

IN RE ADAM CLAYTON POWELL

REPORT

OF

SELECT COMMITTEE PURSUANT TO

H. RES. 1

NINETIETH CONGRESS

FIRST SESSION

ON

H. Res. 1

HEARINGS

FEBRUARY 8, 14, 16, 1967



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SELECT COMMITTEE PURSUANT TO HOUSE RESOLUTION 1

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IN RE ADAM CLAYTON POWELL

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

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

REPORT

[To accompany H. Res. 278]

BACKGROUND

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

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

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

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

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

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

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

Resolved, That the Speaker is hereby authorized and directed to administer the oath of office to the gentleman from New York, Mr. Adam Clayton Powell.

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

House Resolution 1 in the form offered by Representative Udall was rejected on a rollcall vote³ following which a substitute offered by Representative Ford (Michigan) was agreed to and the resolution adopted.⁴

The substitute offered by Mr. Ford reads as follows:

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

¹ "Mr. VAN DEERLIN, Mr. Speaker.

"The SPEAKER. For what purpose does the gentleman from California rise?

"Mr. VAN DEERLIN, Mr. Speaker, upon my responsibility as a Member-elect of the 90th Congress, I object to the oath being administered at this time to the gentleman from New York [Mr. Powell]. I base this upon facts and statements which I consider reliable. I intend at the proper time to offer a resolution providing that the question of eligibility of Mr. Powell to a seat in this House be referred to a special committee—

"The SPEAKER. Does the gentleman demand that the gentleman from New York step aside?

"Mr. VAN DEERLIN. Yes, Mr. Speaker.

"The SPEAKER. The gentleman has performed his duties and has taken the action he desires to take under the rule. The gentleman from New York [Mr. Powell] will be requested to be seated during the further proceedings." (Congressional Record 90th Cong. H4).

² Ibid. H13.

⁴ Ibid. H16.

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

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

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

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

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

Honorable Emanuel Celler, Chairman (New York)

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

SCOPE OF INQUIRY

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

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

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

I share the concern about the accumulation of evidence which strongly suggests to me the probability that one of our colleagues has flouted the laws of the State of New York; that he is charged with criminal contempt, and that there is a warrant for his arrest in that State so that he cannot go into that congressional district. I recognize this.

I recognize the strong probability that public funds have been misused, and paid, to people in violation of the laws of the United States—Rules of the House of Representatives.

I recognize the strong probability that false vouchers have been filed; that airplane tickets have been used in violation of the laws, and that illegal and unauthorized travel has taken place.

* * * * *

I propose to seat him, but I propose to seat him conditionally until a fair judicial inquiry can be held to determine if he ought to be seated in or removed from the House of Representatives (Congressional Record H5).

* * * * *

This man has never had a hearing.

He was invited to appear before the Hays committee and he declined. But this was an investigation limited to looking into a narrow subject—expenditure of public committee funds. They had no power to recommend dismissal or anything of that kind.

The judgments of the New York courts—and I will cheerfully concede that they probably set an alltime record for appeals, motions, counterclaims, and repeated proceedings. But they are not final. I hope someday they will be. But they are not.

Adam Powell has never really had a chance to sit down and state his case to a group of his peers who hold the power to recommend what happens to him as a Member of the House. Maybe he will decline. Maybe he cannot prove a case. But he has never had a chance to state a case (ibid. p. 6).

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

We would establish the forum and give him the opportunity to come in and answer those allegations that have been made—allegations in the press, allegations by various committees, statements of one sort or another by some Members here in the Chamber (Congressional Record H8).

* * * * *

Mr. Speaker, what we must do today in the determination of the qualifications of Mr. Powell is to establish a committee, a blue-ribbon committee, that will investigate all of the allegations that have been made heretofore and report within the period of 5 weeks to all of us, with its recommendations.

Mr. Speaker, this procedure would represent "even justice." This is equity of the highest order. In my humble judgment we probably ought to establish as quickly as possible—and tomorrow is not too soon—an overall select committee such as was approved in the dying days of the 89th Congress in order that all charges or allegations that have been made in the past or which might be made in the future can be considered concerning any one of us who now serves in the House of Representatives (ibid, p. 9).

