bonds	Net Monthly Salary
	1	5915.	1109.11		189.64	waiver	2.82	2.82		916.65

Name: Y. MARJORIE FLORES
Address: 613 Ebare Calle
City and State: Santurce, Puerto Rico
Social Security No. 582-03-0149

Basic Annual Rate	Gross: Monthly	Gross: Previous	Gross: Total to Date	Retirement: Monthly	Retirement: Previous	Retirement: Total to Date	Withholding Tax: Monthly	Withholding Tax: Previous	Withholding Tax: Total to Date	Insurance: Group Life	Insurance: Group Hosp.	Insurance: Govt. Contr.	Savings Bonds	Net Monthly Salary	Check No.	Date
5915	1109 11		1109 11				189 64		189 64		2 82	2 82		916 65*	303499	JAN 31 '63
5915	1109 11	1109 11	2218 22				189 64	189 64	379 28		2 82	2 82		916 65*	307593	FEB 28 '63
5915	1109 11	2218 22	3327 33				189 64	379 28	568 92		2 82	2 82		916 65*	312269	MAR 29 '63
5915	1109 11	3327 33	4436 44				189 64	568 92	758 56		2 82	2 82		916 65*	316715	APR 30 '63
5915	1109 11	4436 44	5545 55				189 64	758 56	948 20		2 82	2 82		916 65*	321143	MAY 31 '63
5915	1109 11	5545 55	6654 66				189 64	948 20	1137 84		2 82	2 82		916 65*	324701	JUN 28 '63
5915	1109 11	6654 66	7763 77				189 64	1137 84	1327 48		2 82	2 82		916 65*	330242	JUL 31 '63
5915	1109 11	7763 77	8872 88				189 64	1327 48	1517 12		2 82	2 82		916 65*	334940	AUG 30 '63
5915	1109 11	8872 88	9981 99				189 64	1517 12	1706 76		2 82	2 82		916 65*	339526	SEP 30 '63
5915	1109 11	9981 99	11091 10				189 64	1706 76	1896 40		2 82	2 82		916 65*	344044	OCT 31 '63
5915	1109 11	11091 10	12200 21				189 64	1896 40	2086 04		2 82	2 82		916 65*	347653	NOV 29 '63
5915	1109 11	12200 21	13309 32				189 64	2086 04	2275 68		2 82	2 82		916 65*	353064	DEC 20 '63

POWELL, ADAM C. JR.
16th, N.Y.

House of Representatives
Disbursing Office

INDIVIDUAL PAY CARD

Carrier Control No. 3351160
Enrollment Code No. 104

Name T. MARJORIE FLORES
Address ~~459 N.O.B. Wash. D.C.~~ 613 Hoare Calle
City and State ~~[illegible]~~ (Santurce, Puerto Rico)
Social Security No. ______

Effective Date	Tax Code	Basic Annual Salary	Gross Monthly Salary	Retirement	Withholding Tax	Insurance Group Life	Insurance Group Hosp	Insurance Govt Contr.	Savings Bonds	Net Monthly Salary
	1	5915	1036.55		176.58	waiver	2.82	2.82		857.15
[illegible] P.L. [illegible]	1	5915	1109.11	---	189.64	waiver	2.82	2.82		916.65

Basic Annual Rate	Gross Monthly	Gross Previous	Gross Total to Date	Retirement Monthly	Retirement Previous	Retirement Total to Date	Withholding Tax Monthly	Withholding Tax Previous	Withholding Tax Total to Date	Insurance Group Life	Insurance Group Hosp	Insurance Govt Contr.	Savings Bonds	Net Monthly Salary	Check No.	Date
5915	1036 55		1036 55				176 58		176 58		2 82	2 82		857 15	249747	JAN 31 '62
5915	1036 55	1036 55	2073 10				176 58	176 58	353 16		2 82	2 82		857 15	254079	FEB 28 '62
5915	1036 55	2073 10	3109 65				176 58	353 16	529 74		2 82	2 82		857 15	258407	MAR 30 '62
5915	1036 55	3109 65	4146 20				176 58	529 74	706 32		2 82	2 82		857 15	262813	APR 30 '62
5915	1036 55	4146 20	5182 75				176 58	706 32	882 90		2 82	2 82		857 15	267212	MAY 31 '62
5915	1036 55	5182 75	6219 30				176 58	882 90	1059 48		2 82	2 82		857 15	271681	JUN 29 '62
5915	1036 55	6219 30	7255 85				176 58	1059 48	1236 06		2 82	2 82		857 15	276278	JUL 31 '62
5915	1036 55	7255 85	8292 40				176 58	1236 06	1412 64		2 82	2 82		857 15	280780	AUG 31 '62
5915	1036 55	8292 40	9328 95				176 58	1412 64	1589 22		2 82	2 82		857 15	285286	SEP 28 '62
5915	1072 83	9328 95	10401 78				183 11	1589 22	1772 33		2 82	2 82		886 90	289824	OCT 31 '62
5915	1109 11	10401 78	11510 89				189 64	1772 33	1961 97		2 82	2 82		916 65	294181	NOV 30 '62
5915	1109 11	11510 89	12620 00				189 64	1961 97	2151 61		2 82	2 82		916 65	298530	DEC 20 '62

1962

POWELL, Adam C., JR.

16th N. Y.

House of Representatives
DISBURSING OFFICE

CARRIER CONTROL No. 3351160

ENROLLMENT CODE No. 104

INDIVIDUAL PAY CARD

NAME Y. MARJORIE FLORES 459 H. O. B., Washington, D.C.

ADDRESS 613 Boare Calle

CITY AND STATE Santurce, Puerto Rico

SOCIAL SECURITY No.

EFFECTIVE DATE	TAX CODE	BASIC ANNUAL SALARY	GROSS MONTHLY SALARY	RETIREMENT	WITHHOLDING TAX	INSURANCE			SAVINGS BONDS	NET MONTHLY SALARY
						Group Life	Group Hosp	Govt Contr.		
	1	1070	256.17	--	36.80	Waiver	2.82	2.82		216.55
2/3/61	1	6220	1081.22	--	184.62	Waiver	2.82	2.82		893.78
2/1/61	1	6065	1058.52	--	180.53	Waiver	2.82	2.82		875.17
[illegible]	1	5915	1036.55	--	176.58	Waiver	2.82	2.82		857.15

BASIC ANNUAL RATE	GROSS			RETIREMENT			WITHHOLDING TAX			INSURANCE			SAVINGS BONDS	NET MONTHLY SALARY	CHECK NO.	DATE
	MONTHLY	PREVIOUS	TOTAL TO DATE	MONTHLY	PREVIOUS	TOTAL TO DATE	MONTHLY	PREVIOUS	TOTAL TO DATE	GROUP LIFE	GROUP HOSP	GOVT CONTR.				
1070	17 08		17 08*				2 40		2 40*		2 82	2 82		11 86*	203333	JAN 31'61
6220	1009 12	17 08	1026 20*				171 92	2 40	174 32*					837 20*	203391	JAN 31'61
6065	1058 52	1026 20	2084 72*				180 53	174 32	354 85*		2 82	2 82		875 17*	209067	FEB 28'61
5915	1036 55	2084 72	3121 27*				176 58	354 85	531 43*		2 82	2 82		857 15*	7001424	MAR 31'61
5915	1036 55	3121 27	4157 82*				176 58	531 43	708 01*		2 82	2 82		857 15*	211304	APR 28'61
5915	1036 55	4157 82	5194 37*				176 58	708 01	884 59*		2 82	2 82		857 15*	215467	MAY 31'61
5915	1036 55	5194 37	6230 92*				176 58	884 59	1061 17*		2 82	2 82		857 15*	219728	JUN 30'61
5915	1036 55	6230 92	7267 47*				176 58	1061 17	1237 75*		2 82	2 82		857 15*	224117	JUL 31'61
5915	1036 55	7267 47	8304 02*				176 58	1237 75	1414 33*		2 82	2 82		857 15*	228446	AUG 31'61
5915	1036 55	8304 02	9340 57*				176 58	1414 33	1590 91*		2 82	2 82		857 15*	232798	SEP 29'61
5915	1036 55	9340 57	10377 12*				176 58	1590 91	1767 49*		2 82	2 82		857 15*	237140	OCT 31'61
5915	1036 55	10377 12	11413 67*				176 58	1767 49	1944 07*		2 82	2 82		857 15*	241320	NOV 30'61
5915	1036 55	11413 67	12450 22*				176 58	1944 07	2120 65*		2 82	2 82		857 15*	245545	DEC 29'61

POWELL, ADAM C., JR.
16th, N Y.

House of Representatives
DISBURSING OFFICE

INDIVIDUAL PAY CARD

Carrier Control # 3351160
Enrollment Code # 104

NAME Y. MARJORIE FLORES 459 H.OB WASHINGTON DC.
ADDRESS 613 Hoare Calle
CITY AND STATE Santurce, Puerto Rico
SOCIAL SECURITY NO.

EFFECTIVE DATE	TAX CODE	BASIC ANNUAL SALARY	GROSS MONTHLY SALARY	RETIREMENT	WITHHOLDING TAX	INSURANCE: GROUP LIFE	INSURANCE: GROUP HOSP	INSURANCE: GOVT CONTR.	SAVINGS BONDS	NET MONTHLY SALARY
	1	1770	332.57	--	49.80	Waiver				282.77
2/1/60	1	1265	264.19	—	38.20	Waiver				225.99
7/1/60	1	2870	543.16	—	89.00	W	2.82	2.82		451.34
8/1/60	1	1070	256.17	--	36.80	waiver	2.82	2.82		216.55

BASIC ANNUAL RATE	GROSS: MONTHLY	GROSS: PREVIOUS	GROSS: TOTAL TO DATE	RETIREMENT: MONTHLY	RETIREMENT: PREVIOUS	RETIREMENT: TOTAL TO DATE	WITHHOLDING TAX: MONTHLY	WITHHOLDING TAX: PREVIOUS	WITHHOLDING TAX: TOTAL TO DATE	INSURANCE: GROUP LIFE	INSURANCE: GROUP HOSP	INSURANCE: GOVT CONTR.	SAVINGS BONDS	NET MONTHLY SALARY	CHECK NO	DATE
1770	332 57		332 57				49 80		49 80					282 77	151379	
1265	264 19	332 57	596 76				38 20	49 80	88 00					225 99	156437	
1265	264 19	596 76	860 95				38 20	88 00	126 20					225 99	161352	
1265	264 19	860 95	1125 14				38 20	126 20	164 40					225 99	166665	
1265	264 19	1125 14	1389 33				38 20	164 40	202 60					225 99	171654	
1265	264 19	1389 33	1653 52				38 20	202 60	240 80					225 99	176398	
2870	543 16	1653 52	2196 68				89 00	240 80	329 80		2 82	2 82		451 34	181520	
1070	256 17	2196 68	2452 85				36 80	329 80	366 60		2 82	2 82		216 55	185314	
1070	256 17	2452 85	2709 02				36 80	366 60	403 40		2 82	2 82		216 55	189309	
1070	256 17	2709 02	2965 19				36 80	403 40	440 20		2 82	2 82		216 55	193245	
1070	256 17	2965 19	3221 36				36 80	440 20	477 00		2 82	2 82		216 55	197121	
1070	256 17	3221 36	3477 53				36 80	477 00	513 80		2 82	2 82		216 55	200942	

POWELL, ADAM C., JR.
16th, N.Y.

House of Representatives
DISBURSING OFFICE

INDIVIDUAL PAY CARD

EFFECTIVE DATE	TAX CODE	BASIC ANNUAL SALARY	GROSS MONTHLY SALARY	RETIREMENT ✓	WITHHOLDING TAX	INSURANCE ✓	SAVINGS BONDS	NET MONTHLY SALARY
	1	1775	333.36	-	49.80	waiver		283.56
7/1/59	1	305	115.78		10.50	waiver		105.28
8/1/59	1	1775	333.36	--	49.80	Waiver		283.56
10/1/59	1	1770	332.57	—	49.80	waiver		282.77

NAME Y. MARJORIE FLORES

ADDRESS 613 Hoare Calle, (459 H.O.B.)

CITY AND STATE Santurce, Puerto Rico

SOCIAL SECURITY No.

