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THE MISSISSIPPI CHALLENGE: SOME QUESTIONS AND ANSWERS

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INTRODUCTORY NOTE

The contested election cases of the five Mississippi Congressmen are now being considered by the House Administration Committee. Congressmen have raised some questions concerning the legality and procedures of the Challenge. This memorandum answers the questions most frequently posed. It is brief, in order to provide a convenient source of reference. For more detailed information, consult the Brief of Contestants.

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THE MISSISSIPPI CHALLENGE: SOME QUESTIONS AND ANSWERS

I. WHAT ARE THE REASONS AND GROUNDS FOR THE CHALLENGE?

1. Why was the election of the Mississippi representatives illegal?

The election of the Mississippi representatives was illegal for two reasons. First, the representatives were chosen under a system which almost totally excluded Negroes from voting, that is, a system excluding more than 42% of the population of Mississippi. Such elections are in direct violation of the Fifteenth Amendment to the Constitution of the United States. This exclusion has been accomplished through intimidation, terror, violence, and even murder, as well as through legal and administrative trickery. The second reason for the illegality is that qualified candidates were kept off the ballot. Thus not only were these candidates prevented from submitting their ideas and political platform to the voters, but the voters themselves were deprived of the opportunity to choose between competing candidates and platforms.

2. What is the legal basis for the Challenge?

The Challenge is being brought pursuant to Sections 201-226 of Title 2, U. S. Code, and Article I, Section 5 of the Constitution. The Mississippi Freedom Democratic Party contends that the elections of the Mississippi Congressmen were illegal under these provisions because of the wholesale denial of Negroes in that state of their rights of suffrage. The sitting members were nominated illegally and were elected illegally in the primary of June 2, 1964, and in the general election of November 3, 1964. The contestants were illegally refused the placing of their names on the ballot for the November elections, despite having filed the requisite petitions. Such actions are part of the regular and systematic exclusion of qualified Negro voters from the electoral processes of Mississippi. Finally, the elections of June 2 and November 3 are voidable by the House under the act of February 23, 1870, which readmitted Mississippi to representation in Congress.

3. Should not the State of Mississippi, and it alone, be able to determine the validity of the elections and specify the grounds for removal from office?

No. Elections for the House of Representatives are Federal elections; responsibility for determining electoral disputes is committed by the Constitution to the House. The federal courts have consistently held that this jurisdiction of the House excludes any concurrent or remaining jurisdiction in the courts or in any other governmental body. Thus the State of Mississippi and any of its organs are prevented by the Constitution of the United States from judging the validity of the elections.

4. Do the Contestants have standing to challenge the election inasmuch as none of them were listed on the ballot at the general elections?

Yes. Any citizen has the right to challenge the election of his Congressman as being illegal. This is undisputed law in election cases. See the Case Against Richard S. Whaley (63rd. Congress, 1913). There has arisen, however, some question as to whether the statutory provisions for the collection of evidence are available to private individuals. The language of the statute, 2 U.S.C.A. sec. 201, is "Whenever any person intends to contest. . ." (emphasis added). Thus, on the face of the statute, a private person can use the statutory provisions. Moreover, the majority and better-reasoned authority sustains the right of any citizen to invoke the statute. (See Contestants' Brief, pp. 86-101)

In any event, the House in the present challenge has already voted that the statute should be utilized. On January 4, 1965, Majority Leader Albert stated the directive as follows:

> "Any question involving the validity of the regularity of the election of the Members in question is one which should be dealt with under the laws governing contested elections. I therefore urge the adoption of the resolution." (111 Cong. Rec. 1 (1965))

