MISSISSIPPI FREEDOM DEMOCRATIC PARTY
926 Pennsylvania Avenue, SE
Washington, DC
546-4450

REPORT ON THE CHALLENGE

July 7, 1965

THE PRINTING OF THE DEPOSITIONS

Since June 2nd, the MFDP has been embroiled in a day-to-day battle with the Clerk of the House of Representatives, Ralph R. Roberts, who seems to have an interest in seeing that the Challenge of the five Congressmen from Mississippi does not get reported out for a vote by the full House.

Background As required by the statute governing these contested elections, on June 2nd representatives from the MFDP and the challenged Congressmen met with the Clerk to determine which portions of the evidence submitted should be printed by the public printer. The only depositions submitted were the 600 taken by the MFDP; the Congressmen offered no evidence, but they had participated in the hearings called by the MFDP and their cross examination of witnesses was included in our record.

The position of the lawyers representing the Congressmen, former Governor J.P. Coleman, Attorney General Joe T. Patterson, and B.B. McClendon, was that no evidence should be printed as the Challenge itself is not valid. William Kunstler, Arthur Kinoy, and Morton Stavis, representing the MFDP, called for the immediate printing of all depositions since it is not within the authority of the Clerk to determine the validity of the Challenge; only Congress can make that decision and in order to do so must have access to the full record. After a number of hours of debate and discussion, the Clerk announced that his decision would be made within 48 hours.

During that period, we called upon MFDP supporters throughout the country to send telegrams urging printing to the Clerk, the Speaker of the House, and their Congressmen. The response was excellent, and during that two-day period phone calls were constantly going into the Clerk's office, and we estimate that about thirty Congressmen called the Clerk in response to inquiries received. At 6:00 P.M. on June 4th, we thought our efforts were rewarded when the Clerk informed our lawyer, Morton Stavis, Congressmen Philip Burton and Edith Green that the depositions would be printed, and he called for a special meeting with the MFDP for June 7th to go over the details of printing.

At the June 7th meeting the questions of indexing the depositions, sequence, etc. were gone over with a representative from the Public Printing Office. Everything seemed to be in order and in fact the Clerk indicated that the depositions from the Fourth Congressional District were already at the printers and the order had been placed for 1,000 copies.

After about a week, the MFDP became concerned when we could get no firm date as to when the printed record would be ready, and we realized that a prolonged delay in the actual printing could seriously impair chances of a vote on the Challenge in this session of Congress.

On Wednesday, June 18th, Congressman Conyers of Michigan visited the Clerk on this matter and learned that not one deposition had ever been sent to the printers and that the Clerk was now raising technical objections on whether he would proceed and print. This reversal of position was done without notifying the contestants, the Congress, or the public.

The same afternoon, Congressmen Ryan (D-N.Y.), Hawkins (D-Cal.), Burton (D-Cal.), Todd (D-Mich.), Diggs (D-Mich.), Nix (D-Penna.), Resnick (D-N.Y.) and Edwards (D-Cal.) joined Congressman Conyers in meeting with the Clerk and demanded an explanation of his refusal to honor his commitment. The Clerk admitted that he had received a letter from Mississippi Attorney B.B. McClendon, dated June 8th (after the Clerk's decision) which raised questions about whether the depositions conformed to the requirements of the law, since they were late in submission, they were not witnessed, and they were not properly sealed when delivered. In his letter, McClendon admitted that the lawyers for both sides had agreed to waive these formalities--in fact, the Congressmen were the ones to request the delay in taking the depositions, but the Mississippi Congressmen felt that the Clerk should not be bound by these stipulations and should not print because of incorrect procedures.

On June 19th Congressman Edwards, with the support of the other eight Congressmen, held a press conference denouncing the Clerk's action and calling for immediate printing.

The Clerk has never said that he will not print; this would be an untenable legal position. His position is that he's still studying the depositions and will determine what material conforms with the legal requirements in due time.

Activities Around Printing:

Ten Mississippians go to jail: A delegation from Mississippi was in Washington for the purpose of lobbying for the Challenge itself when the issue of printing was reopened. At a meeting on the evening of June 18th, the time they were to return to Mississippi, the group decided to stay an extra day in an attempt to see the Clerk.

The delegation appeared at the Clerk's office the next day and were told that the Clerk would not be back for three or four hours. This was an obvious deception since news reporters who preceded them by about two minutes were told he would return within the half hour. The Mississippians informed the Clerk's assistant, Benjamin Guthrie, that they would wait. After about an hour, the delegation was told that the Clerk was not returning at all that day. They said they would remain in the office until it closed. After another hour, Mr. Guthrie said that the Clerk would be able to see them the next day, Saturday, at 10:00 A.M. The delegation accepted the appointment in writing.