CODE	BASIC ANNUAL RATE	GROSS			RETIREMENT			WITHHOLDING TAX			INSURANCE	SAVINGS BONDS	NET MONTHLY SALARY	CHECK NO.	DATE
		Monthly	Previous	Total to Date	Monthly	Previous	Total to Date	Monthly	Previous	Total to Date					
1	1775	333 36		333 36				49 80		49 80			283 56	93192	
1	1775	333 36	333 36	666 72				49 80	49 80	99 60			283 56	97550	
1	1775	333 36	666 72	1000 08				49 80	99 60	149 40			283 56	102433	
1	1775	333 36	1000 08	1333 44				49 80	149 40	199 20			283 56	107312	
1	305	115 78	1000 08	1115 86				10 50	149 40	159 90			105 28	107315	
1	305	115 78	1115 86	1231 64				10 50	159 90	170 40			105 28	112097	
1	305	115 78	1231 64	1347 42				10 50	170 40	180 90			105 28	116771	
1	305	115 78	1347 42	1463 20				10 50	180 90	191 40			105 28	122012	
1	1774														
	1775	333 36	1463 20	1796 56				49 80	191 40	241 20			283 56	126727	
1	1775	333 36	1796 56	2129 92				49 80	241 20	291 00			283 56	131685	
1	1770	332 57	2129 92	2462 49				49 80	291 00	340 80			282 77	136606	
1	1770	332 57	2462 49	2795 06				49 80	340 80	390 60			282 77	141230	
1	1770	332 57	2795 06	3127 63				49 80	390 60	440 40			282 77	145809	

POWELL, ADAM C.,
16th, N.Y.

House of Representatives
DISBURSING OFFICE

INDIVIDUAL PAY CARD

EFFECTIVE DATE	TAX CODE	BASIC ANNUAL SALARY	GROSS MONTHLY SALARY	RETIREMENT	WITHHOLDING TAX	INSURANCE		NET MONTHLY SALARY
10/1/58	1	1775	333.36		49.80	waiver		283.56

NAME Y. MARJORIE FLORES

ADDRESS 459 H.O.B. (3808 Hampo ST., N.E. Wash. 19, D.C.)

CITY AND STATE (mother's address) 613 Hoare Calle, Santurce, Puerto Rico

SOCIAL SECURITY NO. 582-03-0149

CODE	BASIC ANNUAL RATE	GROSS			RETIREMENT			WITHHOLDING TAX			INSURANCE		NET MONTHLY SALARY	CHECK NO.	DATE
		MONTHLY	PREVIOUS	TOTAL TO DATE	MONTHLY	PREVIOUS	TOTAL TO DATE	MONTHLY	PREVIOUS	TOTAL TO DATE					
1	1775	333 36		333 36				49 80		49 80			283 56	78942	OCT 31 58
1	1775	333 36	333 36	666 72				49 80	49 80	99 60			283 56	82849	NOV 28 58
1	1775	333 36	666 72	1000 08				49 80	99 60	149 40			283 56	87039	DEC 19 58

74-821 O—67——16

Chairman CELLER. The Chair wishes to offer the following letter into the record. Stationery of the Committee on Education and Labor, House of Representatives, Congress of the United States. It is a facsimile letter signed "Adam," and it is addressed to "Dear Friend." It is dated January 23, 1967, and it reads as follows:

I have just recorded a long-playing album for Jubilee records, called Keep the Faith, Baby. It is the only recording I have made in the last 5 years. This was a thrilling experience because the album is my philosophy of life and religion, Christianity, politics, race relations, war, civil rights. This album is Adam Clayton Powell. I would appreciate your listening to the album. I would also enjoy knowing your reaction to the album. Thank you for your cooperation and keep the faith, baby.

ADAM.

[Laughter.]

Chairman CELLER. The Chair wishes to note it is on the stationery apparently of the Committee on Education and Labor, and it is an indication that Mr. Powell is still chairman of that committee. It is on the official stationery of the Congress of the United States. That shall be placed in the record.

(Whereupon, the document referred to above was marked as Mrs. Powell's exhibit No. 3 and received into evidence.)

Chairman CELLER. Our next witness is Mr. C. S. Stone.

Mr. Stone, would you step forward, please?

(C. Sumner Stone, Jr., being first duly sworn, testified as follows:)

TESTIMONY OF C. SUMNER STONE, ACCOMPANIED BY SEYMOUR BARASH, COUNSEL

Chairman CELLER. Is counsel with you?

Mr. STONE. Yes, sir.

Chairman CELLER. Would you identify yourself?

Mr. BARASH. Seymour Barash, 1 Hanson Place, Brooklyn, N.Y.

Mr. GEOGHEGAN. Will the witness please state his name.

Mr. STONE. Initial is C for Charles. S-u-m-n-e-r Stone, Jr.

Mr. GEOGHEGAN. Mr. Stone, you are the same individual who testified before the House subcommittee in December of this past year?

Mr. STONE. Yes, sir; I am.

Mr. GEOGHEGAN. Would you tell us briefly what your relations were to Mr. Powell and to the Committee on Education and Labor during the 88th and 89th Congresses?

Mr. STONE. My title is special assistant to the chairman. I was hired in November of 1964 for 2 months and I returned to Chicago and came back in March of 1965 and worked with him until 2 days ago as special assistant.

Mr. GEOGHEGAN. You are no longer on the payroll of the Committee on Labor and Education?

Mr. STONE. That's right, sir.

Mr. GEOGHEGAN. Mr. Stone, in connection with you duties, did you have occasion to travel on official business?

Mr. STONE. Yes, sir; I did.

Mr. GEOGHEGAN. And on occasion you made trips to Miami, Fla., on official business?

Mr. STONE. Yes.

Mr. GEOGHEGAN. Now, I would like to show you a travel voucher indicating you are claiming subsistence for February 4, 5, and 6, 1966, on official business in Miami.

Would the reporter mark that Stone exhibit 1 and give it to Mr. Stone?

(The document above referred to was marked Stone exhibit No. 1.)

Mr. GEOGHEGAN. I am going to ask the reporter to identify as Stone exhibit 2 an airline ticket on National Airlines in the name of C. Sumner Stone indicating travel between Washington and Miami on February 4, 1966, and another ticket, a return ticket identified as Stone exhibit 3, indicating travel from Miami to Washington on February 6.

(The documents above referred to were marked Stone exhibits Nos. 2 and 3.)

Mr. GEOGHEGAN. Mr. Stone, I would like to have the reporter mark and identify Stone exhibit 4, the manifest from Chalk Airlines dated February 5 indicating that Sumner Stone, on that date, flew to Bimini. That will be marked and shown to the witness.

(The documents above referred to was marked "Stone exhibit No. 4.")

Mr. GEOGHEGAN. I shall now ask the reporter to mark for identification "Stone exhibit 5," which purports to be a passenger manifest of Chalk Airways, Chalk Flying Service, indicating that Mr. Stone returned from Bimini to Miami on February 6.

(The document above referred to was marked "Stone exhibit No. 5.")

Mr. GEOGHEGAN. Have you had an opportunity to examine these exhibits?

Mr. STONE. Yes, sir.

Mr. GEOGHEGAN. You were here present the other day, Tuesday, when Mr. Franklin from Chalk Flying Service identified you as being in the hearing room?

Mr. STONE. Yes, sir.

Mr. GEOGHEGAN. I ask you, Mr. Stone, did you, in fact, travel to Miami on the date indicated, National Airlines ticket February 4, and then proceed to Bimini on the 5th and return to Miami on the 6th?

Mr. STONE. Yes, sir; I did.

Mr. GEOGHEGAN. And I refer you now to the subsistence voucher which you have before you, exhibit 1, I believe.

Does that bear your signature?

Mr. STONE. Yes, sir.

Mr. GEOGHEGAN. You claimed on that voucher subsistence for official business in Miami, Fla.?

Mr. STONE. Yes, sir.

Mr. GEOGHEGAN. Do you wish to make any explanation as to why you were claiming subsistence in Miami, Fla., when these records indicate you were in Bimini?

Mr. STONE. Yes, sir.

Mr. GEOGHEGAN. Please go ahead.

Mr. STONE. The chairman had assigned me to supervise an investigation of the neighborhood legal service program of Miami and also the discrimination in the construction trades unions relative to the situs picketing bill which is coming up in the House of Representatives. We had numerous complaints from around the country and quite a few letters from Miami concerning discrimination in the con-

struction trades. Also, we had had a number of complaints on the poverty program from NAACP president of the lack of representation of Negroes in the official policymaking position and staff.

The chairman even queried Mr. Sergeant Shriver about this and subsequently met personally with the president of NAACP, chairman of the board, and several officials of the civil rights groups in Miami and I contacted a number of union officials in Miami while I was there and then I also contacted people involved in the neighborhood legal service program.

I called Mr. Powell to tell him of my findings and he said to come over to Bimini and leave them with him. I brought them there and came back and I have copies of the reports I made to him.

Mr. GEOGHEGAN. How long were you at official business in Miami?

Mr. STONE. The whole time I was there.

Mr. GEOGHEGAN. Which was for how long?

Mr. STONE. Overnight, until the next day.

Mr. GEOGHEGAN. When you went to Bimini?

Mr. STONE. Yes, sir.

Mr. GEOGHEGAN. What did you do on Bimini on February 5 and 6?

Mr. STONE. I took my reports that I had compiled and left them with him and we discussed it and I came back to Miami.

Mr. GEOGHEGAN. What was Mr. Powell doing there in Bimini at that time?

Mr. STONE. I don't know what he was doing. He was just there.

Mr. GEOGHEGAN. How long had he been there at that time? Do you know?

Mr. STONE. I don't recall.

Mr. GEOGHEGAN. He didn't return—he was there when you arrived?

Mr. STONE. Yes, sir.

Mr. GEOGHEGAN. And he was there when you left.

Mr. STONE. Yes, sir.

Mr. GEOGHEGAN. Did Mr. Powell call you from Bimini and tell you to come down?

Mr. STONE. I called him—he had told me to go to Miami initially before then and then I was there and called him and told him what I found and he said bring the reports over and I did.

Mr. GEOGHEGAN. You felt justified in claiming 3 days' subsistence—February 4, 5, and 6?

Mr. STONE. Yes, sir; I was working on committee business.

Mr. GEOGHEGAN. Where were you working on committee business?

Mr. STONE. Where? In Miami.

Mr. GEOGHEGAN. On February 4, 5, and 6, 1966?

Mr. STONE. Four, I was in Miami. The fifth I went to Bimini to give the reports to him. It's part of the continuum of what I was doing. Then I returned to Miami and came back to Washington.

Mr. GEOGHEGAN. Does Mr. Powell's signature appear on the travel voucher, the subsistence voucher?

Mr. STONE. Yes, sir.

Mr. GEOGHEGAN. Is that in fact his signature?

Mr. STONE. That's right.

Mr. GEOGHEGAN. Did you have any discussion with Mr. Powell prior to submitting this travel voucher as to whether you should claim

3 days' subsistence when you were, in fact, in Bimini a good part of it?

Mr. STONE. No; I didn't have any discussion with him about it.

You said I was in Bimini a good part of the time. It's hard getting in and out of there. It isn't a question of the amount of time so much as of the schedule one must adhere to to get there and get back to Miami.

Mr. GEOGHEGAN. Where did you stay in Bimini on that trip?

Mr. STONE. At the Brown's Hotel. I think. I am not quite sure.

Mr. GEOGHEGAN. During the 89th Congress, how many trips did you make to Bimini?

Mr. STONE. I made several trips, but I don't know the exact number. I can't recall right at hand the exact number of trips I made.

Mr. GEOGHEGAN. And did your presence—did official business require you to be in Bimini?

Mr. STONE. I went at the instructions of Mr. Powell, sir.

Mr. GEOGHEGAN. I direct your attention to a subsistence voucher which we will mark for identification as "Stone Exhibit 6," on which you claim subsistence for being in Miami, Fla., November 7 and 10, 1965, on official business.

(The document above referred to was marked "Stone Exhibit No. 6.")

Mr. GEOGHEGAN. Do you recall that trip?

Mr. STONE. Yes, sir.

Mr. GEOGHEGAN. Do you recall what the purpose of the trip was?

Mr. STONE. Again, it was part of the continuing investigation, sir, in Miami.

Mr. BARASH. Pardon me, Mr. Geoghegan. There are several trips mentioned here. Which do you refer to?

Mr. GEOGHEGAN. I am speaking of the one opposite the date November 7–10.

Mr. Stone, the records compiled by the GAO auditors of airline travel and immigration records indicated that on this particular trip you arrived in Miami on November 7, departed to Bimini November 8 and returned to Miami November 10 and then to Washington; is that correct?

Mr. STONE. Yes, sir.

Mr. GEOGHEGAN. So that almost the entire time on that trip was spent in Bimini.

Mr. STONE. Yes—well, whatever you construe as being the entire time.

Mr. GEOGHEGAN. Well, now, you arrived in Miami at 8:40 p.m. at night and left the next morning for Bimini.

Did you engage in official committee business while you were in Miami that evening?

Mr. STONE. No, sir. Not that evening.

Mr. GEOGHEGAN. When did you engage in official committee business?

Mr. STONE. When I was in Bimini with the chairman, Mr. Powell.

Mr. GEOGHEGAN. You were there at his request?

Mr. STONE. Yes, sir.

Mr. GEOGHEGAN. What was the chairman doing in Bimini at that time?