Even if general standing were not sufficient, three of the complainants here are Mrs. Hamer, Mrs. Devine, and Mrs. Gray, who attempted, in the Second, Fourth, and Fifth Mississippi Congressional Districts respectively, to have their names placed on the general election ballot and who submitted the required petitions to the State Election Board. The Board proceeded to impose an illegal further requirement of certification of the petition signatures by local registrars. The latter refused to do so

on the grounds that the signatories had failed to pay their poll taxes. This refusal blatantly violated the Twenty-Fourth Amendment to the Constitution, which bans the poll tax as a condition for voting in federal elections. Several registrars are quoted in the depositions as simply denying the authority of the Twenty-fourth Amendment. If the names had been placed on the ballot there would be no question that the statutory procedures for collecting evidence would be applicable. It would be strange indeed if qualified candidates whose names have been wrongly kept off the ballot shoudl thereby be deprived of using the very procedures which Congress has set up in order to insure honest elections.

5. Is not the new Voting Rights Bill sufficient to alleviate the wrongs committed against the Negroes of Mississippi?

No. The Voting Rights Bill in several ways fails to alleviate the oppression of Negroes in Mississippi or even to secure effectively their right to vote. A law is no more potent than its sanctions. Under the new bill, a local official who refuses to register an eligible Negro applicant, or a private individual who intimidates the Negro physically or economically, exposes himself to dangers no more severe than a civil action for preventive relief, heard by a Southern district judge, or a criminal prosecution to be decided by a predominantly white jury, the obstinancy of any member of which can block a guilty verdict. Southern trial courts, including, unfortunately, the federal courts, have established a record in civil rights cases of notorious and unequalled laxness. In their hands, it is folly to expect either the civil or criminal sanctions to be effective.

True, the Voting Rights Bill also allows a court to delay the announcement of election results until the votes of registered Negroes have been tabulated. But to qualify for this remedy, the Negro populace must have somehow succeeded in casting its votes. Even were there genocide of the Negro community on its way to the polls, so long as its vote was not actually cast, the Voting Rights Bill calls for no suspension or postponement of the election results. The only remedy would be an abortive criminal action with predictable results. The same fate, denial of life and liberty, awaits the tens of thousands of actually qualified Negroes who in the face of such terror never dared to attempt to vote or even to attempt to register with the federal registrar.

History confirms this prediction. When the legal restrictions on Negro voting in Mississippi were removed in 1868, the Ku Klux Klan was organized in that same year and privately-organized violence on a scale yet unmatched in this country was visited upon the Negroes of that state. There is no need to recount again how a whole vast array of weapons from physical violence to economic pressures and even including manipulation of federal funds for welfare and assistance programs have been used to disenfranchise Negroes.

Even though federal registrars are provded, this in no way insures that Negroes will actually be able to register, that various nonlegal pressures -- which can be far worse than legal ones -- won't be turned against those attempting to become voters. Consider the situation in Tallahatchie County, where the Justice Department, proceeding under section 1971 of Title 42 of the United States Code, has succeeded in obtaining a court injunction which essentially eliminates all procedural barriers to registration. See United States v. Dogan, 314 F.2d 767 (5th Cir. 1963). Of the Court's decree it has been said:

> "'No voting law the Senate could draw up would be more stringent than the injuction under which this county is operating now,' claims George Payne Cossar, a local attorney and a member of the Mississippi House of Representatives. 'The door to Negro registration is wide open.'
>
> "All the same, only about five Negroes per week are seeking to register, according to both civil rights leaders and local white leaders. Since residents must usually display two poll-tax receipts to vote in other than Federal elections, many of the Negroes now registering will not be eligible to vote in local contests until 1967."
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> The Wall Street Journal, May 7, 1965.

Hence, Mississippi Negroes, in the face of such threats as those experienced in Tallahatchie County, must endure further delays in the acquisition of rights long since guaranteed them, and further opposition and hostility on the part of those very men who should be representing them in local, state, and national governing bodies. At a time when the House has under consideration so much legislation vital to the economic and social well-being of the nation, and particularly of these Mississippians, it cannot deny them a voice in the deliberation and con-

sideration of matters so crucial. The Voting Rights Bill can have no more than a peripheral and gradual influence of these problems. The Challenge meets them directly by asking of the House that it do no more than its duty and uphold its sworn allegiance to the Constitution.