At 10:00 A.M. on Saturday, they returned to the Clerk's office only to find it closed. After a half hour an assistant, Mr. Younger, appeared to say the Clerk was so sorry but he had a funeral to attend and could not see them. The Mississippians pointed out the great extra expense they went remaining in Washington those extra days, and having recieved a written appointment, they intended to see the Clerk that day and would wait for his return. The Capitol police were sent in; all doors and access routes to the area were locked, and people were prevented from going out and returning.

At about 3:00 P.M. a new message was delivered to the delegation from the Clerk. The funeral story was dropped, and this time he said he knew nothing of his 10:00 A.M. appointment and, having just learned about it, could not see them but offered an appointment for Monday anytime. Again the delegation pointed out the expense they had already gone to and that they could not afford to stay another two days and, since they had a written appointment, they would wait that day until the Clerk could get to his office. At 4:30 when the Capitol officially closes, ten Mississippians were arrested for "illegal entry." They are Mrs. Victoria Gray (Hattiesburg), Mrs. Mildred Cosey (Vicksburg), Mrs. Nellie Applewhite (Coila), Mrs. Lillie Willis (Anguilla), Mrs. Ernestine Washington (Vicksburg), Mr. Andrew Hawkins (Shaw), Mr. Roosevelt Vaughn (Starkville), Mr. James Graham (Starkville), and Mr. David Cattlin (Redwood). All were held on $500 bail, which could not be raised at that time, and they stayed in jail until their arraignment on Monday. On Monday, their attorney, Professor Herbert Reed of Howard University Law School, demanded a jury trial which was set for the following Monday, June 28th, and all were bonded out at $300 bail.

After the arraignment, the group went to the Capitol to make a statement to the press. They received a message that the Clerk was willing to see them. The group then made the statement: "On Saturday we attempted to keep a written appointment with the Clerk and were arrested. We have been deceived on three different occasions by the Clerk or his representatives and have completely lost faith in the integrity or good faith of the Clerk or his office. Consequently we can see no reason to attempt to see the Clerk now since we can believe very little of what he says. We did not come to Washington to demonstrate or to sit-in. We attempted to see the Clerk on business in which we are all involved very personally. We found that because we were Negroes and poor people we were treated with contempt and disrespect. We have no wish to be abused further by the Clerk or his assistants."

On June 28th the Mississippians appeared in court only to find that the Judge was postponing the case to July 12th, one of the reasons being that the subpoenas issued to Clerk Ralph Roberts and his assistant, Benjamin Guthrie, were inexplicably lost.

The case for the Mississippians was planned around proving in open court that the Clerk had lied to the people, had told them different stories and treated them with disrespect and contempt; that they were not sitting in and had a written appointment giving them every right to be there; and that they had come to Washington not to sit in, but to participate in activities which directly affected their lives.

Democratic Study Group Supports Printing: Again our supporters started letter-writing campaigns urging printing and the Congressmen responded. After the initial Congressional press conference, the issue was brought up at the Democratic Study Group. Through the question of printing and the active lobbying done in behalf of the MFDP, new support started to emerge from Congress. First, Emanuel Celler, who is chairman of the Civil Rights Committee of the DSG agreed to express to the Clerk and the Speaker his desire to see all material printed. Also the Executive Committee of the DSG sent a letter to the Clerk urging printing. Signers of that letter were Frank Thompson (N.J.), Chairman, Philip Burton (Cal.), John Blatnik (Minn.), Ed Edmondson (Okla.), William Moorhead (Pa.),

John Brademas (Ind.), James O'Hara (Mich.), Morris Udall (Ariz.), Chet Holifield (Cal.), Henry Reuss (Wis.), Thomas Ashley (Ohio), Sidney Yates (Ill.). Not all of the signatories of this letter, nor Emanuel Celler, supported the Fairness Resolution on opening day, and certainly most were not leaders in this initial action. Their participation, and the fact that the DSG so readily acted at a time when the Challenge could easily have been killed for this session, is very encouraging in terms of future support. The fact that the Congressmen from Mississippi are trying to defeat the Challenge by keeping it blocked and bottled up through legal and political chicanery is becoming more and more evident, and a growing number of Congressmen seem to be committing themselves to fight this plan.

Civil Rights Leadership Conference Organizations Support Printing: Thirty-four organizations belonging to the Leadership Conference on Civil Rights signed a statement deploring the Clerk's attitude toward the Mississippians and urging immediate printing of all depositions. The following groups signed. (Starred means they are also on record in support of the Challenge.)