Mr. STONE. I don't know what you mean when you keep saying what was he doing there at the time.

Mr. GEOGHEGAN. What were his—what was his daily routine?

Mr. STONE. I don't know what his daily routine was. When I was there I met with him. We spent considerable time. That particular trip, I remember I went down with him because he wanted to start making preparations for the poverty bill coming up in the following year and also get a series of questions and topics which he was going to present at a meeting with the President in January.

Mr. GEOGHEGAN. Could that have been done here in Washington if Mr. Powell had been here?

Mr. STONE. If he had been here, yes, sir.

Mr. GEOGHEGAN. The trip to Bimini would have been unnecessary?

Mr. STONE. If he were here. I went there at his orders.

Mr. MOORE. Mr. Chairman, if I may inquire.

Mr. Stone, when did you come to the payroll of the House Committee on Education and Labor as its employee?

Mr. STONE. I came in November of 1964, sir, for 2 months and then I returned to Chicago. Then I came back in March and worked for 2 weeks but didn't go on the payroll officially until April 1. I was in Washington working.

Mr. MOORE. You didn't come to the payroll officially until April 1, 1965?

Mr. STONE. That's right, sir, but I was back here before then working.

Mr. MOORE. Mr. Stone, what if anything can you tell us with respect to Huff Enterprises?

Mr. STONE. Very little, sir. Miss Huff asked me to be one of the incorporators back in 1965 and I signed a paper of incorporation, I think, and it was a long form. Her signature was first. Mine was second. When I signed it, rather. And I think I got a share of stock—at least I was told I got a share of stock, but never received it physically. I never got any certificate.

Mr. MOORE. Would it be surprising for you to know, Mr. Stone, that you weren't one of the incorporators of Huff Enterprises?

Mr. STONE. Yes. I am not? [Laughter.]

I am not an incorporator? I thought I was. That is the reason I signed it. I thought I was helping to incorporate. But—I didn't know that.

Mr. MOORE. The records of Huff Enterprises have come to the attention of the committee in the Bahamas and does not list you as one of the incorporators of Huff Enterprises.

However, it does list you now as a shareholder in Huff Enterprises.

Mr. STONE. I thought when I signed that paper that I was getting a share of stock of Huff, Inc. That was my understanding at the time.

Mr. MOORE. Would it be surprising for you to learn that you are not now the owner of a share of stock, but that you are the owner of five shares of stock in Huff Enterprises?

Mr. STONE. I am five times wealthier, sir. [Laughter.]

Mr. MOORE. I don't know what five times zero is right now. [Laughter.]

Can you tell us anything or have you participated in as either a shareholder, as a director or as an officer of any of the corporate undertakings of Huff Enterprises?

Mr. STONE. I have done nothing at all, sir, for Huff Enterprises in any kind of capacity, officially, otherwise. I have had no knowledge of activities. I have had no dealings with them. It has been just a phase to me but there has been no—I have been in no way involved in any activities whatsoever, business, financial, or anything.

Mr. MOORE. Then may I ask you to fasten your seat belt and tell you that you are listed as the vice president of Huff Enterprises. [Laughter.]

Mr. STONE. Oh, I remember that. That is when I thought I was vice president, when it was incorporated. I thought I was going to be vice president then.

Mr. MOORE. You do recall, then, that you are vice president.

Mr. STONE. Yes, I know that. If I am the vice president—I asked to resign from Huff Enterprises last year.

Mr. MOORE. Would you state for the record when or on about what date?

Mr. STONE. February or March when I told Miss Huff that I wanted to get out. They were thinking about getting some property down there and asked me to put up some money and I didn't have money to put up so I said I should get out.

Mr. MOORE. Who were these conversations held with?

Mr. STONE. With Miss Huff.

Mr. MOORE. At any of the conversations that you allude to, was Mr. Powell present?

Mr. STONE. No, sir; he wasn't.

Mr. MOORE. At no time did he ever engage in any discussion with you concerning that?

Mr. STONE. No, sir. Not at all.

Mr. MOORE. Are you aware of any banking practices of Huff Enterprises?

Mr. STONE. Absolutely not, sir. I didn't know they had a bank account.

Mr. MOORE. Are you aware that another member of the staff—Mrs. Emma Swann—is shown to have been—to be a shareholder in Huff Enterprises?

Mr. STONE. No, sir; I didn't know she was a shareholder or a member.

Mr. MOORE. I might give you a little information. If you, the two of you, get together, you have enough shares to vote the whole company.

Mr. STONE. I think I will consider it.

Mr. MOORE. There are only 17 shares showing, and you and Mrs. Swann own 10 of them.

Mr. STONE. May I ask who has the other seven?

Mr. MOORE. I will be happy to tell you. As presently shown in the record, they are held by—(Lynden O. Pindling) has one share. Mr. (Jefferey M. Thomson?) who Mr. Pindling advised is listed as a barrister at law in the Bahamas. Mr. Thomson is an articulated law student. At least, that is the way it is shown on the incorporation

papers. Maybe it is "articled" law student. Miss Huff owns—excuse me. Mr. Thomson owns one share. Miss Huff owns five shares. Mrs. Swann owns five shares. Mr. Sumner C. Stone, journalist, of Washington, D.C., owns five shares.

Mr. STONE. I see.

Mr. MOORE. At no time during—strike that. Let me pose the question in this way.

Since Mrs. Swann, Miss Huff, and yourself, I understand, were employees of either Mr. Powell or of the Education and Labor Committee during his chairmanship, and at no time, even though you were perhaps in constant contact with Mrs Swann and Miss Huff, were there any discussions concerning Huff Enterprises or any of its business undertakings?

Mr. STONE. No, sir. They never said anything. We never discussed it. It was never a topic of conversation directly—there is a letter I did sign in my capacity as vice president.

Mr. MOORE. Would you tell us the nature of that letter, and to whom it was directed?

Mr. STONE. It was directed to an attorney in Nassau but I don't remember the name. It's not the names you have given just now. Miss Huff also signed this letter and she asked me to sign it—they had to have two signatures for some reason or other, and I signed it underneath hers. It was to an attorney in Nassau, but it was not the two names you have mentioned to me just now.

Mr. MOORE. Did you read or do you recall the contents of that letter?

Mr. STONE No Just something you glance at and—it was a thin sheet of paper and it was—it was a blank sheet of paper to the attorney. That was all.

Mr. MOORE. Mr. Stone, you are a well-educated man and you are a very intelligent man.

Mr. STONE. Thank you, sir.

Mr. MOORE. Do you make it a habit of signing blank sheets of paper?

Mr. STONE. I certainly do, sir. My wife takes care of all our accounts. Whatever she puts before me, I sign. [Laughter.]

Mr. MOORE. I would assume that there is an extra-special relationship between husband and wife.

Mr. STONE. I trust myself. I think she is an honorable person and she said this is necessary in your capacity as vice president and I just glanced at it and signed it.

Mr. MOORE. You didn't inquire what capacity a vice president brought about this necessity?

Mr. STONE. No, sir; I didn't. You said, for example, I am not listed as an incorporator. I thought I was an incorporator, and I thought I had one share of stock. I just learned I am not an incorporator and have five shares of stock.

Mr. MOORE. Well, so that the record might show, the incorporators of Huff Enterprises, for whatever value it has, Mr. Chairman, and I am not sure it has any value, is (Lynden O. Pindling), barrister, one share. Jefferey Thomson, one share, Margaret (Pendiling?), secretary, one share. Isabella Cooper, secretary, one share. Juliet

McKinsey, secretary, one share. The address shown at that time is Nassau, Bahamas.

Mr. Stone, have you ever disposed of your now-found-to-be five-share interest of Huff Enterprises?

Mr. STONE. I never got it to begin with. I haven't received any papers or anything like that. When I resigned, I thought that would take care of it. I guess it doesn't.

Mr. MOORE. At the time of your resignation, was that a resignation in writing or verbal?

Mr. STONE. It was a verbal resignation.

Mr. MOORE. Did you at that time grant verbally the right to anybody to sign your stock certificates and to dispose of the same for you?

Mr. STONE. No, sir, I didn't.

Mr. MOORE. Just have the record show the articles of incorporation of Huff Enterprises is May 14, 1965.

I understand you came to the payroll of the House Education and Labor, April 1, 1965; is that correct?

Mr. STONE. Prior to—before that, for 2 months I was on the payroll. November and December.

Mr. MOORE. But not in a permanent capacity?

Mr. STONE. No, sir.

Mr. MOORE. Thank you, Mr. Stone.

Mr. CORMAN. Mr. Stone you made a number of trips to Miami and to Bimini over a period of time?

Mr. STONE. Yes, sir.

Mr. CORMAN. Were any of those trips made at Government expense at a time when you didn't travel at the direction of Mr. Powell?

Mr. STONE. No, sir. Never once.

Mr. CORMAN. Were any of the trips you traveled at the direction of Mr. Powell without performing services for the Labor and Education Committee?

Mr. STONE. I was always performing services for the Committee.

Mr. CORMAN. The times you traveled to Bimini were at the instructions of the chairman, is that right?

Mr. STONE. Yes.

Mr. CORMAN. Did you ever travel to Bimini any time under his instructions without performing services in connection with the job?

Mr. STONE. No. My relationship with Mr. Powell was such that there was a constant involvement with legislation and problems back in the office and whenever I am with him we were working on legislation.

Mr. CORMAN. As I read the record, on some occasions when you traveled you claim not only the fare but also subsistence and at other times you claimed only the fare and didn't claim subsistence, is that correct?

Mr. STONE. Yes, sir.

Mr. CORMAN. What was the reason for that?

Mr. STONE. Mr. Powell would reimburse me personally and I stayed at friends, didn't stay in a hotel. I didn't spend any money.

There were times both to New York and Miami where I stayed with friends and there was no—I had no expenses whatsoever. They meet me at the airport, take me to their house, take me to Chalk Airline

Service. Mr. Powell reimbursed me for the fare between Miami and Bimini so I had actually put out no money.

Mr. CORMAN. Did you ever buy airline tickets in your name and give them to someone else to travel?

Mr. STONE. I purchased tickets on an air travel card which I held under the committee's jurisdiction which I gave to Mr. Powell at his direction.

Mr. CORMAN. Were they purchased for a specific person to travel or was the name shown as the passenger? In other words, when you went down and bought tickets, whose name would be shown as the person who was going to do the traveling? Would that be your name?

Mr. STONE. There were various staff members' names. I could not attest that every staff member or every person——

Mr. CORMAN. No, sir. My question was whether you ever purchased a ticket in your name showing your name as passenger and gave it to another person to do the traveling?

Mr. STONE. I might have done that during the poverty investigation.

Mr. CORMAN. Was that done at the instruction of Mr. Powell?

Mr. STONE. Pardon?

Mr. CORMAN. Was it done at the instruction of Mr. Powell?

Mr. STONE. Pardon?

Mr. CORMAN. Was it done at the instruction of Mr. Powell?

Mr. STONE. Yes, sir; I gave tickets to Mr. Powell.

Mr. CORMAN. You bought tickets showing yourself as the traveler?

Mr. STONE. Yes, sir.

Mr. CORMAN. And gave them to Mr. Powell and didn't travel?

Mr. STONE. Sometimes I didn't; yes, sir.

Mr. CORMAN. Did you ever travel on anyone else's ticket? That is, where another person's name was shown?

Mr. STONE. Not to my knowledge. As carefully as possible I attempted to travel under my own name at all times.

Mr. CORMAN. Do you know of your own knowledge whether those tickets that were in your name or were used by other staff members were used on official business and not——

Mr. STONE. This, I don't know.

Mr. CORMAN. You don't have any personal knowledge of that?

Mr. STONE. No, sir; I don't.

Mr. CORMAN. Can you give us any reasonable estimate as to how many such tickets are involved?

Mr. STONE. Ten? I am just taking a figure out of the sky. I don't really know.

Mr. CORMAN. In your connection with Huff Enterprises, were you ever told that Mr. Powell had any interest in Huff Enterprises?

Mr. STONE. No, sir. I never had any discussions with him concerning it.

Mr. CORMAN. Any connection you have with Huff Enterprises had nothing to do with instructions from Mr. Powell?

Mr. STONE. That is right.

Mr. CORMAN. I have no further questions.

Mr. PEPPER. Mr. Stone, would you kindly tell us just how your association with Huff Enterprises began in chronological order as best you can recall?

Mr. STONE. Well, Miss Huff asked me to become——

Mr. PEPPER. Speak louder.

Mr. STONE. Miss Huff asked me to become what I thought was an incorporator and I agreed.

Mr. PEPPER. Who mentioned it to you about your being an incorporator?

Mr. STONE. Miss Huff.

Mr. PEPPER. What did she tell you was the purpose of the corporation?

Mr. STONE. She said they were going to manage some property in the Bahamas.

Mr. PEPPER. Going to manage some property in the Bahamas?