And, finally, the Challenge is the necessary remedy under the Constitution for a specific past wrong; and it is now ripe for adjudication by the House -- a precise case that is untouched by the voting bill which applies only to the future.

II. WHAT IS THE SCOPE OF THE CHALLENGE AND ITS IMMEDIATE GOALS?

1. Why are the Senatorial elections not being contested?

If the elections of the Mississippi Representatives were void, it may follow that the elections of Senators Stennis and Eastland are also invalid. At this time, however, the Mississippi Freedom Democratic Party is not pressing for the unseating of either Senator. But if the present exclusion of Negroes from the voting process continues, senatorial elections would be just as unconstitutional as the present Mississippi elections for Congressional seats. The United States Senate, as the judge of its own elections, would decide the question.

2. Since there are other areas where challenges might also be brought and they have not been, would unseating the Mississippi Congressmen unfairly discriminate against Mississippi as opposed to the treatment of these other areas?

Most simply, the Mississippi Freedom Democratic Party is a political party organized in and concerned with Mississippi. It does not attempt to promote activities in other states, though it would hardly be hostile to challenges elsewhere in the hard-core South. Even from a national viewpoint, a policy of countering the most outrageous evils first is commended by common sense and rational strategy.

3. Do the Challenge procedures apply to representatives of malapportioned districts?

Reapportionment controversies are distinguishable by the availability of adequate relief outside of Congress.

Complete and effective relief exists in the courts. However, in the case of the Challenge, the federal and state courts under the Constitution have no jurisdiction or authority to act. Sole responsibility to judge the validity of an election is placed on the House of Representatives itself.

4. Why not bring the Challenge through the courts, as is usually done for the protection of individual rights guaranteed by the Fourteenth and Fifteenth Amendments?

It cannot be repeated too often that this is a matter cognizable by the House and by the House alone. More than forty times in the past it has overturned elections on the very grounds now urged by the Mississippi Freedom Democratic Party -- that Negroes were prevented from voting. (See Contestants' Brief, pp. 41-42) The power and the duty to protect election rights must be exercised by this House now.

5. Will all, or only some, of the Mississippi delegation be removed if the Challenge succeeds?

Since Negroes constitute a substantial fraction of the population in all five of Mississippi's Congressional districts, and since Negroes are almost totally excluded from voting in every district, all five elections were unconstitutional and therefore all five representatives should be removed. It remains, however, within the judgment of the House as to whether to unseat all five or only some or none of the Congressmen.

6. Will Mississippi be left without representation if the Congressmen from Mississippi are unseated?

Yes. The state will lack all representation in the House until new elections are held, although it will remain fully represented in the Senate. Representation below the figure prescribed by law is not, however, at all uncommon, since a seat becomes temporarily vacant whenever its occupant dies or becomes otherwise incapacitated. Furthermore, were deaths to befall the single Congressmen from Vermont, Nevada, Wyoming, Delaware, or Alaska, the entire state would be left without representatives in Congress until new elections were held.

Mississippi would only be without representatives until new and constitutional elections were held. How short the period of no representation would be is entirely dependent on the state of Mississippi itself. (Representatives to fill vacancies must be elected;they cannot -- unlike Senators and

Senate vacancies -- be chosen by the governor of the State.) That Mississippi should be unrepresented for a period of time is not unfair to that state, since the "people" of that state and their "elected" state officials have for seventy years kept Negroes from participating in open and free elections.

7. Will unseating the present Congressmen automatically put the Freedom Democratic Party contestants into office?

Emphatically, no. The relief requested by the Challenge is twofold: (1) the unseating of the present delegation, (2) the eventual seating of the winners of new elections in Mississippi which, unlike its 1964 predecessor, would be conducted according to law, including the 15th Amendment.

