REPORT ON MEETING OF NOV. 10th, WASHINGTON, D.C.

SUBJECT DISCUSSED: DETAILS OF CONGRESSIONAL CHALLENGE
By: Mike Thelwell

PRESENT: LAWRENCE GUYOT, MRS. FANNIE LOU HAMER, ANNIE DEVINE, VICTORIA GRAY, MIKE THELWELL, FRANK SMITH, LESTER MCKINNEY, MARY ANN STUPENICO, ATTY. ARTHUR KINOY, STAN NEUMAN (CONGRESSMAN FITTS RYAN'S ASSISTANT) AND TOM ALDER (FROM CONGRESSMAN KASTENMIER'S OFFICE).

Before the meeting officially began Atty. Kinoy mentioned an old precident that some of Bill Higg's law students had dug up which gives persons challenging for a seat in Congress the right to appear on the floor of the House and to address the body on the day that the Congress convenes. This precedent is apparently effective in both the Senate and the House.

Atty. Kinoy outlined the formal procedures for effecting the challenge in the House. There are four separate ways in which such a challenge can be done:

STATUTUARY CHLLENGE

1. This is clearly set forth in the statutes of the United States (Title 2, 201 USC et seq.). This is a law passed by Congress, binding upon the House and is not part of the body's rules of procedure which can be changed at will. The statuary challenge is iniatated by serving a notice of challenge on each of the Congressmen who are being challenged and a copy of the notice with the Sub-Committee on Electinns and Privileges of the House Administration Committee within 30 days of election.

2. The second way of challenging (Bilbo precedent) is merely to file a compaint with the same sub-committee. This complaint can be made by any defeated candidate or an elector from the State. The committe can decide what manner it wants to dispose of the challenge -- to hold hearings or not. If it holds hearings then it votes and reports back to the House.

3. A challenge can also be filed with the corrupt practices committee which is only in session while Congress is adjourned. There is no set guidelines for this committees action except that its powers are limited to investigate and report back to the sub-committee on elections.

4. The fourth way is to have another Congressman-elect challenge or object to the oath being given to the guy being challenged. The body then decides what procedures are to be used in dealing with this objection. The challenged Congressman does not recieve the oath with the rest of the House, but I think that in one case a special resolution was introduced asking that he be sworn in and this resolution passed. The challenge can be also directed to one of a number of committees including the Administration committee.

Atty. Kinly pointed out that it is only in the first challenge (Statutuary) that the case cannot be bargained away in a half hour with the House deciding to adopt whatever procedure it feels to suppress the challenge. In the statutuary challenge the procedures for dealing with a challenge are clearly set forth and ARE LAW, not precedents subject to change. He also pointed out that these procedures give us scope for other kinds of action around the challenge and that contrary to our previous conceptions, the challenge will not necessarily be a flurry over after January but can remain a live issue right up until summer. The meeting arrived a general consensus that we would not use all the methods open to us since if we used method 2 or 3 or any of the other non-statutuary methods the Committeee could conceivably meet and decide to dismiss that challenge and this may pre-empt the full course of the statutuary challenge as the case would have already been decided.

Following is a time-table and break down of the way the statutory challenge is supposed to work.

STATUTUARY CHALLENGE

Under the statute notice must be filed within 30 days of the elections being challenged. This means that we have until DECEMBER 2nd, 1965 to serve notice on EACH MEMBER that we are challenging with copies of these notices being filed with the sub-committee on elections. We have to serve these guys formally and publicly as with a subpoena.

STEP TWO:

The law then gives these people the right to file their replies to this challenge within thirty (30) days. This takes us up to January 1st or 2nd. Of course they may play dead and refuse to acknowledge the challenge with an answer, but the law does allow them the thirty days if they want it.

(As Atty. Kinoy expressed it our challenge will be a formal challenge to their right to sit based on the fact that their elections were based on violation of Negroes right to vote. This will be supported by exhibits, affidavits and whatever evidence we can gather. Also we will attach the validity of the primaries and general elections (candidates refused the ballet, etc.) and the legal theme of the case will be the holding of the Fifth Circuit Court that the political institutions of the state operate on a policy of "Steel-hard segregation". And that all state officials participate in this policy of steel-hard segregation).

STEP THREE:

We are now at about January 1st or 2nd. Congress reconvenes on January 4th, and the challenged congressmen have either just filed their replies or have ignored their right to do this. Now the law gives us the right to go into Mississippi and take legal depositions, (testimony). We can do this for 40 days. How this is done is that we have teams of lawyers with list of the people we want to get statements from. Under this law we can take formal federal depositions (testimony), under oath, from anyone we wish. What we do is get subpeonaes for anyone who doesn't want to talk and get the judge or clerk of courts to sign this subpeona. The judge or clerk must under law issue the subpeona, or else be in contempt of Court. If they refuse we go to the Fifth Circuit and have them issue the subpeona and they can also subpoena the Judge in question. If Judge Cox refused to issue these he would be in contempt of court. Our forty days of depositions (testimony) takes up to about FEBRUARY 10th, 1965.