Mr. STONE. Yes, sir.

Mr. PEPPER. Did she say where the property was located?

Mr. STONE. Mr.——

Mr. PEPPER. Did she say who owned the property?

Mr. STONE. No, sir; she didn't tell me at the time.

Mr. PEPPER. Was Miss Huff to manage the property or someone else?

Mr. STONE. This, I didn't know.

Mr. PEPPER. Were they to employ experts in property management in that area to carry out the nature of the incorporation?

Mr. STONE. I didn't know this. It was not my responsibility.

Mr. PEPPER. Was it to be residence or business property?

Mr. STONE. I haven't the slightest idea.

Mr. PEPPER. Did she tell you about how much capital the corporation was going to have to begin with?

Mr. STONE. No, sir; she didn't.

Mr. PEPPER. Did you put up any money for your stock?

Mr. STONE. Not one penny.

Mr. PEPPER. Did she say anything about borrowing any money to start the corporation in business?

Mr. STONE. There was never any discussion of financing concerning it.

Mr. PEPPER. Do you know of any revenue or income the corporation derived?

Mr. STONE. I don't know of any.

Mr. PEPPER. Do you know of any expenditures the corporation ever incurred?

Mr. STONE. No, sir.

Mr. PEPPER. Did you ever hear Miss Huff discuss the matter thereafter?

Mr. STONE. No, sir.

Mr. PEPPER. Did you ever get a report from the corporation about its activities?

Mr. STONE. No, sir; never saw a report. There was never anything of that nature.

Mr. PEPPER. Thank you very much.

Mr. MACGREGOR. Mr. Stone, I have before me the printed report of the Special Subcommittee on Contracts for the Committee on House Administration with excerpts of the testimony given by you to that special committee in late December of last year.

I would like to read briefly from page 41 of that report of the transcript of the questions asked you and answers given by you and I would ask you to listen carefully please and at the end of that time I am

going to ask you whether or not you wish to change any of the answers you gave.

Page 41:
Question. What names would the chairman order you to put in from time to time?
Answer. My name, Lewis, Clark, Swann, Warren. Those are the only ones.
Question. Would he order you specifically to put those names in when he asked you to pick up tickets for him?
Answer. Yes, sir.
Question. Did the persons or the parties whose names appeared on the ticket perform the travel?
Answer. Not very frequently, no, they didn't.
Question: Who would be actually performing the travel on those tickets?
Answer. The Chairman.
Question. Who else with the Chairman?
Answer: Miss Huff.
Question: Who else?
Answer. That is all.
Question. No one else?
Answer. No, sir; not that I know of.

Do you, Mr. Stone, at this time wish to change in any way the testimony I have read given to the Special Committee on Contracts for the Committee of House Administration last December.

Mr. STONE. May I amplify that testimony?

Mr. MACGREGOR. My question is do you in any way wish to change any of the answers you gave under oath to the Subcommittee of House Administration 2 months ago?

Mr. STONE. I don't wish to change it. I can amplify it.

Mr. MACGREGOR. If you will turn to page 42, I will give him an opportunity, counsel. Bottom of page 42, approximately 6 lines up from the bottom referring again to the report of the Subcommittee on Contracts, I would like you to listen carefully and follow the copy of the report you have in front of you the following transcript of testimony given by you under oath last December.

Question. Didn't Miss Huff travel under the name of Swann?
Answer. Yes, sir.
Question. How often would she travel under the name of Swann?
Answer. I don't know. I don't know how many times.
Question. It was customary for her to travel under an assumed name, is that correct?
Answer. That is right.

Now to the top of page 43—

Question. Who would decide what name she was going to travel under on a particular trip?
Answer. The Chairman.
Question. Did she also travel under the name of Lewis?
Answer. Yes, sir.

Mr. Stone, do you wish in any way to change that testimony you gave under oath in December?

Mr. STONE. No, sir.

Mr. MACGREGOR. Now after conferring with counsel it has been indicated you would like to amplify or in some way add to the testimony that you gave in December and the recital of questions and answers that I have read to you from the transcript.

Proceed please.

Would you give for the record the additional counsel now advising you?

Mr. BARASH. He is advising me. He is from my office.

Mr. MACGREGOR. May we have his identification for the record?

Chairman CELLER. Identify yourself. The gentleman who is talking identify himself?

Mr. BARASH. The gentleman is my associate from my office, had a message from me. His name is Arthur Goodstein. He is an attorney also and his office is in Brooklyn.

Mr. MACGREGOR. Where is that office in Brooklyn?

Mr. BARASH. 44 Court Street.

Mr. MACGREGOR. Thank you.

Mr. STONE. The chairman ordered me to buy tickets sometime in a book or a ticket number at a time, put certain names on there.

For the most part he did travel under those names but tickets were also purchased for staff members. And I wasn't aware of the times the other staff members traveled but I was aware on specific occasions when he left the office and traveled or Miss Huff traveled but I could not say with accuracy when staff members went on different trips.

Mr. MACGREGOR. With respect to the testimony you gave in December regarding the practice of Adam Clayton Powell and Corinne Huff to travel under an assumed name, you have no desire at this time to change that testimony?

Mr. STONE. No, sir.

Mr. MACGREGOR. Thank you.

Mr. THOMSON. Mr. Stone, did you work in Mr. Powell's private clerical office or did you work for the committee?

Mr. STONE. I worked for the committee, sir, but I was physically located in his office. But I worked with the committee.

Mr. THOMSON. Were you in a room all by yourself?

Mr. STONE. No, sir. I shared the room with Miss Huff.

Mr. THOMSON. Now, were you in that office room from October until February 15, October 1965 or 1966, until February 15, 1967?

Mr. STONE. Yes, sir.

Mr. THOMSON. When was the last time you saw Miss Huff in that office?

Mr. STONE. January.

Mr. THOMSON. January of what year?

Mr. STONE. This year.

Mr. THOMSON. How long was she there at that time?

Mr. STONE. Two or three weeks.

Mr. THOMSON. January of this year, 2 or 3 weeks?

Mr. STONE. Yes, sir.

Mr. THOMSON. Was she in the office in November 1966?

Mr. STONE. I don't recall, sir, the specific time, I don't think so but I am not sure. I just can't recall——

Mr. THOMSON. Was she in that office in December 1966?

Mr. STONE. No, she wasn't in there in December 1966.

Mr. THOMSON. And you say she was in the office for about 2 weeks in January 1967?

Mr. STONE. That is a relative estimate. I am not quite sure of the exact precise times.

Mr. THOMSON. Are you sure of the extent of that time?

Mr. STONE. No, sir; I am not.

Mr. THOMSON. Could it have been less than 2 weeks?

Mr. STONE. Yes, sir.

Mr. THOMSON. It wasn't any more than 2 weeks?
Mr. STONE. I can't say with certainty, sir.
Mr. THOMSON. Was it prior to the convening of the 90th Congress?
Mr. STONE. Yes, sir; it was.
Mr. THOMSON. Well, the Congress convened on the 10th didn't it?
Mr. STONE. It did.
Mr. THOMSON. Has she been in there since the convening of the 90th Congress?
Mr. STONE. Yes, sir; she has been.
Mr. THOMSON. And for how long a period?
Mr. STONE. Intervals of—I don't know the exact time. She is not there right now but I don't know exactly—she hasn't been there consistently.
Mr. THOMSON. When was the last time she was in that office?
Mr. STONE. As I said before, January, sir.
Mr. THOMSON. Well, when? Can you be more specific?
Mr. STONE. No. I don't know when she left the office.
Mr. THOMSON. You were right in the same room, weren't you?
Mr. STONE. Yes, sir.
Mr. THOMSON. Does anybody in that office keep track of who comes in and who stays out?
Mr. STONE. To some extent I do; to some extent Mr. Powell's administrative assistant does.
Mr. THOMSON. But your testimony is she wasn't in the office in November to your recollection?
Mr. STONE. I am not sure if she was there at that particular time.
Mr. THOMSON. And she wasn't in there in December to your recollection?
Mr. STONE. That is right.
Mr. THOMSON. She appeared a few days prior to the convening of the 90th Congress?
Mr. STONE. That is right.
Mr. THOMSON. And after that you can't specify any time she was there?
Mr. STONE. That is right.
Mr. THOMSON. Was she also in Bimini every time you went there?
Mr. STONE. Not all the time; no, sir.
Mr. THOMSON. Was she there February 4, 5, and 6?
Mr. STONE. I can't remember whether she was there specifically at that time, sir—whether she was there on those particular dates or not.
Mr. THOMSON. Would it be unusual for you to go to Bimini and not find Miss Huff there?
Mr. STONE. No.
Mr. THOMSON. It wouldn't be unusual?
Mr. STONE. No, sir.
Mr. THOMSON. That is all.
Chairman CELLER. Any other questions?
Mr. GEOGHEGAN. I would like to offer in evidence the exhibits marked "Mr. Stone, Nos. 1 through 6."
Chairman CELLER. They will be received for the record.
(The referenced documents, marked for identification, Mr. Stone's exhibits 1 through 6, were received in evidence. The documents referred to follow:)

STONE EXHIBIT NO. 1

*(To be filled out and submitted in triplicate.)

HOUSE OF REPRESENTATIVES OF THE UNITED STATES

VOUCHER

(Do not write in this space)
H. of R. Vo. No. 5127
3076-FC
3/1/66 6713

TO C. Sumner Stone, Jr., DR.
Special Assistant to the Chairman
Address Committee on Education & Labor
Washington, D. C.

(Do not write in this space)
Appropriation EXPENSES OF SPECIAL AND SELECT COMMITTEES 1966

Date of service 1966	Quantity	Unit	ARTICLES OR SERVICES	Unit price	Amount Dollars	Cts.
			Reimbursement for official travel performed for the Committee on Education & Labor, during the course of an investigation in Miami, Florida, indicated in detail as follows:			
February 4, 5, & 6			PER DIEM CLAIMED: Three (3) days	$16.00	48	00
			Taxi to and from airport, Washington, D.C.		3	50
			Taxi to and from airport, Miami, Florida		4	50
			(Authorized by House Resolution 634, approved 1/27/66. 89th Congress)			
			TOTAL		56	00

I CERTIFY that the above bill is correct and just, and that payment therefor has not been received.

* SIGN ORIGINAL ONLY
(Bill must be completely filled in before certification by payee, and there must not be any erasure or alteration whatever.)

Payee C. Sumner Stone
By

I CERTIFY that the above articles have been received in good condition and in the quality and quantity above specified, or the services performed as stated, and that they are in accordance with the orders therefor; that the prices charged are just, reasonable, and in accordance with agreement.

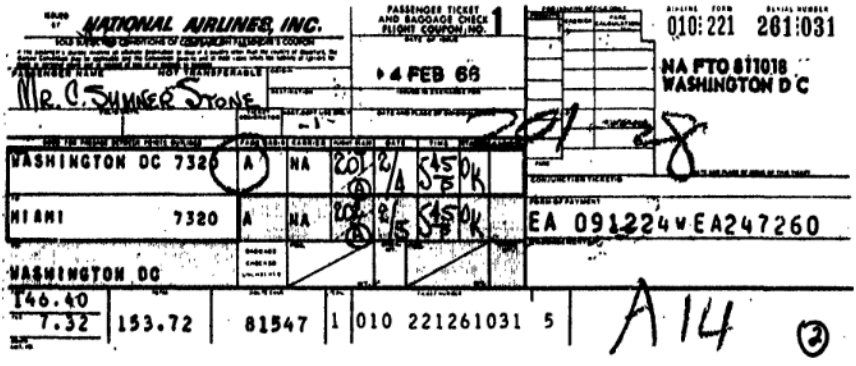
Adam C. Powell
ADAM C. POWELL, Chairman
Committee on Education and Labor
(Title)

APPROVED	ALLOWED
(Date)	MAR 3 1966 (Date)
Ralph R. Roberts Clerk, United States House of Representatives.	Omar Burleson Chairman, Committee on House Administration

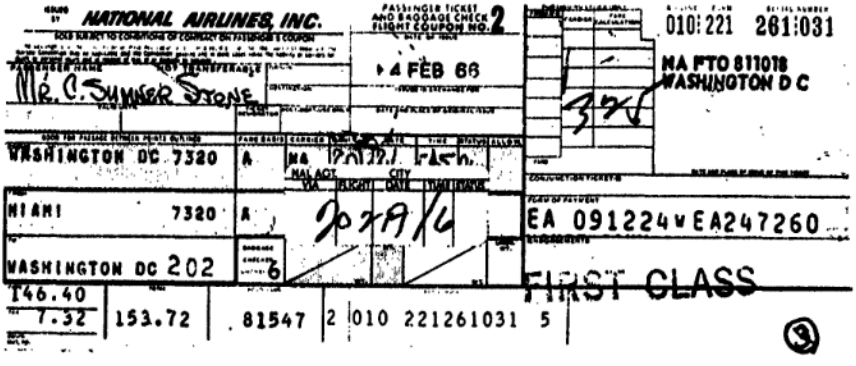
CLERK U. S. HOUSE OF REPRESENTATIVES
Paid by check No. 7A-07A-345 dated MAR 4 1966, 19 , on the Treasurer of the United States at Washington, D. C., in favor of payee named above.