Only if the Freedom Democratic Party contestants decide to run in the new election, qualify as candidates, and emerge from free elections victorious will they be entitled to sit in Congress. (In the Second Congressional District, currently "represented" by Jamie Whitten, Negroes who are prevented from voting, constitute a majority of the total voting-age population. In a free and open election it is quite possible that Mrs. Fannie Lou Hamer, a resident of that district and contestant in the Challenge, would be elected to Congress.

8. When will new elections be held?

If the House unseats the existing delegation, it may specify in its resolution a date on which re-elections will be held. Otherwise the state of Mississippi would be allowed to hold new elections at any time. In either situation, the new elections would again be subject to challenge if suffrage should again be limited according to race. Were, for some reason, Mississippi to fully abdicate its responsibility to conduct an election constitutionally, it would not be beyond the Constitution of the House to recognize an election held with Constitutional suffrage but without the participation of the existing government of Mississippi, perhaps [illegible] with the Federal examiners and poll-watchers of the new voting bill present.

III. WHAT PRECEDENTS ARE APPLICABLE TO THE CHALLENGE?

1. What precedent supports the present action?

In forty-three election contests in the past the House of Representatives has set aside the results of an election to that body, because of the exclusion of Negro citizens from the electorate. These cases are conveniently summarized in the brief for the contestants, Appendix B. A few of the more important and typical cases are discussed below. They demonstrate beyond any doubt the power and duty of the House to consider and decide the merits of the Challenge.

Mississippi election of Lynch v. Chalmers, 2 Hinds, 1959, p. 263 (47th Congress, 1882):

> The Mississippi voting laws were technically construed so as to eliminate large numbers of Negroes from the vote. The House emphatically rejected the notion that it was in any way bound by the decision of Mississippi election officials upholding the validity of the election. The central issue with which the House was squarely faced was whether it would permit the results of an election to stand when that election excluded great numbers of Negro citizens from the exercise of their franchise. The Elections Committee vigorously took the position that the House had the power, and more than that, the duty to set aside the results of such an election. The Committee Report was approved by the House. In that report the Committee asserted that the House had broad powers indeed to fashion an appropriate remedy to protect the votes of the citizens of the state. Its conclusion was that the winner of the election should be refused seating, and that the contestant be seated in his stead.

South Carolina election case of Johnston v. Stokes, 2 Hinds, § 1126, p. 706 (54th Congress, 1896):

> Thousands of Negroes were disfranchised, as they have been in present day Mississippi, by the operation of voter registration laws which were broadly interpreted so as to place unfettered discretion in the hands of the local registrars. There was no disagreement of any consequence of the first issue, that the House had the power, when the right of a member to take his seat is in question, to find that the election had been conducted under unconstitutional election provisions. This is the power granted it by Article I, §5 of the Constitution. The decisive issue was as to the effect to be given an election conducted under unconstitutional

registration laws, i. e., the question of remedy. Of the three alternatives considered - seat the contestee, seat the contestant, or hold new elections - it chose to conduct another election. Essential to this decision was the underlying determination that there had not been a valid election. The election was set aside because qualified voters had been denied the right to exercise their franchise, which denial made the outcome of the election doubtful in view of its extent.

South Carolina election case of Murray v. Elliott, 2 Hinds, §1074, p. 597 (54th Congress, 1896):

The House found evidence of a general conspiracy among registration, election, and other state officials to deprive Negroes of their right to vote. The same sort of conduct is shown over and over again in the depositions gathered for the Challenge. The inference of a conspiracy is all the more compelling in view of seventy years of additional experience by Mississippi officials in devising means to prevent the free exercise of the vote.

Louisiana elections cases, 1868-1896:

This series of cases answered the question whether the House and the nation would tolerate the wholesale exclusion of Negro voters through the use of intimidation, terror and violence.