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

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

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

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

⁶ "Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members * * * " (art. I, sec. 5, clause 1).

"Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behavior, and, with the Concurrence of two-thirds, expel a Member" (art. I, sec. 5, clause 2).

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

3. Matters of Mr. Powell's alleged official misconduct since January 3, 1961.⁸

PROCEDURE FOLLOWED

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

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

This is not an adversary proceeding. The Committee is going to make every effort that a fair hearing will be afforded, and prior to this date has decided to give the Member-elect rights beyond those afforded an ordinary witness under the House rules.

The Committee has put the Member-elect on notice of the matters into which it will inquire by its notice of the scope of inquiry and its invitation to appear, as well as by conferences with, and a letter from its chief counsel to the counsel for the Member-elect.

Prior to this hearing the Committee decided that it would allow the Member-elect the right to an open and public hearing, and the right to a transcript of every hearing at which testimony is adduced.

The Committee has decided to summon any witnesses having substantial relevant testimony to the inquiry upon the written request of the Member-elect or his counsel.

* * * * *

Again, the Committee states that this is an inquiry and not an adversary proceeding.

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

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

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

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

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

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

INVESTIGATION CONDUCTED

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

Mr. Robert D. Gray, of the General Accounting Office, who supervised the team of GAO auditors employed by the Hays subcommittee, performed the same function for the Select Committee. For the Hays subcommittee, Mr. Gray's auditors checked all airline tickets purchased on committee credit cards and separated out those used for travel for which no subsistence was claimed on the theory that in almost all instances when travel relates to official business subsistence will be claimed. Mr. Gray and his assistants¹¹ undertook a similar review of travel charged by Chairman Powell and members of the staff of the Committee on Education and Labor during the 87th and 88th Congresses. They also conducted an audit which determined that the funds expended by the Committee on Education and Labor and Mr. Powell's congressional office did not exceed the amounts authorized by the 87th, 88th, and 89th Congresses, and a special audit relating to travel from Miami to Bimini and return, during the 89th Congress.

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

SUMMARY OF EVIDENCE

A. INHABITANCY

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

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

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

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

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

B. BEHAVIOR OF ADAM CLAYTON POWELL

1. *With respect to the courts of New York*

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

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

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

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

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

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

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

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

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

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

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

The records in both cases show that the courts of New York have been very indulgent in granting Mr. Powell adjournments and opportunities to avoid the consequences of his acts. It also shows there were numerous instances when Mr. Powell did not honor subpoenas and court orders to appear and to submit to the jurisdiction of the courts. On at least two occasions, Mr. Powell's failures to appear violated written stipulations which he had signed agreeing to appear on set dates. On some of these occasions, Mr. Powell based his refusals to appear on the ground that he had congressional immunity as he was attending sessions of Congress. In many instances various judges granted adjournment after adjournment to accommodate him only to have Mr. Powell subsequently fail to appear on the reset dates. In two instances, the records of Congress show that the House of Representatives was not in session on the dates he dishonored a court order, *i.e.*, November 24, 1965, and December 9, 1966.¹⁶

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

It is however, not an easy task to arrive at a conclusion as to the punishment for criminal contempt of court to be meted out to a minister, a Congressman, a leader of men, a man, indeed, of many natural gifts, and he should be a man in relationship to the law that one would look up to, to respect. All of you may rest assured that what I have determined upon is a conclusion that has not been lightly reached.

I am regretful that the defendant, either himself or through his counsel, is unwilling to express any views in that regard, because that expression might be helpful to me, but silence at this time, self-imposed by the defendant once again, his nonparticipation, may be, and must be, ignored, since I shall make my decision presently * * *

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

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

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

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

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

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

In May of 1964, the court said:

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

In December of 1965, the court said:

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

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

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

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

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

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

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

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

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

In October 1966, the court said:

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

In October 1966, another justice of this court said:

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

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

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

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

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

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

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

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

2. As chairman of the Committee on Education and Labor

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

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

(a) Proceedings before the Hays subcommittee

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

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

1. Testimony indicates that Representative Powell used an assumed name on many airline flights purchased with committee credit cards thus deceiving the approving authority as to the number of trips made by him as an individual.