* Where a voucher is certified by a corporation or company, the name of the person signing the corporate or company name, as well as the capacity in which he signs, must appear. Example: "Chicago Edison Company, per John Smith," Secretary or Treasurer, or member of firm, as the case may be.

STONE EXHIBIT No. 2



STONE EXHIBIT No. 3



STONE EXHIBIT No. 4

PASSENGER MANIFEST

TO Bimini — Sat. Feb 5, — 2:45 pm

Ned Ames (Pilot) — 6521 (Phone) — 1381

	Name	Ticket No.	Address	CH	CR	Prev.
1601 1	Sumner Stone	2507 2501	2161 Rayburn, House Office Bd. Wash. DC	30		15
1402 2	Marjorie Saunders	2503	I 94	10		
1303 3	Helen Duncombe	1195	I 94	NC		—
1704 4	William Butler	2504	A-11-632-864 1166 NW 58th Ter. Miami	10		
5						
6						
7						
8						
9						
10						
11						

35

$50.

E-4

STONE EXHIBIT No. 5

PASSENGER MANIFEST

TO Miami, Fla — 1st trip — 1884-A.

Ned Ames (Pilot) — 3:45 PM flight (Phone)

	Name	Ticket No.	Address		CH	CR	
1	Judy Taylor	2446	180	15	15.		2.00
2	Frances Thomas	2451	110.	15	NC		2.00
3	Ellen ..	2464	75.	15	NC		1.00
4	Carol Aldridge	1892	160.	15	NC		2.00
5	Francis C. Swann	2422	173.	15	NC		2.00
6	Sumner Stone	2502	165.	15	NC		2.00
7	S.						
8							
9							
10							
11							

783.
144

15.

1 Passenger 10:00 A.M.

E-5

74-821 O—67——17

STONE EXHIBIT No. 6

(To be filled out and published in triplicate.) CC 158-65

HOUSE OF REPRESENTATIVES
OF THE
UNITED STATES

(Do not write in this space) H. of R. Va. No. 53655

VOUCHER

2073-FC 11/23/65 4351

TO C. SUMNER STONE JR., Special Assistant to the Chairman, DR.
Address Committee on Education and Labor, U. S. House of Representatives

(Do not write in this space) Appropriation EXPENSES OF SPECIAL AND SELECT COMMITTEES 1966

Date of service 1965	Quantity	Unit	ARTICLES OR SERVICES	Unit price	AMOUNT Dollars	Cts.
			Reimbursement for official travel performed for the Committee on Education and Labor, during the course of an investigation in New York, New York, indicated in detail as follows:			
October 24 and 25			PER DIEM CLAIMED: Two (2) days	16.00	32	00 ✓
			Taxi to and from airport, Washington, D. C.		3	50 ✓
			Taxi to and from Airport, New York City		4	00 ✓
November 14			PER DIEM CLAIMED: One (1) day		16	00 ✓
			Taxi to and from airport, Washington, D. C.		3	50 ✓
November 7 -- 10			Official investigation to Miami, Florida; PER DIEM CLAIMED: four (4) days	16.00	64	00 ✓
			Taxi to and from airport, Washington, D. C.		3	50 ✓
			Taxi to and from airport, New York City (11/14 trip)		4	00 ✓
			Taxi to and from airport, Miami, Florida		4	50 ✓
			(Authorized by House Resolution 139, approved 2/9/65, 89th Congress)			
				TOTAL	135	00 ✓

I CERTIFY that the above bill is correct and just, and that payment therefor has not been received.

* SIGN ORIGINAL ONLY
(Bill must be completely filled in before certification by payee, and there must be no erasures or alterations whatever.)

Payee C. Sumner Stone Jr.
By

I CERTIFY that the above articles have been received in good condition and to the quality and quantity above specified, or the services performed as stated, and that they are in accordance with the orders thereof; that the prices charged are just, allowable, and in accordance with agreement.

Adam C. Powell
ADAM C. POWELL, CHAIRMAN
Committee on Education and Labor
(Title)

APPROVED
Roger R. Robb
Clerk, United States House of Representatives

ALLOWED DEC 6 1965
Omar T. Burleson
Chairman, Committee on House Administration

CLERK U. S. HOUSE OF REPRESENTATIVES
Paid by check No. 7044592 dated DEC 9 '65, 19 , on the Treasurer of the United States at Washington, D. C., in favor of payee named above.

* When a voucher is certified by a corporation or company, the name of the person writing the corporate or company name, as well as the capacity in which he signs, must appear. Example: "Chicago Milling Company, per John Smith, Secretary or Treasurer, or member of firm, as the case may be."

Chairman CELLER. This will close the hearing. The record will remain open for 24 hours.

The committee will now adjourn. The committee will meet in executive session at 3:30 this afternoon.

(Whereupon, at 12 noon, the committee was adjourned to meet in executive session at 3:30 p.m. the same day.)

(Additional materials submitted for the record:)

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.

MEMORANDUM IN SUPPORT OF RESPONSE BY MEMBER-ELECT, ADAM CLAYTON POWELL, BY COUNSEL, TO LETTER OF FEBRUARY 10, 1967, FROM CHAIRMAN EMANUEL CELLER

JEAN CAMPER CAHN,
Washington, D.C.,
ROBERT L. CARTER,
New York, N.Y.,
HUBERT T. DELANEY,
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.,
Counsel for Congressman-Elect Adam Clayton Powell, Jr.

On January 10, 1967, the House of Representatives adopted House Res. No. 1 pursuant to which this Select Committee was appointed to inquire into "the right of Adam Clayton Powell to be sworn in as a Representative . . . in the Ninetieth Congress, as well as his final right to a seat therein . . ." Until the report of the Committee and the decision of the House as to its recommendations, Congressman Powell is to be denied the right to take the oath or occupy a seat in the House of Representatives.

The legal and constitutional issues in this controversy involve the scope and breadth of the inquiry the Select Committee is entitled to make into the matter in question and the validity of the proceedings adopted by the Committee to accomplish its mandate.

It is the position of counsel for the Congressman that the Select Committee is constitutionally bound to limit its inquiry to a determination as to (1) whether the Congressman's election has been validated; and (2) if he was properly elected, whether he possesses those qualifications for membership in the House specifically enumerated in Article I, Section 2 of the Constitution, viz whether he is twenty-five years of age, a citizen of the United States for seven years and an inhabitant of New York. For that reason, and for that reason only, counsel had advised Mr. Powell (and he has refused) not to answer any questions except those relating to these above questions and not to participate in the hearings of the Committee which extend beyond such limitations. We have made and documented our point on this question with sufficient clarity in our original motion, in oral argument and briefs heretofore submitted, and we are confident that the Constitution, authorities and precedents of the Congress fully sustain our position to deem any further discussion of that proposition unnecessary.

While it is realized that the Committee has reached no final decision on this question, it does deem its mandate to be far broader than counsel considers warranted by constitutional and legal limitations to which the House must adhere. The Select Committee conceives its mandate to authorize and warrant its "simultaneously" inquiring into Congressman Powell's qualifications for membership as set forth in Article I, Section 2 of the Constitution and determining at one and the same time and in the same proceedings whether and the extent to which it should recommend that disciplinary action should be taken against the member-elect by the House pursuant to power granted under Article I, Section 5 of the Constitution. In short, the Committee seeks to merge the function of determining whether the member-elect has engaged in such "disorderly behaviour" to warrant punishment by the House under Article I, Section 5.

In addition, the Committee seeks to introduce into the hearing testimony concerning:

(a) the status of legal proceedings to which Congressman 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; and

(b) alleged official misconduct on his part occurring at any time since January 3, 1961.

It is Counsel's contention that the Select Committee is grossly in error in both of these respects.

Proceeding To Determine Whether a Member-Elect Possesses The Requisite Qualifications Required by Article I, Section 2 To Be a Member Must Be Concluded and the Member-Elect Must in Fact Be Sworn Before Article 1, Section 5 Can Be Invoked

Article I, Section 5 by its own terms deals expressly and exclusively with the power and authority of the House to discipline its own members. The words and phrases used therein are clear and unambiguous in meaning. The basic and cardinal rule of statutory and constitutional construction is that a statute or constitution must be taken to mean what its language plainly imparts. The plain meaning of the words is the most persuasive evidence of the intent of the framers of the Constitution or the makers of legislation. *Chung Fook* v. *White* 264 U.S. 443 (1924); *District of Columbia National Bank* v. *District of Columbia* (C.A. D.C. 1965); *McGowan* v. *United States* 105 F. 2d 701 (C.A. D.C. 1939); *Wilbur* v. *United States* 284 U.S. 231, 237 (1931); *Northwest Paper Co.* v. *F.P.C.* 344 F. 2d 47 (8th Cir. 1965); *United States* v. *Redmond* 328 F. 2d 47 (8th Cir. 1965); *United States* v. *Redmond* 328 F. 2d 707 (6th Cir. 1964).

There has never been very much doubt that Article I, Section 5 gave to the Congress, each house thereof, only the right to take action against members. The Committee on Elections in the Case of Victor Berger makes clear that this power reaches only to members:

"In the first place, the House of Representatives . . . has also consistently refused to expel a member once he has been sworn in for any offense committed by him previous to his becoming a member of the ground that the constitutional power of expulsion is limited in its application to the conduct of members of the House during this term of office." 1 Hinds § 57, p. 57.

Senator George in the debate whether to expel Senator Roach on charges of embezzlement, 53rd Congress, 1st sess. 1893. 2 Hinds § 1289, Cong Rec. Vol. 25, P. I., 53 Cong. Special Sess.:

"If it be alleged that a member of this body has been guilty of disorderly conduct the Senate may investigate that question, ascertain the facts, and pronounce judgment upon the facts. Certainly that relates to disorderly conduct whilst a member of this body, for it says 'punish its members for disorderly behavior of whom? Disorderly behavior of the member, and when he is a member, amenable to the jurisdiction of this body.'

Senator Murdock in the 1942 debate over the seating of Senator William Langer who was charged with prior "moral monsterism" 88 Con. Rec. Part II, 77th Cong. 2d Sess. 1942, 2488 made this point in these words.

"My answer to the Senator is one which I have made two or three times before in the Senate. If the Senate ever adopted the precedent contended for by the Senator—that the Senate has the right to ask a Senator-elect clothed with proper credentials and having the constitutional qualifications to stand aside—it misconstrued its powers, because it has not such power.

"I take the position that under the Constitution we have no power to ask a Senator-elect to stand aside, if there is no question as to his constitutional qualifications or regarding his election, or regarding his having the proper credentials. Under the Constitution we are bound to let him take the oath of office. If thereafter, he does anything that is wrong or disorderly, we have the right to expel him. But once the Constitution is misconstrued, once Senators start to assert the inherent powers referred to—the power to tell Senators-elect to stand aside, even though they have the constitutional qualifications and credentials—the Senate must remedy such misconstruction of the organic law. In my opinion, the adoption of a fallacious procedure comes back today, and will continue to come back to plague the Senate in matters of this kind."

Mr. Multer in the current session of the House in the debate over the adoption of House Res. No. 1 in the instant case has again stated the guiding constitutional principle that Article I, Section 5 applies only to members:

"One of the first rules of construction is that you must take into account the order in which the various items appear in the legislation or, in this case, the Constitution. In the Constitution, the first reference to the qualification of Members refers, not to fitness, but to qualifications, and they are citizenship, age, and not residency, but inhabitancy in the State. None of those items is in question with reference to the gentleman we are talking about today. There is no question about his election. There is no question about the returns of his election. He has been duly elected. There can be no question of his qualifications as referred to in the Constitution. That has not been raised in or outside of the Congress. No one has challenged his residence or inhabitancy in the State, his age, or his citizenship.

"We have a right to pass upon the question of fitness of a Member by reviewing his behavior as a Member. The caucus did so yesterday in stripping him of his chairmanship of the powerful committee on which he has served as chairman. That was a determination of what he may do as a Member of this House after he is sworn as a Member. After the qualifications are set forth in the U.S. Constitution, we then find the statement which the minority leader has referred to accurately. It states that we are the judges of the election, returns and the qualifications of our colleagues.

"That means the qualifications set forth in that document, our Constitution. We can neither add to nor detract from them. Once the voters of a congressional district have chosen their Representative, his fitness to serve is determined beyond question by us, his colleagues, providing only that he meets the three qualifications set forth.