Hunt v. Sheldon, Sypher v. St. Martin, Kennedy and Morey v. McCrannie, Newsham v. Ryan, Darrall v. Bailey (41st Congress, 1870):

The House concluded that vacating the contested seats was the "best permanent practical means of securing fair and free elections." H.R. Rep. No. 38.

Benoit v. Boatner, 1 Hinds, §337, p. 227 (54th Congress, 1896):

The House reaffirmed the principle of the earlier cases, that when large numbers of Negroes have been intimidated and beaten to prevent them from voting, the election must be voided, even though in some precincts the election was free of coercion. The House considered its course of action to be one of high constitutional duty.

2. Is the Ottinger case a precedent against the Challenge?

In January of this year the House dismissed statutory proceedings which had been brought challenging the seat of Representative Ottinger of New York. The contest had been instituted by Mr. Frankenberry, the campaign manager of the defeated candidate. The issue in the Ottinger case related solely to the availability

of the deposition-taking procedures of §§201-226 of Title 2, U.S.C. The power of the House to hear an election contest brought by a person other than the defeated candidate was not the issue. The ruling of Ottinger was to deny the availability of the statutory procedures for taking evidence to the Contestant.

As to the power of the House to hear election cases brought by persons other than the loser in the election, this has never been in doubt. Such a proceeding can be instituted upon the initiative of another member of the House, or by the filing of a protest by an elector of the concerned district or by any other interested citizen of another district. Case against Richard S. Whaley, 6 Cannon's Precedents, §78, p. 111 (63rd Congress, 1913); see also Letter of Assistant Clerk to the Speaker, 111 Congressional Record 795, Jan. 14, 1965.

There is no issue in the present Challenge as to the availability of the statutory procedures for gathering evidence. That question is moot. The depositions have already been taken, with the participation of the contestees by way of cross-examination. Since the House had directed the contestants to follow the statutory procedures, the Ottinger ruling is inapplicable wholly. In short, the House thereby decided the issue. In discussing his proposed H. Res. 1 on January 4, Majority Leader Albert said: "Any question involving the validity of the regularity of the election of the Members in question [viz., the Mississippi delegation] is one which should be dealt with under the laws governing contested elections." 111 Cong. Rec. 17 (1965). In adopting the resolution the House ordered that the Challenge be brought in accordance with Title 2 and its provisions for contested elections. The determination that the statute is applicable is decisive. In re Voorhis, 296 Fed. 673. The House has the sole power of deciding whether Title 2 is applicable. It has ruled that it is. Moreover, contestees failed to move to dismiss the statutory proceedings, and participated in the taking of the depositions, so that the issue as to the propriety of those proceedings is now entirely moot and utterly immaterial.

This is the just and proper conclusion. The narrow construction given to the statutory provisions in the Ottinger case should not be applicable to an election complaint the essence of which is the exclusion from the electoral process itself. The House has never insisted upon so strict a construction of these statutory provisions as would make a mockery of their letter and spirit. See Bisbee v. Finley (Fla.) 2 Hinds, § 977, p. 317 (47th Congress): "No statute can tie the House down to any rules of procedure. Its provisions are directory, constituting only convenient rules of practice, and the House is at liberty, in its discretion, to determine that the ends of justice require a different course." It cannot seriously be thought that those

legitimate ends will be properly pursued by deciding that that the parties bringing this Challenge are not strictly "contestants," when the gravamen of their charge is that they and nearly all Negro Mississippians have been excluded from the electoral processes of that state. The Ottinger case is wholly inapplicable to this Challenge, and both the ends of justice and the specific mandate of the House itself in adopting H. Res. 1 compel the conclusion that the statutory procedures were properly invoked. The Challenge must be heard on its merits.

See also the answer to question I (4).