2. Testimony indicates that Corrine A. Huff, a staff employee of the Committee on Education and Labor, prior to June 30, 1966 (on July 1, 1966, Miss Huff was transferred to Representative Powell's clerk-hire payroll), made many trips under an assumed name on many airline flights purchased with committee credit cards thus deceiving the approving authority as to the number of trips made by her as an individual.

3. Representative Powell placed on the staff of the Committee on Education and Labor one Sylvia J. Givens, who had been hired for the express purpose of doing domestic work for Representative Powell when he traveled, as well as for performing the clerical work in his committee offices.

4. After the initiation of this investigation, Representative Powell paid to Eastern Air Lines the cost of travel of himself, Miss Huff, Miss Givens, and Mr. and Mrs. Stone, which had been purchased with committee airline credit cards for transportation to Miami en route to Bimini, British West Indies, except that Representative Powell did not pay the cost of a return trip for Sylvia J. Givens from Miami to Washington, which travel has been charged to and paid for from the contingent funds allocated to the Committee on Education and Labor.

5. The deceptive practice of using the names of staff employees on airline tickets which were not used by the named employees appears to be a scheme devised to conceal the actual travel of Representative Powell, Miss Huff, and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Q. What names would the chairman order you to put in from time to time?

A. My name, Lewis, Clark, Swann, Warren. Those are the only ones.

Q. Would he order you specifically to put those names in when he asked to pick up tickets for him?

A. Yes, sir.

Q. Did the persons or the parties whose names appeared on the ticket perform the travel?

A. Not very frequently; no, they didn't.

Q. Who would be actually performing the travel on those tickets?

A. The chairman.

Q. Who else with the chairman?

A. Miss Huff.

Q. Who else?

A. That is all.

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

Q. Didn't Miss Huff travel under the name of Swann?

A. Yes, sir.

Q. How often would she travel under the name of Swann?

A. I don't know. I don't know how many times.

Q. It was customary for her to travel under an assumed name; is that correct?

A. That is right.

Q. Who would decide what name she was going to travel under on a particular trip?

A. The chairman.

Q. Did she also travel under the name of Lewis?

A. Yes, sir.

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

(b) Additional evidence adduced before this Committee

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

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

Mr. GRAY. The travel regulations of the House provide for any member or employee of the committee who is traveling on official business to make claim for reimbursement for subsistence and other expenses related to that travel and it has been my experience that it would be highly unusual for an employee traveling on official business not to claim reimbursement of his subsistence and taxi and other expenses that were related to that travel.

Mr. PATTERSON. You mean that if travel is chargeable, per diem is also chargeable?

Mr. GRAY. That is right, sir.

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

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

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

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

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

| Year | Amounts received by Adam Clayton Powell | Amounts reported by Adam Clayton Powell |
|------|---|---|
| 1961 | \$5,777.21 | \$3,283.37 |
| 1962 | 4,300.04 | 1,544.00 |
| 1963 | 1,080.60 | 721.21 |
| 1964 | 2,457.69 | 1,353.71 |
| | Amounts received by Tamara Wall | |
| 1962 | 3,526.30 | 1,653.00 |
| | Amounts received by Corrine Huff | |
| 1962 | 2,998.38 | 1,741.50 |

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

3. *As a Member of the House of Representatives*

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

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

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

Mr. GEOGHEGAN. Could you give us some idea as to how much work in terms of time required to perform this service you were doing during the 88th Congress? That is the period generally speaking of 1963 and 1964.

Mrs. POWELL. 1963-64—about 1963 is the time I started getting less work from his office in Washington and I would say it probably wouldn't amount to more than 2 hours a day.

Mr. GEOGHEGAN. Did the amount of work actually trickle off to almost nothing?

Mrs. POWELL. Yes.

Mr. GEOGHEGAN. When did that occur?