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American Civil Liberties Union*
American Jewish Congress
American Newspaper Guild
American Veterans Committee
Anti-Defamation League of B'nai B'rith
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Catholic Interracial Council*
Christian Methodist Episcopal Church
Congress of Racial Equality*
Council for Christian Social Action-United Church of Christ*
Episcopal Society for Cultural and Racial Unity
Iota Phi Lambda, Inc.
Jewish Labor Committee
National Alliance of Postal Employees
NAACP*
National Association of Negro Business and Professional Women's Clubs, Inc.
National Catholic Conference for Interracial Justice*
National Council of Churches - Commission on Religion and Race*
National Newman Club Federation
National Urban League
Phi Beta Sigma Fraternity
Southern Christian Leadership Conf.*
SNCC*
Transport Workers Union of America
Unitarian Universalist Association-Commission on Religion and Race*
Unitarian Universalist Fellowship for Social Justice*
United States National Student Assn.
Women's International League for Peace and Freedom*
Workers Defense League
State, County, Municipal Employees
Union of American Hebrew Congregations

The statement was also signed by the A. Philip Randolph Foundation and the National Consumers League (not members of the Leadership Conference).

SNCC LOBBY

A good part in the immediate success we had in reaching Congressmen with this issue was due to the SNCC Student Lobby which brought to Washington about 250 students from some 40 states. During the three week period of the Lobby, over 300 Congressmen were visited. The results were:

The Printing of the Depositions: The great majority of Congressmen supported printing.

The Challenge: The count was not so clear cut. The general situation is certainly that the Congress is better informed than prior to the January 4th vote,

and with this support seems to be growing. There have been two very significant changes of position: that of Emanuel Celler of Brooklyn and Brock Adams of Washington, who both voted against us on the 4th but now indicate they will probably support the final unseating. Only some thirty-five Northern Congressmen claim to be irrevocably against unseating. About one-third of those seen still claim to be uncommitted, many raising the basic question that they don't believe that the issue will ever come to the floor. But of that group, many indicate that "if it comes out of committee they will probably vote to unseat." As far as we can analyze, there is growing support; more Congressmen (Celler and Adams are good examples) are beginning to feel the home town pressure, but this pressure must be accelerated in order to ensure a large number of Congressmen pushing for a vote this session.

On the Republican side little progress has been made. There is still a small core of liberal Republicans--about fifteen--who are committed to unseating, and among that group Congressman Bradford Morse (Mass.) has agreed to bring this issue to the Republican Party caucus. But the vast majority of Republicans are still saying that this is a Democratic Party issue, that they have no influence, and that the outcome of the Challenge is controlled by the Democratic Administration.

THE BRIEF

On Wednesday, June 30, 1965, seventy copies of the Brief of Contestants were filed, in accordance with the statute governing contested elections, with the Clerk of the House. Not unexpectedly, Mr. Roberts raised objections to what was, after all, only an administrative procedure. In essence, the Clerk argued that he could not "officially accept the Brief" because the depositions had not yet been printed! Notwithstanding, the Clerk is now required by law to distribute copies of the Brief to members of the House Committee on Administration and to the contestees. He has no authority to rule on matters of timing--nowhere does the statute specify that the filing of the brief is conditional on the depositions having been printed--and it is our position that the five white Mississippians have until July 30th to file their replies. Our case is at last in the hands of the House of Representatives.

The Brief summarizes in detail evidence amassed by the United States Commission on Civil Rights, the Department of Justice, and the Federal courts--evidence attested to, moreover, by the President and the Congress--that Negroes have been systematically excluded from the electoral process in Mississippi. It also contains excerpts from testimony gathered in Mississippi earlier this year in accordance with the deposition procedure prescribed by statute. But the fact of Negro exclusion from Mississippi's political life is by now so well documented that few, including, apparently, the five white Mississippians, would dare dispute it. Thus as the Challenge moves into its final phase, the issues which seem to be emerging are: First, does the House have the power to vacate the seats held by the contestees? And second, does it have that obligation? These two questions the Brief answers affirmatively and authoritatively.

As to the first, the Brief points out that the House has in the past set aside election results in over forty contested elections where Negro citizens were prevented from exercising the franchise. The vast majority of these contests

occurred between 1867 and 1900--before the Nation, both North and South, in effect repealed the 13th, 14th, and 15th Amendments. In many instances, contestants were actually seated: for example, in the Mississippi case of Lynch v. Chalmers in the Forty-Seventh Congress (1881-1883), and in four Louisiana cases in the Forty-First Congress (1869-1871).