IV. WHAT ARE THE PROCEDURAL REQUIREMENTS FOR CONDUCTING THE CHALLENGE, AND HOW HAVE THEY BEEN MET?

1. What general outlines are prescribed by statute for bringing the Challenge?

The procedures for contesting elections are outlined in 2 U.S.C. §§201-226. Notice of the contestee's challenge of the election of any member of the House of Representatives is to be made in writing within thirty days after the election results have been officially determined. §201. A period of ninety days is then provided for the taking of evidence in the form of depositions. The contestant initially is allotted forty days for the gathering of testimony. The sitting member than has a like forty-day period. Finally, the contestant has ten days in which to take rebuttal testimony. § 203.

When the depositions have been completed, they are to be sent, without unnecessary delay, to the Clerk of the House of Representatives. He is to open the package in the presence of the contesting parties or their attorneys. The parties are then to reach agreement upon which testimony is to be sent to the Public Printer. The clerk is to direct the printing and compile an index. Should the opposing parties be unable to agree upon which portions of the evidence are to be printed, or should either party fail to attend the session at which the materials are to be opened, the Clerk is authorized to examine the contents of the depositions and decide what is to be made part of the printed record. Section 223 further directs the Clerk to preserve those portions of the testimony not to be printed, "and lay the same before the Committee on House Administration at the earliest possible opportunity."

Upon receipt of notice from the Clerk, the contestants are allowed thirty days within which to file a brief setting forth the facts and authorities upon which they rely to

to establish their case. A like period is given the contestees. The contestants are then given an additional period of thirty days to file a brief in reply to new matters raised by the brief of the contestees.

The case then goes before the House Administration Committee. The Committee then submits its report to the House, which then makes its decision on the contested election as a question of high constitutional privilege.

2. Was sufficient notice of the contest given the contestees?

Yes. Notice of contest, elaborately detailed, was filed according to law and was served not only upon the contestees personally, but also upon their residences and places of business, including their offices in the House Office Buildings.

3. Were the allegations sufficiently specific?

So profuse with detail were the allegations that the notices of contest averaged thirty pages in length, in addition to long appendices. Copies of the notices are available, on request, from either the Mississippi Freedom Democratic Party or from the Clerk, if and when he prints the record.

4. What hearings have been held and what witnesses have appeared?

Upon requisite notice and under agreed-upon proceedings pursuant to federal statute, over 600 witnesses have testified under oath in support of the allegations and notice of contest. The transcript of their testimony is about 10,000 pages in length. By far the greater part of this evidence was gathered within Mississippi from areas all over the state. Some witnesses were deposed elsewhere in the nation as to what they had personally seen and heard while in Mississippi. Attorneys for the contestees actively participated and examined witnesses in the taking of most of the depositions. In all cases full and adequate notice was given contestees of the deposition taking.

5. May the seat of a Congressman be challenged if he was not directly involved in the election fraud?

Yes. The precedents are clear in which the member whose seating is challenged is not himself implicated in the electoral irregularit (See Contestants Brief, pp. 67-106.) A candidate's seating is legitimate only if he has been duly elected by his constituency. Illegality in the voting process undermines that legitimacy regardless of the degree of participation and the extent of personal guilt of the candidate who benefits from the illegality. This is settled doctrine; any other rule would lead to the irrational toleration of the grossest malfeasance.

6. Must the evidence show that the results of the election would have been different had Negroes been allowed to vote?

No. The contestant need not show that but for the wrongdoing the outcome would have differed. This "but-for" notion received some support during the nineteenth century, but has long since been conclusively rejected. The rationale for its rejection derives from the possible evil the doctrine would condone when the onerous burden of proving "but-for" causality cannot be sustained. The rights of the winning candidate in the original election are adequately protected by his opportunity to demonstrate majority support in the reelection.

7. Were counsel for the sitting members present at the taking of depositions and what stipulations were made at that time regarding the admissibility of the evidence?