Mrs. POWELL. About the summer of 1965, June, July, something like that.

¹⁸ Public Law 89-80, sec. 103; see H. Res. 294, 88th Cong.; H. Res. 7, 89th Cong.

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

Mr. GEOGHEGAN. Mrs. Powell, did you at any time in writing or verbally authorize Mr. Powell to receive your checks, endorse them and keep them?

Mrs. POWELL. No.

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

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

The Committee concludes from the foregoing evidence that Mrs. Powell has not performed any official duties whatever since at least the summer of 1965 and has not performed any official duties in Washington or New York since 1961. Accordingly, Mr. Powell has improperly maintained Mrs. Powell on his clerk-hire payroll from August 14, 1964, when House Resolution 294 was adopted²⁰ until December 1966, resulting in improper payments in the amount of \$44,188.61.

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

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

¹⁹ Louise M. Dargans (then chief clerk of the Committee on Education and Labor) testified before the Hays subcommittee that at Mr. Powell's direction she has signed Miss Flores' and Mr. Powell's names to each of those paychecks except three and deposited them to Mr. Powell's account. Miss Dargans had a power of attorney authorizing her to sign Mr. Powell's name but had no authorization from Mrs. Powell. The endorsements on the three checks which Miss Dargans didn't sign appeared to her to be in Mr. Powell's handwriting (Hays subcommittee hearings, pp. 26-34, 92-94, 297, 302-304; Report, "Individual Pay Cards," after p. 80).

²⁰ Sec. 2 of H. Res. 294, 88th Cong., provides: "No person shall be paid from any clerk-hire allowance if such person does not perform the services for which he receives such compensation in the offices of such Member * * * in Washington, District of Columbia, or in the State or the district which such Member * * * represents."

This provision was readopted in the 89th Cong. by resolution, H. Res. 7, and then by statute, Public Law 89-90, sec. 103, 79 Stat. 281 (1965).

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

I, therefore, am unhappily constrained to request that, in the interest of fairplay, the following conditions be established for my appearance before your subcommittee:

(1) The investigation include a comparative analysis of the travel vouchers of staff members of other full committees and subcommittees, including your own. I am prepared to provide immediate additional investigators and secretarial staff to assist your staff.

(2) The investigation include a comparable analysis of the travel undertaken by all other committee and subcommittee chairmen.

(3) That I be permitted to read into the record the following articles and series of articles:

(a) The Life magazine article of June 6, 1960, by Walter Pincus and Don Oberdorfer, "How Congressmen Live High Off the Public."

(b) The Congressional Quarterly article of March 4, 1966, on congressional foreign travel "Nearly Half of Congress Takes U.S. Paid Trips."

(c) The series of articles by Vance Trimble on congressional payrolls beginning January 5, 1959, through December 1, 1959.

(4) That my accompanying counsel be permitted the privilege of cross-examination of certain Congressmen whose travel and activities relate directly to the Education and Labor Committee. I shall submit the list of names to you privately for your prior approval.

(5) That no staff members of the Education and Labor Committee be required to testify before your subcommittee until conditions Nos. 1 and 2 have been fulfilled.

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

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

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

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

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

LEGAL SUPPORT FOR RECOMMENDATIONS

Counsel for Mr. Powell have raised a number of legal issues, including whether the Select Committee can consider any qualifications other than the three set forth in article I, section 2 of the Constitution, and whether the House may properly expel a Member for acts committed in a prior Congress. Since the Select Committee does not recommend a resolution calling either for the exclusion²³ of Mr. Powell, or for his expulsion,²⁴ it is unnecessary for it to pass upon the constitutional questions discussed in the briefs filed on behalf of Mr. Powell.

A. AGE, CITIZENSHIP, AND INHABITANCY

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

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

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

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

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

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

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

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

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

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

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

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

meaning he must have and occupy a place of abode within the particular State in which he claims inhabitancy, and that he must have openly and avowedly by act and by word subjected himself to the duties and responsibilities of a member of the body politic of that particular State.

