answer those charges so that when you go back and make your report to the full Committee or to the Chairman, you will be in a position to say, "This is what Mr. Marcantonio has been charged with; this is what Mr. Marcantonio said about those charges." You will agree with me that I have not been confronted with those charges.

MR. BARKER: No, you have not been confronted with any specific allegations, but you have been asked certain questions.

MR. MARCANTONIO: That is right. But, I haven't been confronted with any charges in any way to indicate that my election was not a free election, and after all that is what this Committee is concerned with.

MR. BARKER: Of course, the Committee, on its own motion, may make the investigation of any member of the House.

MR. MARCANTONIO: But in this instance Mr. Priest has stated that he has ordered a preliminary investigation so that the Committee can then determine, as a result of the preliminary investigation, whether or not a full investigation is warranted.

I say that what is unfair about the preliminary investigation is that I have not been given any specific allegations to which to make answer, so that what will the Committee be confronted with? Specific allegations, if any, without my answer to those specific allegations.

MR. BARKER: I don't think that is necessarily true.

I don't think that is necessarily true at all. In your particular case it is evident to everybody that you have a very hostile press. You have made that allegation yourself.

I was here making this investigation before the press learned of my appearance here, and they didn't learn of it through me at all. They first learned of the investigation in Washington in a manner in which the Committee has not determined at all that an investigation was going to be held. That was supposed to be something that was not supposed to be in the press at all. But, much to the astonishment of the committee, it appeared on the same day that they first ordered me to come to New York to see what there was to these general allegations, and that inquiry is still being conducted, and that is why you came up to state your side of the case.

MR. MARCANTONIO: I have stated my side.

MR. BARKER: By the way, you are the first of the candidates who has made any statement.

MR. MARCANTONIO: I am in this position. I am in the position of a person who is arraigned before the bar of justice without knowing what the charges are against him.

MR. ALLEN: I think I know what you mean. If we were to take the allegations at random and go back to the Committee without getting your side of the story - the report we file with the Committee will have to be a complete report or we will be failures as investigators. So, in anything we get, we will get your side of the story before we take it back to the Committee.

MR. MARCANTONIO: That is right, but I understand that this Committee is going to make its decision on Monday.

MR. BARKER: As to public hearings.

MR. MARCANTONIO: That is a step ahead of itself. As to public hearings, whether or not to have a public hearing, that is dependent on whether or not they are going to have a full investigation.

MR. BARKER: Yes.

MR. MARCANTONIO: Before this Committee decides on the procedure of the investigation, it has to determine whether or not it is going to have the investigation.

MR. BARKER: Then I think your request to the Committee has been misunderstood.

MR. MARCANTONIO: My request is in writing. My position is very simple. There is nothing here, or nothing has been presented to me to show that this was not a free election. Therefore, there is no basis for any investigation. If, on the other hand, the Committees feels that there is a basis for an investigation, then it should be in open public hearings. Until such time as it is determined that there is, at such an investigation I want to be put in the position you have justed stated, that before you report back to the Committee, that John Jones makes this charge, and Marcantonio makes this statement about it. The Committee should not have only the charge, but it should have what I have to say about it.

MR. BARKER: The Committee should first have that before

they decide whether to proceed to open public hearings and to issue subpoenas for witnesses, etc.?

MR. MARCANTONIO: That is right. That is what all of the Committees have always done at all times. They first determine whether or not they should have a full investigate based on a preliminary investigation.

MR. BARKER: I will certainly report that to the Committee.

MR. MARCANTONIO: What time is the Committee meeting?

MR. BARKER: 10:00 o'clock.

MR. MARCANTONIO: Well, to make my position clear, I will call up Percy Priest before they meet, and I want them to understand that my request for a public hearing is only in the event that they should decide that they should have a full investigation. It is presupposed on that. Before they make that kind of a decision, they should have my answer to specific charges with which I haven't been confronted.

MR. SABBATINO: On the basis of what has occurred here, before us, there is nothing for the Committee to investigate, and therefore the Committee should drop the whole matter. That is on the basis of what has occurred before us. If there are other facts that we don't know about, we should be confronted with them and given a chance to say that that is the story.

MR. BARKER: Maybe the Committee will have to determine that by further investigation.

MR. MARCANTONIO: That is allright with me, so I say that in such an investigation to determine whether or not a full

investigation should be had, I should be confronted with - -

MR. BARKER: with the allegations against you before they are presented to the Committee?

MR. MARCANTONIO: Exactly.

MR. BARKER: Instead of waiting for public hearings and then confronting you with them then?

MR. MARCANTONIO: Yes.

MR. BARKER: Then you would twice be presented with the same charges?

MR. MARCANTONIO: What if these allegations were answered to the satisfaction of the Committee? That is the end of the investigation.

MR. BARKER: Yes. There is no basis for the allegation.

MR. MARCANTONIO: And to determine whether or not there is any basis, show me these allegations and let me have a chance to answer them.