Governor Coleman and other attorneys for the contestees were present at the taking of most of the testimony. They were always given adequate notice that depositions were to be taken. They were permitted to cross-examine all witnesses and had ample opportunity, at that time, to challenge the propriety of any evidence adduced. It was stipulated by both parties to each contest that objections to technical defects or other departures from §§ 201-226 of Title 2 would be waived.

8. Can technical objections to the depositions be raised at this stage of the proceedings, in the face of the stipulations?

It has been repeatedly held in House election contests that the technical requirements of the 1851 statute, 2 U.S.C. §§ 201-226, are not mandatory but merely directory. South Carolina case of Mackey v. O'Connor, 1 Hinds § 735, p. 950; Louisiana case of Benoit v. Boatner 1 Hinds § 339, p. 230; McCrary, a treatise on the American Law of Elections, Ch. 12, § 373. The 1851 rules were intended merely for the protection and guidance of the parties, who are free to waive any of the technical requirements. Failure to raise objections on these grounds, and even more so, specific waiver of such objections, forecloses the parties from raising them at a later time. Mitchell v. Walsh, 54th Cong. Rep. 1899; Duffy v. Mason, 46th Congress, 1 Ells 363. The sitting members have fully participated, by way of cross-examination, in the taking of the depositions. To permit the sitting members to renounce their own stipulations of waiver of technicalities, upon which in good faith reliance 10,000 pages of testimony were taken, would perpetrate the greatest fraud upon the contestants, the electorate of Mississippi, and the House of Representatives itself. In the New York election case of Frank v. LaGuardia, Cannon's Precedents, Vol. VI, § 164,

stipulations had been entered into waiving the time limits on the gathering of testimony. When the contestee renewed this technical objection in his brief, the Committee, in its report, stated that his attorney, who had "joined in the stipulation to waive the requirements of the law, . . . was afterwards guilty of a breach of legal ethics when he raised the point of lack of diligence." H.R. Rep. No. 1082, 68th Congress, 2nd Session (1925).

The House has acted, in case after case, to remove technical obstacles to the consideration of the merits of election challenges. As was explicitly agreed by the Clerk of the House and attorneys for the contestees, in their June 2nd conference with the attorneys for the contestants, the evidence in its entirety must be printed by the Public Printer. Only in this way will the entire truth of Mississippi's shocking disregard for the laws and Constitution of the United States be laid before the House and the American people.

9. Has the Clerk of the House agreed to print the depositions, and is he doing so promptly?

On June 4, in a telephone conversation with Congressman Philip Burton, the Clerk committed himself to printing all depositions requested by the Mississippi Freedom Democratic Party. On the same date he announced an identical decision to Mr. Morton Stavis of Newark, New Jersey, attorney to the contestants, again by telephone. These assurances were made at the end of a forty-eight hour period after the June 2 meeting of the attorneys for both parties in the presence of the Clerk. The Clerk's deputy in charge of printing told Mr. William Higgs, another attorney for the Mississippi Freedom Democratic Party, at a meeting in the clerk's office the next morning, that not only had the Clerk decided to print all the depositions as requested by the MFDP, but that he had also decided that he would print another forty depositions which the MFDP had indicated it was not particularly concerned with having printed, as well as reproducing all photographs and other documents - all in 1000 copies. Mr. Higgs then returned two days later, on Monday, June 7, to enquire as to the progress. The deputy in charge, Mr. Guthrie, said that the first of eight volumes would be sent to the Printer that afternoon, that volume containing the testimony from the Fourth Congressional District of Mississippi. For the next three days Mr. Higgs checked with Mr. Guthrie and was told each time that things were proceeding very well indeed. The following Thursday a legal assistant to Mr. Higgs was given the runaround. Congressman Ryan (D.-N.Y.) and Congressman Conyers (D.-Mich. had their offices place calls to the Clerk's office that afternoon. They too had similar results. The next morning Congressman Conyers

and Mr. Higgs went directly to the office of the Clerk. He was not in, but Mr. Guthrie and the Clerk's attorney informed them that the Clerk had repudiated his earlier decision and was insisting upon full compliance with the technical requirements of the statute, even though his action was contrary to clear precedent and his own earlier announced decision.