* * * * *

We do not think that the framers of the Constitution intended by the use of the word "inhabitant" that the anomalous situation might ever arise that a man should be a citizen, a legal resident, and a voter within a given State and yet be constitutionally an inhabitant elsewhere. * * * ²⁶

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

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

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

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

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

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

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

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

²⁶ H. Rept. 976, pp. 6-9. The minority report did not challenge the majority report's construction of the term "inhabitant," but rather differed with the majority on the application of the facts concerning Member-elect Beck's inhabitancy under the principles enunciated by the majority.

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

1. Censure

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

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

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

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

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

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

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

²⁷ See 2 Hinds, secs. 1246-1249, 1251, 1256, 1305, 1621, 1656; 6 Cannon, sec. 236.

²⁸ See 2 Hinds, secs. 1239, 1273, 1274, 1296; 6 Cannon, sec. 239; "Senate Election, Expulsion and Censure Cases," S. Doc. 71, 87th Cong., pp. 125-127, 132-154.

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

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

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

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

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

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

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

(1) For his noncooperation with and abuse of the [Gillette] subcommittee * * * in 1952 during an investigation of his conduct as a Senator; and

(2) For abuse of the Select Committee to Study Censure [Watkins committee] ("Senate Election, Expulsion and Censure Cases," pp. 152-154).

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

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

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

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

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

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

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

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

2. Other forms of punishment

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

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

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

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

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

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

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

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

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

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

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

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

3. *Committee view*

The power of the House of Representatives upon majority vote to censure and to impose punishments other than expulsion is full and plenary and may be enforced by summary proceedings. This discretionary power to punish for disorderly behavior is vested by the Constitution in the House of Representatives, and its exercise is appropriate where a Member has been guilty of misconduct relating to his official duties, noncooperation with committees of this House, or nonofficial acts of a kind likely to bring this House into disrepute.

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

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

C. THE SCOPE OF JUDICIAL REVIEW

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

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

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

In *United States v. Johnson*, 337 F. 2d 180 (4th Cir. 1964), aff'd 383 U.S. 169 (1966), where it was held that the Speech or Debate clause⁸² precluded a criminal prosecution based on a Member's speech on the floor of the House, the Fourth Circuit stated (p. 190):

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

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

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

⁸² U.S. Constitution, art. I, sec. 6.

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

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

FINDINGS

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

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

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

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

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

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

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

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

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

CONCLUSIONS AND RECOMMENDATIONS

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

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

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

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

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

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

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

This Committee recommends that—

1. Adam Clayton Powell be permitted to take the oath and be seated as a Member of the House of Representatives.
2. Adam Clayton Powell by reason of his gross misconduct be censured and condemned by the House of Representatives.
3. Adam Clayton Powell, as punishment, pay the Clerk of the House, to be disposed of by him according to law, \$40,000; that the Sergeant at Arms of the House be directed to deduct \$1,000 per month from the salary otherwise due Mr. Powell and pay the same to the Clerk, said deductions to continue until said sum of \$40,000 is fully paid; and that said sums received by the Clerk shall offset any civil liability of Mr. Powell to the United States of America with respect to the matters referred to in paragraphs Second and Third above.
4. The seniority of Adam Clayton Powell in the House of Representatives commence as of the date he takes the oath as a Member of the 90th Congress.
5. The House direct the Clerk of the House of Representatives to forthwith terminate salary payments to Corrine Huff whose name appears on the clerk-hire payroll of Representative Adam Clayton Powell.
6. The House make a study in depth to determine whether or not existing procedural and substantive rules are adequate in cases involving charges of breach of public trust which have been lodged against any Member.
7. The Committee on House Administration, which currently is undertaking a revision of its auditing procedures, be directed by the House to file annually a report of audit of expenditures by each committee of the House and the clerk-hire payroll of each Member.

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

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

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

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

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

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

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

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

Now, therefore be it resolved,

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

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

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

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

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

Respectfully submitted.

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

ADDITIONAL VIEWS OF HON. JOHN CONYERS, JR.

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

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

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

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

JOHN CONYERS, Jr.