"A still later provision of that same Constitution gives us the right to punish Members for their misbehavior. Note, however, it is only a Member that may be punished and not a Member-elect.

"There is grave doubt whether the 90th Congress may punish a Member for what he did as a Member of the 89th Congress.

"Certainly, however, we have no right to punish one who is not a Member of this Congress.

"The right to punish may include expulsion. It does not include exclusion.

"The right to exclude in no event should be exercised without a full and complete hearing."

The precedents of the House and Senate support the view that the powers granted under Section 5 and Section 2 of Article I are treated as separate and distinct functions and are not to be exercised simultaneouly. McCrary on Elections (cited during debate in *Campbell* v. *Cannon* in the 47th Congress (1 Hinds § 473, p. 511)):

"The manifest intent of the Constitution was to fix certain things as unalterable conditions of eligibility, and leave all else for the electors to judge and determine for themselves. . . . So firmly has the House adhered to this fundamental principle of a representative government that the uniform rule of Congress has been not to entertain questions of alleged bad personal character in judging of what are called 'qualifications.' In exercising the right of expulsion, even the established rule has been not to expel for bad character or even crimes committed before the election and known to the electors at the time."

Mr. Harrison put the matter succinctly during the consideration of the continuing of *Maxwell* v. *Cannon* in the 43rd Congress, 1 Hinds § 496, pp. 496–497:

"There has been no precedent since the organization of the Government which would justify, any more than would the Constitution itself justify, the House acting as the judges of the election, returns, and qualifications of Mr. Cannon, in a decision to deprive him of his seat on the ground that he has violated the law prohibiting polygamy in the Territories of the United States."

* * * * * * *

"The line of demarcation between these two great powers of the House, the power to judge of the election, returns, and qualification of its Members by a mere majority vote, and the power to expel its Members by a two-thirds vote, is clear and well-defined. That line is not to be obliterated. It would be necessary to preserve it, even though its obliteration might seem to threaten no disasters, even though its maintenance might promise no benefits to the House, to the people, or to the Constitution. For this barrier is raised by the Constitution itself."

As Senator Knox put it in the debate over the seating of Senator Reed Smoot, 1 Hinds 578–579, the factors which are determinative in respect to Article I, Section 2 are quite different from those at issue in reference to application of Article I, Section 5:

"The simple constitutional requirements of qualification do not in any way involve the moral quality of the man; they relate to facts outside the realm of ethical consideration and are requirements of fact easily established."

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

"First. That the Constitution undertakes to prescribe no moral or mental qualification, and in respect to such qualification 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.

"Second. That as to all matters affecting a man's moral or mental fitness the States are to be the judges in the first instance, subject, however, to the power of the Senate to reverse their judgment by a two-thirds vote of expulsion when an offense or an offensive status extends into the period of Senatorial service, and such a question can only be made after the Senator has taken his seat."

Article I, Section 5 Does Not Grant General Jurisdiction To Punish For Crimes But Is Merely Protective To Enable the House To Carry Out Its Legislative Functions Without Obstruction

It was long recognized that Article I, Section 5 did not empower the House to sit in moral judgment of the character of its members, or to punish them for infractions of the criminal code committed outside the House itself and not related to its functions. The Committee on the Judiciary of the 42nd Congress, 2 Hinds 485, 486 reported on the testimony taken by the committee investigating the conduct of two of its members, Messrs. Ames and Brooks involved in the Credit Mobilier scandal. The investigating committee found Ames and Brooks deeply implicated and had recommended impeachment or expulsion. Because Article I, Section 5 power was conceived as being designed to protect the House in the exercise of legislative process, a majority of the Committee held that neither expulsion nor impeachment could be invoked, since the offenses had been committed before the election. The report states:

"The plain words of the Constitution seem to us clearly to indicate that the power of expulsion is a protective, not a primitive, provision of the Constitution. It is found in section 5 of Article I: '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.' Expel for what? For disorderly behavior, i.e., for that behavior which renders him unfit to do his duties as a Member of the House, or that present condition of mind or body which makes it unsafe or improper for the House to have him in it. We submit, with some confidence, that the House might expel an insane man, because it might not be safe or convenient for the House to have him within the legislative Hall. They can also expel a man for disorderly proceedings in the body, or for such acts outside of the body as render it at the time manifestly improper for him to be in the House. But your committee are constrained to believe that the power of expelling a Member for some alleged crime, committed, it may be, years before his election, is not within the constitutional prerogative of the House.

"We do not overlook the argument presented by the learned committee, upon whose report we are observing, by the phrase: 'Every consideration of justice and sound policy would seem to require that the public interests be secured and those chosen to be their guardians be free from pollution of high crimes, no matter at what time that pollution had attached! But the answer seems to us an obvious one that the Constitution has given to the House of Representatives no constitutional power over such considerations of 'justice and sound policy' as a qualification in representation. On the contrary, the Constitution has given this power to another and higher tribunal, to wit, the constitutency 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 peoples Constitution and frame of government they have, in the very first article and second section, determined that 'the House of Repre-

sentatives shall be composed 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' ".

* * * * * * *

"Our opinion upon the whole matter, therefore, is that the right of representation is the right of the constituency and not that of the Representative, and, so long as he does nothing which is disorderly or renders him unfit to be in the House while a Member thereof, that, except for the safety of the House, or the Members thereof, or for its own protection, the House has no right or legal constitutional jurisdiction or power to expel the Member. We see no constitutional warrant for his expulsion upon any other ground, and expecially not upon the ground of purgation and purification as set forth in the report of the learned committee, against which your committee most earnestly and respectfully protest."

* * * * * * *

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

The House finally voted "to condemn" the two men.

Senator Mills participating in the debate over Senator William Roach, Cong. Rec. 102, 53rd Cong. 1st sess. 2 Hinds § 1280.

"The power of this body is not unlimited. This is not a legislative despotism by any means. This body is clothed with certain limited enumerated powers, and the Government has been declared by the highest court in the land to be a government of enumerated powers. 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.

"Now let me read what that other new-fangled authority on the Constitution says on this subject. I read from Story, first volume, section 837:

"The next clause is, 'Each House may determine the rules of its proceedings"—

"That is a part of the sentence. It is not a whole paragraph. The subject is not broken—

"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".

"Expel a member.

"No person can doubt the propriety of the provision authorizing each House to determine the rules of its own proceedings. If the power did not exist, it would be utterly impracticable to transact the business of the nation, either at all, or at least with decency, deliberation, and order. The humblest assembly of men is understood to possess this power, and it would be absurd to deprive the councils of the nation of a like authority. But the power to make rules would be nugatory unless it was coupled with a power to punish for disorderly behavior or disobedience to thos rules.'

"Here is where your punishment comes in; first, to make the rules for your procedure to enable you to carry out the functions charged to you by the Constitution of the United States. When you make those rules, then to punish for disorderly behavior in the execution of those rules or in prohibiting others from executing those rules."

Mr. MITCHELL. of Oregon. Is not that wholly disconnected from the power to expel?

Mr. MILLS. Will my friend just wait until I get to the end of that? Judge Story says:

" 'But the power to make rules would be nugatory unless it was coupled with a power to punish for disorderly behavior or disobedience to those rules. And as a member might be so lost to all sense of dignity and duty as to disgrace the House by the grossness of his conduct or interrupt its deliberations by perpetual violence or clamor, the power to expel for very aggravated misconduct was also indispensable, not as a common but as an ultimate redress for the grievance.'

"Now, then, Mr. President, the power to expel follows the power to establish rules, and the power to expel follows as the highest exhibition of punishment for misbehavior in preventing the House in the exercise of its functions from proceeding in the orderly discharge of its duties. You may imprison. You may fine. You may reprimand. You may expel. You may not take life. Now, then, you can choose which horn of this dilemma you will hang on. If you want to expel this man, it must be because he has been guilty of disorderly behavior since he has been a member of this body, infracting its rules, interfering with its deliberations. That is the consistent, common-sense interpretation of this provision of the Constitution and that which is given to it by the most distinguished commentator who has ever written on that instrument, and as I said before, not a strict constructionist by any means."

It would seem clear, therefore, that this Committee has no authority to inquire into any court proceedings in which the member-elect is involved, no matter what their nature, since Article I, Section 5 was not intended to vest the House with general judiciary authority to try and punish. Article I, Section 5 was not meant to take away from members of Congress the constitutional right to a jury trial and the full protection of due process on all charges of violations of law.

Article I, Section 5 May Be Invoked Solely in Respect to Offenses Committed Against the Current House

The precedents in this point are legion. In 1799 the House declined to expel Mathew Lyon for an offense committed while a member but before his reelection to the current House. See 2 Hinds, § 1285, 850. A resolution was introduced charging him with "having been convicted of being a notorious and seditious person, and of a depraved mind," of maliciously defaming the Government of the United States, and seeking his expulsion from the House. A vote was taken. The resolution was defeated and Mr. Lyons retained his seat.

Another case in point is that of King and Schumaker in the 44th Congress. 2 Hinds 848–849. There the House Ways and Means Committee of the 43rd Congress in investigating charges that large sums of money were used to secure passage through Congress of an increased appropriation for the Pacific Mail Steamship Co., the investigation disclosed that the charges had foundation and that the two Congressmen were implicated but refused to tell all they knew. The Ways and Means Committee had its findings transmitted to the 44th Congress. The Judiciary Committee ruled that the House had no authority to take up violations against a previous Congress. The report stated in part (2 Hinds 849):

"Your committee are of the opinion that the House of Representatives has no authority to take jurisdiction of violations of law or offenses committed against a previous Congress. This is a purely legislative body and entirely unsuited for the trial of crimes. The fifth section of the first article of the Constitution authorizes "each House to determine the rules of its proceedings, punish its Members for disorderly behavior, and, with the concurrence of two-thirds, expel a Member." This power is evidently given to enable each House to exercise its constitutional function of legislation unobstructed. It can not vest in Congress a jurisdiction to try a Member for an offense committed before his election. For such offense a Member, like any other citizen, is amenable to the courts alone. Within four years after the adoption of the first ten amendments to the Constitution, Humphrey Marshall, a Senator of the United States from Kentucky, was charged by the legislature of his State with the crime of perjury, and the memorial was transmitted by the governor to the Senate for its action. The committee to whom it was referred reported against the jurisdiction of the Senate, and say:

" 'That in a case of this kind no person can be held to answer for an infamous crime unless on a presentment or indictment of a grand jury, and that in all such prosecutions the accused ought to be tried by an impartial jury of the State or district wherein the crime shall have been committed. Until he is legally convicted, the principles of the Constitution and of the common law concur in pre-

suming that he is innocent. And they are also of opinion that, as the Constitution does not give jurisdiction to the Senate, the consent of the party can not give it, and that therefore the said memorial ought to be dismissed.'

"This report was adopted by a vote of 16 to 7. This is the construction given to said section in the first case presented to either House after its adoption by the statesmen who framed the Constitution, and we think it an authority which should control the case before the committee. We know of no public interest which will be promoted by further investigation. Your committee therefore recommend that the House leave these charges where they now are, in court, to be finally adjudicated and disposed of without any interposition or further action of the House."

Another case in point concerns Orsamus Matteson.

Mr. Matteson, who was a member of the Thirty-fourth Congress, had been investigated and a resolution was placed before the House to expel him. He resigned before action could be taken. He was thereafter elected to the Thirty-fifth Congress and took and retained his seat. The House Committee took the view that action of the previous Congress constituted no disqualification. The case as reported in 2 Hinds 851, 852 follows:

"The committee in their report took the view that the proceedings in the previous Congress constituted no disqualification, and that in Mr. Matteson's case there was no constitutional or legal hindrance to his being elected, and no personal disqualification excluding him either permanently or temporarily from being a Representative. The legislative power to punish Members could not be used in regard to matters having no legal recognition. According to Cushing's Law and Practice of Legislative Assemblies, 'Expulsion from a former or from the same legislative assembly can not be regarded as a personal disqualification, unless specially provided by law.' The Wilkes case was cited in support of this authority. The power of the House of Representatives in each Congress was ample and complete to punish its Members for disorderly behavior or misconduct. The House of the last Congress had tried Mr. Matteson; but what offense had he committed against this House? With what act of disorderly behavior was he charged? The fact that he had been elected to the Thirty-fifth Congress before the resolutions of censure were passed in the Thirty-fourth Congress, if material, did not, in the committee's opinion, change the case, since the charges against Mr. Matteson were known to the people of his district before they reelected him. With the judgment pronounced by the House in the Thirty-fourth Congress, its power ended. Mr. Matteson was thenceforth amenable only to the people of his district.

The report of the committee was considered on March 27, and during consideration of the resolution recommended by the majority the whole subject was laid on the table, yeas, 96, nays, 69."