Of course, the present Mississippi contests have as their goal the unseating of the contested Members and the calling of new elections. Again, there is ample precedent for such House action: in the Louisiana cases of Hunt v. Menard in the in the Fortieth Congress (1867-1869) and Sypher v. St. Martin in the Forty-First (1869-1871), and in the Alabama case of Smith v. Shelly, Forty-Seventh Congress (1881-1883), the sitting Member was unseated and new elections were held. One South Carolina case, Johnston v. Stokes in the Fifty-Fourth Congress (1896) provides us with a particularly strong precedent; in the words of the Brief, "The proven facts before the Committee and the House were in essence identical to the record in the present cases--thousands of Negro citizens disenfranchised by operation of a sweeping and broadly constructed registration law vesting absolute discretion in the hands of local voting registrars." The South Carolina challenge based itself upon the claim that the operation of the state's 1882 voter registration law had resulted in the massive exclusion of Negro citizens from the electoral process. The reasoning of the House was as follows:

(1) The South Carolina law was unconstitutional;
(2) Under Article I, Section 5 ("Each House shall be the judge of the elections, returns, and qualifications of its own members"), the House has the power to consider the constitutionality of a state law as it bears upon the right of any person to sit in the House;
(3) In particular, where large numbers of citizens have been excluded from the electoral process by the operation of an unconstitutional law, "The House has the right and the obligation to consider the impact of the operation of the law upon the validity of the election;"
(4) Where the operation of the election laws results in the massive disenfranchisement of Negro voters--in effect, results in preventing a "fair expression of the will of the voters"--no valid election has been conducted and new elections must be called.

Johnston v. Stokes is also instructive for its reasoning as to why such elections ought to be set aside "regardless of any showing of 'special wrong-doing' on the part of the contestees":

> The difficulty is that a system exists the principle of which is to disenfranchise the colored voters. It is a system that permits the minority in certain districts to choose the members of the House themselves. Individuals are powerless to oppose it, and it is a duty which we owe to this Government, and even to the State of South Carolina, to refuse to seat members chosen in such a manner.

The Brief deals with a number of collateral issues as well. For example, it points out that challenge contestants need not be rival claimants to the seats in question. Mrs. Hamer, Mrs. Devine, and Mrs. Gray are entitled, as electors of the districts concerned, to file protests against the seating of Whiten, Walker and Colmer, respectively. Last November's Freedom Elections proved simply that Negroes would vote in Mississippi if they were allowed to do so. They are in no way essential to the challenge procedure and are certainly not being used to establish rival claims to the three seats.

Another point on which there has been come confusion is the so-called Ottinger case. The House, this past January, dismissed a challenge to the seat of Representative Ottinger of New York, on the grounds that the person who instituted the contest was not competent to do so. In fact, Mr. Frankenberry, the alleged contestant, was campaign manager for Rep. Ottinger's opponent. The Majority Leader, Mr. Albert, made it quite clear that in ruling that the deposition procedure was not available to Frankenberry, the House was in no way restricting its power to hear election cases instituted by voters or other concerned persons.

Thus, it would appear that far from creating a new precedent, unseating the five white Mississippians would constitute a reaffirmation of one of the most honored of House traditions. As the Committee on Elections of the Thirty-Fifth Congress put the matter in Whyte v. Harris, "The question is, shall elections to the House of Representatives of the United States be free, fair, and open to the whole body of legal electors?" Merely to raise this question is to answer it: the House has a solemn constitutional duty to vacate the seats of the five illegally elected Mississippians.

CONCLUSION

The Clerk still has not proceeded on the printing. His last communication on the issue was to Congressman Don Fraser of Minnesota which stated, "I have just about resolved this matter and as soon as the mechanics of carrying my determination out have developed sufficiently I will immediately inform you as to all particulars." A lot of double talk, saying I'll take my good old time, but the indications are that he is preparing to print some part of the evidence. Pressure is still needed obviously.

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The major job ahead is going to be to keep the pressure focused at each step of the Challenge so that it does not get buried by use of legal, technical, or political tricks. Even before we're over the hurdle with the Clerk, we can foresee the next bottleneck--the Southern dominated Subcommittee on Elections. Since assuredly no help is possible there, letters should start going to members of the full Committee on House Administration and to individual Congressmen noting that all the MFDP material is in, that the Congressmen must submit their brief by July 30, that members of the full Committee can get copies of the MFDP Brief from the Clerk of the House, and urging that the Committee see that the racist dominated Subcommittee does not prevent the democratic operation of the Congress by blocking a vote of the total membership.

Since the total legal procedure under the statute will be concluded by July 30th (even if all the records are not printed, they are still legally considered to be now before the Committee), the projected plans are to call for a vote sometime in mid-August. At that point delegations from Mississippi will come to Washington and will be asking supporters and friends from throughout the country to join in a vigil until a vote on unseating is taken. (We will keep you posted on details.)

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