STEP FOUR

They then have 40 days to gather their depositions. If they use it it takes us up to MARCH 20th.

STEP FIVE

We have under law ten days for rebuttal and we can again take more depositions if we want to which brings us up to APRIL 1st.

Then everything, all evidence is mailed to the Clerk of the House of Representatives. On a certain date our folks and the opposition are summoned before the House Clerk and all the evidence is formally and ceremonially opened. A decision is made about what portion of the evidence is to be printed for the Congress and (if the public requests it). If there is disagreement between the parties about what is to be printed the Clerk will make the decision. He must print the major part of the evidence and copies will be sent to the opposition and to us. The printing can be done over night or it can take longer. However as soon as we receive the printed copies of the evidence we have thirty days (30) to file a final brief. If the printing took xxxx 30 days that would take us up to May 1st, 1964.

STEP SIX

Thirty days to file our final brief. Takes us up to JUNE 1st.

STEP SEVEN

They have 30 days to file their reply to our brief. That would take us up to JULY 1st. Then the entire matter is sent to the Sub-committee on Elections and Previleges who have jurisdiction over the entire controversy. They deiced whether to hold additiona hearings etc, vote on their position and present a resolution to the House. THESE ARE INTENSELY POLITICAL DECISIONS. So I attach a list of the members of this committee.
DEMOCRATS: Ashmore (S.C.) Chairman, Abbit (Vir.), Waggonner (La), Perkins (Kentucky), Gibbons (Fla.), Davis (Ga.).
REPUBLICANS: Chamberlain (Mich.), Goodell (N.Y.), Curtin (Pa.), Devino (Ohio).
That completes the formal procedure as specified by the statutes.

At this point there xx was some general discussion of strategy and our own procedures and time table for this project. Bear oin mind that these dates are all based on the assumption that the opposition takes advantage of all the time allowed them by the statute.

In our first discussion in Atlanta (At Gammon) the general idea was that we would use every possible method of challenge. There was a general concensus at this meeting that perhaps we should not get another Congressman to challenge the swearing in, but to stick with the statutuary method since that was not subject to short-circuit by any autonomous committee.

ALTERNATIVES TO THE CONGRESSMAN'S CHALLENGE on the day congress convenes.

If a congressman objected to the swearing in of another it would at least lead to his temporary unseating. It also would be very dramatic and news-worthy coming on the opening day. But the danger of this challenge being dismissed and used as some sort of final closing of the issue seems too great to risk.

The statute makes no provision for the contested seats being kept vacant until a final decision on the issue. This means that the guys being challenged would be sworn in and take their seats any way. So this alternative was proposed that we get a group of Congressmen (the same ones who would have challenged) to make a resolution on fairness and procedures which would simply state that since there is a challenge that the contested seats be kept vacant pending the outcome. It was felt that this resolution coul get more support and even if it lost it would in no way be a ruling on the real challenge, and if we did keep the guys out pending the outcome it would be at least a moral victory.

TIMING

If you refer back to the outlines of the procedures under the statute it says that we must serve the notices by at least December 2nd. At that point we could have a huge press conference and make public the news of the challenge. Then say, within a week if our allies in Congress came out saying that they were going to introduce the resolution and were seeking support we could begin to organize in the north in terms of getting support for that resolution. Then, it was felt, if we could really mobilize around support for that specific resolution, have delegations visiting Congressmen, sympathy domonstration in Washington on January 4th, etc., and make something like Atlantic City out of it here. Even if we lost, the challenge proper would only be beginning then we could switch the emphasis to Mississippi. Sue, STEP THREE would be beginning -- the period of our taking depositions (testimony), and we could invite lawyers, prominent pe persons, the press, etc. to come to Mississippi to witness the taking of depositions. That way we could still keep the challenge in the public view.

Frank Smith had a reservation about this plan which was this: He doubted the wisdom of putting a lot of emphasis on the resolution since he felt it would lose and the public would get the impression that it was the challenge that had been rejected. This needs to be further discussed.

The entire procedure of petitioning for our cnadidates to be present on the floor of the House and address the group needs to be talked about too.

There was discusssion of the question of the involvement of the Democratic Caucus and Study group in the challenge but this was not conclusive though certain possibilities were raised.

I would suggest that what needs discusssion and very quickly is the entire matter of the organinations commitment to this project- in terms of resources, money etc. And then the strategy should be decided and assignments and responsibilities handed out. We need to start really planning the business of lining up norther and national popular support and deciding the areas we are going to work in and fixing some tentative deadlines.