The case of John Langley in the 69th Congress also illuminates the point that Article I, Section 5 is invoked only to punish for offenses against the current House. In the Langley case, a House investigating committee had found that Mr. Langley had been indicted and sentenced to two years' imprisonment. The conviction was affirmed on appeal. While the matter was on appeal, Mr. Langley was elected a Member of Congress. A motion for rehearing was denied, but sentence was suspended. The only appeal now was to the United States Supreme Court in writ of certiorari.

The matter was referred to a Select Committee. The committee took the unanimous view that "under long-established custom of the House" expulsion was not warranted.

It reported as follows:

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

Senator William Roach was charged with embezzlement and action was brought in the Senate to expel him. It was made clear during the debate that the power of the Senate was limited to offenses committed against the current House; that the Senate had no general jurisdiction over crimes and that power to expel was related to infractions of rules governing procedure for doing business of the body. Senator George stated:

"If it be alleged that a member of this body has been guilty of disorderly conduct the Senate may investigate that question, ascertain the facts, and pronounce judgment upon the facts. Certainly that relates to disorderly conduct whilst a member of this body, for it says 'punish its members for disorderly behavior.' Disorderly behavior of whom? Disorderly behavior of the member, and when he is a member, amenable to the jurisdiction of this body.

"Then, for what cause have we a right to inquire and have we a right to expel? Sir, I think it is a very extraordinary proposition, when we consider it in all its length and breadth, that the Senate may look into the antecedent conduct of a person who has subsequently been elected a member of this body for the purpose of expelling him. What does that mean, Mr. President? Stop and think. It means that the Senate, for any cause which the Senate may adjudge sufficient, may reverse the action of a sovereign State in relation to the election of a member to this body.

"Stating it in a little different form, because I desire the Senate to understand distinctly what this proposition means, if we may for conduct or alleged conduct transpiring before the person becomes a member of this body expel him, do we not assume to dictate to a sovereign State in this Union whom it may elect as a Senator? In other words, whilst the Constitution of our country says that the State through its Legislature shall elect a Senator, if that Senaor has the prescribed qualifications fixed in the Constitution, when he comes to take his seat here we may say, 'We do not like the person whom the Legislature has sent here; he is *persona non grata*; we do not like the man, though possessing all the qualifications prescribed by the Constitution, whom a sovereign State has seen proper to select and accredit to this body.'"

* * * * * * *

"We hold that the power of the Senate does not extend to a man's life and conduct before he becomes a member of this body. We hold that we cannot make inquiry into the details of a Senator's career from the years of his maturity to his arrival here, nor can we organize the Senate into a trial court for the punishment of offenses committed before he was a Senator.

. . . "Where, then, is the limit of inquiry, unless you take that invincible limit given by the Constitution? Will you, in the face of that sacred instrument, dare to say that you have the right to inquire whether a man sent here by a sovereign State has at some time or other been indicted for crime, even if he has paid the penalty of the offense in accordance with the laws of his State? If you can investigate in such a case as that, you can investigate anything and everything which may be distasteful to the Senator from New Hampshire or anyone else, however petty or contemptible the accusation may be." 25 Cong. Rec., Part 1, 53 Cong., Special Session 138.

A reading of the entire debate in Senator Roach, against whom no action was finally taken, is very much in point here. See pp. 138–162.

Another instance is the Case of Brigham Roberts in the Fifty-sixth Congress, 1899 where it was said:

". . . very eminent lawyers from the beginning of the Government down to the present time have taken the position that the House has no right to expel except for some misconduct while a member and relating to his office as a member." 33 Cong. Rec. 39; 56th Congress, 1st Sess. (1899).

In accord is the case of Victor Berger, 66th Cong. 1919, supra at page —.

The case of B. F. Whittemore in the Forty-first Congress (1870) 1 Hinds 464 is not inapposite, but consistent with this long-established custom. Whittemore resigned from the Forty-first Congress to escape expulsion. As his seat was then vacant, a special election was held and he was reelected to the same Congress (the 41st). Congress refused to *seat* him upon his return. But here, the Congress against whom the offense warranting expulsion and the Congress to which he was reelected was one and the same.[1]

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[1] The Missouri Case of John B. Clark, 37th Congress (1861), 2 Hinds 813, is inconsistent with this. When the Missouri delegation appeared to be sworn at the convening of Congress, one member-elect did not appear at all. Several months later it was discovered by the Congress that he was in open and armed rebellion against the U.S. government authorities in Missouri. A resolution was proposed to expel him. There was virtually *no* mention made of the fact that he had never appeared to be sworn in and seated and no discussion was had concerning the propriety of expulsion. By an overwhelming vote, he was "expelled." Had he appeared to be sworn, he could have been excluded for disloyalty (treason) cf. Victor Berger (1919), Civil War Southern delegations (circa 1866). Fourteenth Amendment, Section 3. There was no consideration or debate on the floor concerning the action Congress was taking.

Mr. Powell's situation makes for as strong a case against disciplinary action by this Committee as any of the precedents. It is clear that he cannot be disciplined by the House for any conduct not relating to its function. As to any official misconduct as a member of the House, the Hays Committee made such an investigation in the 89th Congress and made specific recommendations. This Committee has no authority to go over that same ground, certainly. Even apart from the principle enunciated that the power of the House to punish relates only to offenses against the current House, for this Committee to retread the matter which the Hays Committee investigated and dealt with would be in the nature of subjecting Congressman Powell to double jeopardy.

It should be added that the nature of the offense has no relevance to whether the law and practice evidenced by the precedents should apply. The rule is one of universal application because of the nature of the authority which Article I, Section 5 accords that it can only be brought into play for those offenses committed during the current session and directly affecting the legislative process. By this standard, this Committee cannot review "official misconduct" of the member-elect except that occurring in the current session.

These proceedings are adversary in nature and must be conducted in accord with basic constitutional due process safeguards

The House itself, and any Election or Select Committee, when investigating the right of a member to a seat in Congress performs a quasi-judicial function. The procedure is basically adversary in nature and hence calls for the safeguards for the rights of the parties usually associated with such hearings. These propositions are fully borne out by the history and practice of the House though they are not specifically spelled out by any House rules of procedure.

I. THE "QUASI-JUDICIAL" NATURE OF THE PROCEEDINGS

The House rules governing contested election cases are subject to change in every Congress and, in fact, in every case. Thus the printed rules of the House are considered directory only, not mandatory.[2] However, insofar as the printed rules provide a general guide to procedure in contested elections cases,[3] they clearly indicate that the procedure is quasi-adversary and judicial. The preface to the rules provides for the filing of "briefs" and abstracts of the "record and testimony in the case," allows a period for "argument before the committee" by contestant or contestee or their respective counsel and allows for the "ordering [of] briefs to be filed and a case to be heard at any time the committee may determine." *Laws and Committee Rules Governing Contested Election Cases in the House of Representatives* GPO, 1950, P. 1. This language clearly contemplates at least a quasi-judicial proceeding.

The House has, on several occasions, reaffirmed the judicial nature of its hearings in cases of seating disputes. In the case of *Lynch v. Chalmers* in the 47th Congress (1882), Congressman Robeson who presented the majority report of the Committee of Elections stated:

"By the fifth section of the same Constitution it is provided 'that each House of Congress shall be the judge of the election and returns and qualifications of its own members.' That provision names us the court for the maintenance and application of these principles. If gentlemen desire it, I readily admit that it makes us a court with the duties and only the powers of a court of largest jurisdiction and last resort. I admit that we are to 'judge.' But we are a court limited only as far as we are by express language limited atall by the word 'judge' and the objects to which our judgment is to be directed. Still, we are a court, and, though a court, of last resort and of highest powers. A court of highest general powers known to the spirit of the law in the atmosphere of which we live is a court or original and natural equity; not a technical court of equity, such as in the progress of commercial transactions and business develop-

[2] Even though Congress preserves the right to amend the procedures set forth in the printed rules, it only disregards the established rules in "extraordinary cases." McCrary, *American Law of Elections*, 4th Ed., 1897, § 449 citing *Bisbee v. Finley*, in the 47th Congress (1881); *Stolbrand v. Aiken* in the 47th Congress (1881).

[3] It should be noted that there is a distinction between a contested election, where two or more persons claim the right to be seated, and the situation in which Representative-elect Powell finds himself. But that distinction does not call for a different procedure to be followed before the Committee. In short, there do not have to be two active contenders for the same seat to create an adversary or quasi-judicial proceeding. See *Sheridan v. Pinchback* in the 43rd Congress (1873) where even though the contestee failed to answer the charges against him, the contestant was not immediately seated and the charges were not deemed true as stated but the House continued its investigation.

ment binds itself to certain formal and technical and fixed rules and modes of evidence and proceeding, but an original court founded upon the broad principles of equity. . . . We are a court, then, of high equity, proceeding according to legal processes to investigate truths, the conditions of which are defined and fixed by constitutional law, but untrammeled and unregulated in the order of our processes or the application of the principles by statute or organic law. We are the highest court on these subjects known to our organic law; thus an appeal lies from all other courts who have or assume jurisdiction of them; and for the settlement of them we have all the powers of all courts." Cong. Rec. 47th Cong., p. 3428.

In an earlier Congress, the 41st Congress, (1887), while considering the case of *Covode v. Foster*, the following resolution was introduced by Representative Burr of Illinois:

"*Resolved*: That from the nature of its duties the Committee of Elections of the House of Representatives is a judicial body and in deciding contested cases referred to such committee the members thereof should act according to all the rules of law, without partiality or prejudice as fully as though under special oath in each partcular case so decided." Cong. Globe, 41st Cong., p. 700.

And during debate on the action of the Committee of Elections it was said on the floor of the House by Representative Churchill of New York:

". . . it was the duty of the Committee of Elections, in deciding these cases, to act judicially; that it was their duty as lawyers, as members of this House, and also as members of the Committee of Elections to regard the law of the case as well as the facts, tend to decide upon their consciences according to the law as well as the facts." Cong. Globe, 41st Cong., p. 1150.

This has been the consistent position of the House. The judicial nature of the proceedings was again stated less than fifty years ago in the case of *Frank v. LaGuardia* in the 68th Congress (1925). The report of the Committee on Elections contains the following language:

"It has been correctly stated, 'That the House possesses all the power of a court having jurisdiction to try the question who was elected. It is not even limited to the power of a court of law merely, but under the Constitution clearly possesses the functions of a court of equity also.'"

Citing *McKenzie v. Brackston*, Smith Elec. Cases p. 10; *Brooks* v. *Davis*, 1 Bart. 44, *Norton* v. *Butler*, 2 Hinds § 1122. House Report No. 1082, 68th Congress, 2nd Session (1925).

See also *MacDonald* v. *Young* in the 63rd Congress, 6 Cannon § 94.

The adversary nature of the committee's hearings are sustained by the fact that the Representative under scrutiny has not only his own rights to preserve under attack but the rights of his constituents, those who chose him to represent them, to vindicate. As McCrary, *supra*, has stated:

§ 454, "A contested election case, whatever the form of the proceeding may be is in its essence a proceeding in which the people—the constituency—are primarily and principally interested. It is not a suit for the ajudication and settlement of private rights simply. *Mann* v. *Cassiday*, 1 Brewster 43; *People* v. *Holden*, 28 Cal. 130."

§ 431, ". . . statutes providing for contesting elections are to be liberally construed, to the end that the will of the people in the choice of public officers may not be defeated by any merely formal or technical objections."

The judicial nature of the proceedings was established in the first contested election case ever decided in the House. In the case of *Ramsay* v. *Smith* in the 1st Congress, 789, the Committee of Elections proposed and the House adopted a course of procedure which provided that "Mr. Smith be permitted to be present from time to time, when . . . proofs are taken, to examine the witnesses, and to offer counter-proofs, which shall also be received by the committee, and reported to the House." 1 Hinds § 717, p. 927.

Again in the Second Congress, 1791, in the case of *Jackson* v. *Wayne*, the House permitted contestant to appear with counsel at "the bar to produce testimony in an election case." 1 Hinds § 709, p. 916.

Thus the general pronouncements of the House, a leading commentator on the procedures of the House in election cases and the history of the precedents of the House themselves all firmly support the conclusion that the procedure before a committee determining the right of a Representative-elect to his seat is judicial and adversary in nature and hence calls into play the basic requirements of due order and protection for those whose rights are involved.

Those basic requirements of a judicial proceeding, as recognized in the earliest case in the House, include the right to be present at hearings, to present proof, to cross-examine witnesses, see *Ramsay* v. *Smith*, *supra*, and further to be fully apprised of the charges, the standard of the burden of proof and in order to effectively protect these rights, to be represented by counsel before the committee. That these are all rights which have been fully recognized and accorded to parties before the Committee is readily seen by examining several House precedents and the law of the Congress.

II. SPECIFIC RIGHTS AFFORDED TO CONGRESSMEN-ELECT UNDER PRECEDENTS OF HOUSE

(*a*) *Statement of Charges*

McCrary, *supra*, notes that at the very outset, he whose right to sit in the House is challenged is entitled to know exactly the charges which he must answer.