Subsequently a number of leaders of the Democratic Study Group visited the Clerk and suggested that he print all the material as soon as possible and note his objections to any of the depositions in the printed material. The Clerk seems to have followed literally this suggestion and has had all of the depositions printed in three volumes with his prefaced ruling rejecting all of them. It must be pointed out that if the present Clerk followed the contested election statutes in other contests to the degree he has been enforcing them against the MFDP, then under Section 218 of Title 2 (requiring the depositions to be written out completely in the presence of all the parties and the hearing officer), the present Clerk apparently has been illegally printing all testimony that he has sent to the House Administration Committee during his entire tenure of office.

The notice of contest and answers from the First, Second, Fourth and Fifth Districts were printed in four thin volumes. All of these materials were deposited with the Speaker on Thursday, July 29 at 11 a. m. The Speaker then referred these materials together with the original documents to the Committee on House Administration. The Clerk omitted printing the notice of contest and answer from the Third District (John Bell Williams) on the alleged grounds that the copy of the notice of contest given the Clerk in early December, 1964, was not signed, even though the law is quite clear that the jurisdictional service is only upon the contested member himself and there is no requirement whatsoever that a copy be served on the Clerk. (2 U.S.C. Sec. 201) There is no dispute whatsoever that the jurisdictional copy was served upon Mr. Williams.

10. Does this consist of a single action, of five separate actions; how does this element affect the printing of the depositions?

This is, in effect, five separate actions, which

are being assisted and coordinated by the Mississippi Freedom Democratic Party. However, there is much evidence which applies to every district. Therefore, the Clerk has apparently printed the evidence by Congressional District in numerical order, though this unfortunately does not appear from the index. A knowledge of the location of Mississippi municipalities is necessary to ascertain this. The out-of-state testimony is printed at the end of the Mississippi testimony.

11. What committee action must now be taken?

The Committee on House Administration is required by the Act of August 2, 1946, and by Rule 11, paragraph 24, of the Rules of the House, to report to the full House by July 5. There is a problem, however, since the time for the filing of the briefs has not yet expired, due to the delay in the printing of the depositions. Because of this unreasonable delay, the Mississippi Freedom Democratic Party proceeded to file its brief without the benefit of the printed depositions on June 30, relying upon ruling of the Clerk that the Contestees' briefs must be filed 30 days after the Contestants', even though the printed depositions were not yet available. The Clerk now has revised this ruling and takes the position that the contestees have an additional 30 days beginning from July 29, the date the Clerk finally filed the printed depositions with the Speaker. It seems quite clear that this manipulation by the Clerk is intended to prevent the Challenge from reaching the floor prior to the adjournment of the Congress. It is also quite clear that these actions are in direct violation of both the letter and the spirit of the rules of the House.

If the House Administration Committee proceeds with the case and is not divested of jurisdiction by the House, then it could conceivably begin to hold hearings and further delay a vote by the House. In any case, it should be pointed out that in view of the abundance and clarity of the testimony already gathered, and in view of the unanimity of the findings rendered by the United States Commission on Civil Rights in its recent report on voting in Mississippi, further hearings do not seem necessary, and , given the press of time, appear undesirable. Since contested election cases are of high constitutional priority, no Rules Committee clearance is necessary. (House Rule 11, Paragraph 2

12. Are there ways for the House to vote on the Mississippi Challenge other than by acting upon a report from the House Administration Committee?

Yes. On numerous occasions the House has proceeded directly to consider the right of a member to his seat even though the matter was still in the Committee. The question is one of high constitutional privilege and as such, (1) is entitled to be raised at any time, and (2) constitutes a privilege of the House requiring recognition by the Speaker.