Section 370 states that the rules for proceedings must include due and reasonable notice to the incumbent and the opportunity to prepare proofs to be heard on both sides. *McCrary* further specifies that a notice cannot be considered "due and reasonable" which does not inform the contestee of the grounds of the contest with sufficient certainty.

Section 429 further describes the requirement of well-defined charges as follows:

"A notice which is sufficiently specific to put the [contested] . . . upon a proper defense and prevent any surprise being practiced upon him is good."

(*b*) *Burden of Proof*

Again *McCrary* as the compiler of and authority on the cases and rules of election contests notes:

§ 459, "The general rule is that the ordinary rules of evidence apply as well to election contests as to other cases. The evidence must therefore be confined to the point in issue, and must be relevant. The burden of proof is always upon the contestant, or the party attacking the official return or certificate."

(*c*) *Right to Cross Examine*

The Rules of the House specifically provide that deponents or other witnesses in an election case must answer "all such matters respecting the elections about to be contested as shall be proposed by either of the parties or their agents." *Laws and Committee Rules*, *supra*, p. 6. *Ex parte* testimony is unformly disfavored and almost without exception, not admissible before the Committee. See *McFarland* v. *Culpepper* in the 10th Congress (1808), *Spaulding* v. *Mead* in the 9th Congress (1805), *Lyon* v. *Smith* in the 4th Congress (1795), *Chapman* v. *Ferguson* in the 35th Congress (1858) and *Blair* v. *Barrett* in the 36th Congress (1860). See also as to necessary presence of adversely affected party when testimony taken, 1 Hinds § 824.

McCrary further substantiates the rule requiring the opportunity to cross-examine as he states in Section 448 that witnesses must be examined so that the "parties or their attorneys may appear and propound any proper questions."

It should be noted that this strict procedural requirement has been adhered to even in times of high party excitement and keen prejudice toward the Representative-elect. In the case of *Brigham Roberts* in the 56th Congress (1899) the following procedure was followed:

"The Committee met . . . and in Mr. Roberts' presence discussed the plan and scope of its inquiry. Mr. Roberts submitted certain motions and supported them by argument questioning the jurisdiction of the committee and its right to report against his prima facie right to a seat in the House of Representatives. * * * "Subsequently certain witnesses appeared before the Committee and were examined under oath, in the presence of Mr. Roberts and by him cross-examined. . . . The Committee fully heard Mr. Roberts and gave him opportunity to testify if he so desired. . . ." 1 Hinds § 476, p. 521.

(*d*) *Right to Counsel*

As above noted, as early as the Second Congress, *Jackson* v. *Wayne*, the House allowed parties in an election case to be represented by counsel. This precedent was followed explicitly in 1804 and 1841, 1 Hinds § 657. Counsel has appeared in argument before the committee in countless other cases including the cases of

Kahn v. Livernash in the 58th Congress (1903), *Mackey v. O'Connor* in the 47th Congress (1882), and *Moody v. Gudger* in the 58th Congress (1904). And in an instance which presents a very close parallel with the situation of Representative-elect Powell, 3 Hinds § 1847 notes:

"A member's character being impeached by the statement of another member before an investigating committee the committee allowed both members to be represented by counsel."

* * * * * * *

In sum, it appears clear that the overwhelming weight of authority both in the language of the House and the writing of the authoritative text on House procedure supports the proposition that the proceedings of this Committee in respect to Mr. Powell are adversary in nature and quasi-judicial and must be surrounded by the rules and procedures that act as safeguards in such circumstances.

CONCLUSION

For all the foregoing reasons, it is the contention of counsel that this Committee is limited solely to inquiry into Congressman Powell's constitutional qualifications for membership in the House as prescribed by Article 1, Section 2 (age, citizenship and inhabitancy); that it must make this determination and that Mr. Powell must be sworn and seated before any action can be taken pursuant to Article 1, Section 5; that as to that power there conferred, it is designed solely and exclusively to prevent obstructions to the House performing its legislative function, and has no relevance to misbehavior in general, or not related to the legislative process, and not committed during the current session of Congress. Moreover, we contend that Congressman Powell is entitled to but was not accorded basic due process in the conduct of the hearing. In short, we contend the proceedings are illegal and void and that the only recommendation the Select Committee is empowered to make is that Congressman Powell should be sworn and permitted to take his seat.

Respectfully submitted.

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.,
Counsel for Congressman-Elect Adam Clayton Powell, Jr.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON HOUSE ADMINISTRATION,
Washington, D.C., February 16, 1967.

Hon. EMANUEL CELLER
Chairman, Special Committee Pursuant to House Resolution 1, 90th Congress, Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: In response to a request from attorneys for the Special Committee Pursuant to H. Res. 1, Ninetieth Congress for a report of expenditure of local foreign currencies (Counterpart Funds) by the Chairman and certain employees of the House Committee on Education and Labor for the years 1961 to 1965, inclusive, I am glad to submit the following figures which are taken from the records of the Committee on House Administration from the reports submitted by the Chairman of the Committee on Education and Labor on or about March 1st of the year following the year in which the expenditures were incurred.

Between Jan. 1 and Dec. 31, 1961

[In U.S. dollar equivalents]

Powell, Adam C.:		
France	$813.87	
Italy	1,461.53	
Spain	900.00	
Switzerland	107.97	
		$3,283.37
Dargans, Louise Maxienne:		
United Kingdom	62.50	
Brazil	347.50	
Uruguay	46.50	
Argentina	150.00	
		606.50

(No report for Wall or Huff.)

Between Jan. 1 and Dec. 31, 1962

Powell, Adam C.:		
Great Britain (9 days)	$243.50	
France (5 days)	245.50	
Italy (6 days)	313.00	
Greece (11 days)	547.00	
Spain (4 days)	195.00	
		$1,544.00
Wall, Tamara J.:		
Great Britain (4 days)	280.00	
France (5 days)	250.00	
Italy (9 days)	450.00	
Greece (4 days)	200.00	
Austria (5 days)	152.00	
Germany (3 days)	150.00	
Denmark (5 days)	171.00	
		1,653.00
Dargans, Louise Maxienne:		
United Kingdom	49.75	
Spain	83.75	
Italy	119.50	
France	80.50	
Morocco	37.00	
Portugal	53.50	
		424.00
Huff, Corrine A.:		
Great Britain (4 days)	293.50	
France (5 days)	250.50	
Italy (5 days)	305.00	
Greece (11 days)	532.50	
Spain (4 days)	185.00	
Denmark (4 days)	175.00	
		1,741.50

Between Jan. 1 and Dec. 31, 1963

Powell, Adam C.: Switzerland (12 days) $721.21

(No report for Wall, Dargans, or Huff.)

Between Jan. 1 and Dec. 31, 1964

Powell, Adam C.:		
Switzerland:		
June 19–30	$491.84	
July 14–22	861.87	
		$1,353.71

(No report for Wall, Dargans, or Huff.)

Between Jan. 1 and Dec. 31, 1965

(No report by Powell, Wall, Dargans, or Huff.)

With best wishes, I am,

Sincerely yours,

JULIAN P. LANGSTON,
Chief Clerk.

ASSISTANT SECRETARY OF STATE,
Washington, February 20, 1967.

Hon. EMANUEL CELLER,
Chairman, Select Committee Pursuant to House Resolution 1,
House of Representatives.

DEAR MR. CHAIRMAN: I have your letter of February 13, in which you request a statement of sums advanced for foreign travel to Representative Adam Clayton Powell, Chairman of the Committee on Education and Labor, for the calendar years 1961 through 1966, inclusive, and also to the following members of the staff of that Committee: Miss Corrine Huff, Miss Tamara J. Wall and Mrs. Louise Dargans Fleming.

In response to your request, I furnish herewith a compilation of local currency and the equivalent value in dollars, estimated at the then current exchange rates for local currencies advanced to Representative Powell and the aforesaid staff members.

	Month of year	Purpose	Local currency		U.S. dollar equivalent
			Unit	Amount	
1966:					
Powell:					
Germany	June	Advance	Deutsche mark	1,600.00	$400.00
Switzerland	do	do	Swiss franc	1,293.00	300.00
1965: None.					
1964:					
Powell:					
Germany	do	Transportation	Deutsche mark	1,748.40	440.08
Switzerland	do	Advance	Franc	2,242.08	518.89
		Transportation	do	2,923.00	676.46
		do	do	672.00	155.52
		Advance	do	2,875.20	666.64
1963:					
Powell:					
Switzerland	do	do	Swiss franc	863.50	199.70
	do	Transportation	do	2,255.00	521.51
	do	Car hire	do	1,554.00	359.39
1962:					
Huff:					
Denmark	August	Advance	Krone	900.00	130.11
France	do	Transportation	Franc	1,028.00	209.79
		do	do	2,213.12	448.00
		Advance	do	1,250.00	255.10
Greece	September.	do	Drachma	36,370.00	1,212.33
Italy	August	do	Lira	162,100.00	261.03
Spain	do	do	Peseta	12,000.00	200.17
United Kingdom.	do	do	Pound	135.10.0	381.89
		Refund	do	(−35.10.0)	(−100.04)
Dargans:					
Italy	December	Advance	Lira	248,400.00	400.00
Spain	do	do	Peseta	1,540.00	25.69
Powell:					
France	August	Transportation	Franc	4,786.86	969.00
		Advance	do	4,645.60	948.08
		Transportation	do	1,028.00	209.79
		do	do	845.00	172.45
		Transportation refund.	do	(−845.00)	(−172.45)
Germany	July	Transportation	Deutsche mark	1,054.96	264.40
	August	do	do	684.00	171.00
Greece	September.	Advance	Drachma	14,950.00	498.33
Italy	August	do	Lira	172,600.00	278.00
Jamaica	June	Transportation	Pound	13.5.11	37.21
		Telegrams	do	3.9.2	9.73
	August	Advance	do	143.0.0	400.03
		Refund	do	(−104.0.0)	(−293.69)
		Car hire	do	21.10.6	61.50
		Telegram	do	1.0.0	2.80
Spain	do	Advance	Peseta	12,000.00	200.17
		Forwarding luggage.	do	142.90	2.38
		Cancellation fee	do	94.50	1.58

	Month of year	Purpose	Local currency		U.S. dollar equivalent
			Unit	Amount	
1962—Continued					
Powell—Continued					
United Kingdom.	August	Advance	Pound	235.10.0	$663.46
		Refund	do	(−100.0.0)	(−281.85)
		Car hire	do	12.10.0	35.37
		Theater tickets	do	9.3.0	25.93
		Overtime work	do	6.15.0	19.03
		Long-distance telephone.	do	27.5.4	76.79
Wall:					
Austria	do	Advance	Schilling	6,300.00	244.91
Denmark	September.	do	Kroner	1,200.00	173.48
France	August	Transportation	Franc	2,213.12	488.00
	do	do	do	1,028.00	209.79
		Advance	do	1,250.00	255.10
Germany	September.	do	Deutsche mark	600.00	150.45
Greece	do	do	Drachma	12,000.00	400.00
Italy	August	Transportation	Lira	535,100.00	861.69
		Advance	do	286,300.00	461.03
United Kingdom.	do	do	Pound	135.10.0	381.89
		Refund	do	(−35.10.0)	(−100.04)
1961:					
Fleming:					
Argentina	November.	Advance	Peso	20,000.00	241.54
Brazil	December.	do	Cruzeiro	110,000.00	372.88
do		Refund	do	(−3,000.00)	(−10.17)
Uruguay	November.	Advance	Peso	547.50	50.00
Powell:					
France	June	do	Franc	2,535.00	517.35
do		Refund	do	(−1,175.00)	(−239.80)
	July	Transportation	do	2,163.72	441.58
	August	do	do	3,023.78	617.10
	September.	Advance	do	2,828.00	577.14
do		Refund	do	(−200.00)	(−40.82)
	November.	Transportation	do	4,741.16	965.61
Italy	September	Advance	Lira	300,000.00	483.10
	October	do	do	507,600.00	817.40
do		Car hire	do	247,552.00	398.60
do		Advance	do	100,000.00	161.03
Spain	do	Telegram	Peseta	19.00	.32
do		Advance	do	54,000.00	900.00
	December.	Air freight	do	4,226.50	70.63
Geneva	June	Advance	Franc	1,000.00	230.95
	July	Refund	do	(−530.00)	(−122.98)

These items are broken down to sums advanced by the Department for transportation and sums drawn by Representative Powell and the designated staff members in the countries indicated.

All sums mentioned herein were advanced pursuant to Congressional authorization. Copies of these figures were furnished to the Chairman of the Committee on Education and Labor for each of the calendar years covered by this report prior to February 15 of the following calendar year.

I trust that this information will be responsive to your request.

Sincerely,

DOUGLAS MACARTHUR II.

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