MR. BARKER: Maybe I can explain to you how I, personally, not speaking for the Committee, feel because I cannot speak for five members of Congress. I don't know what they have in mind, but speaking for myself, as I understand the situation, there is no contest to your seat pending in the House of Representatives of which I have any knowledge, and you say you have none. There have been newspaper articles to the effect that a resolution would be offered on the opening day of the 80th Congress, which would be at noon on January 3, 1947.

MR. MARCANTONIO: After every member has been sworn in.

MR. BARKER: That is right, because the House, as differentiated from the Senate, is not a continuing body. The Senate is a continuing body.

MR. MARCANTONIO: There is no membership of the House until the roll has been called, and until every member, en mass, raises his right hand and is sworn in.

MR. BARKER: And the Clerk administers the oath.

MR. MARCANTONIO: And then the next order of business is the election of a Speaker.

MR. BARKER: The House Clerk presides and administers the oath since the actual Clerk is deceased and we have the Acting Clerk, because of the illness of South Trimble, who has since died.

MR. MARCANTONIO: Yes.

MR. BARKER: After the oath is administered to the members, they answer the call of the roll, and as you state, the next order of business is the election of a Speaker.

MR. MARCANTONIO: Yes.

MR. BARKER: Usually, there are two candidates.

MR. MARCANTONIO: Yes.

MR. BARKER: And after the Speaker is elected, then he formally takes the Chair and the House is open for business.

MR. MARCANTONIO: Yes.

MR. BARKER: Then, at that particular point, I presume from what I have read in the press, will be offered by somebody a resolution regarding Vito Marcantonio. Is that the way you sum the situation up?

MR. MARCANTONIO: Yes. Then it is up to the Speaker to

treat the resolution as a resolution that is privileged, or refer it to a Committee.

MR. BARKER: Yes, in his discretion.

MR. MARCANTONIO: I should imagine that is what they are. In that event, it is very important to me, and to the people of my district, particularly, that nothing is done by this Committee which will prejudice the case without give me - -

MR. BARKER: Which would prejudice your right to your seat?

MR. MARCANTONIO: Yes.

MR. BORDA: Suppose, Congressman, that the Committee to Investigate Expenditures does nothing?

MR. MARCANTONIO: I don't want the Committee to Investigate Campaign Expenditures to do nothing. I wish that you dig as deep as the length of the earth, and when you find something that you think is materiel to determining the question of whether or not there was a free election, to ask Mr. Marcantonio, "What have you got to say about this?" That should be done in every stage of this campaign. I wish it to be in the preliminary stage to determine whether or not there should be a hearing following it. What if this Committee finds nothing? Certainly, there is no further action warranted. To determine whether or not the Committee finds anything, I should be asked, "Here they say you kept 50 people from voting." Who says it? John Jones says it. All right. When and where, and then I tell my side, if it is true or not.

MR. BARKER: Congressmen, I have a question in my mind, but, first, the action of this Committee is such and this Committee dies with the 79th Congress.

MR. MARCANTONIO: Yes, but it makes its report.

MR. BARKER: But that report is not binding in any manner on the 80th Congress.

MR. MARCANTONIO: That, technically, is true, but certainly it wouldn't be fair for me to enter that Congress. I would want want to enter that Congress if the Committee reported that this was not a free election.

MR. BARKER: You mean if an adverse report were submitted on you?

MR. MARCANTONIO: That is right.

MR. BARKER: You would be at a particular disadvantage.

MR. MARCANTONIO: Not only that, but I would be put in the position of being the defendant without have been accused of anything, if I haven't had the opportunity of meeting any allegations.

MR. BARKER: I want to assure you right now, Congressmen, that you certainly will have an opportunity to answer any and all and every allegation that is made against you from any source before this Committee writes any kind of a report on the case of Marcantonio.

MR. MARCANTONIO: Our area of disagreement is diminishing. I should have the opportunity of answering any allegations before

this Committee decides as to whether or not to have a full investigation.

MR. BARKER: I don't know that the Committee will even write a report on the Marcantonio case. Of course, I refer to the name "Marcantonio" as a designation, with all due respect to you.

MR. MARCANTONIO: It is my case and it is my election that seems to be contested.

MR. BARKER: I refer to that designation with full respect to your holding the office of Congressman.

MR. MARCANTONIO: I understand that perfectly.

MR. SABBATINO: We ask theprivilege from you that if you find something that is unexplained and looks bad, give us a chance to explain it before you file your own report so that you

MR. BARKER: That would be a matter for the Committee to determine, and I will certainly present your request to them and I will certainly make it clear to them.

MR. MARCANTONIO: In other words, I don't want anybody to jump to a conclusion that because I have asked for a public hearing that I say, "Come on and have a public hearing even if there is no warrant for the investigation." I say at this point that there is no warrant for any investigation. The police authorities were there. There was nobody prevented from voting. There is no warrant for any investigation. However, if the Committee should decide against me on that point, then I say as to the procedure for the investigation, let us have a public investigation and a public hearing.

MR. BARKER: You know the Chairman of this Committee personally. You know he is a very high type gentleman?

MR. MARCANTONIO: Yes.

MR. BARKER: I will bring you Monday night, when I return from Washington, a letter from him, stating that action that the Committee takes, in response to your request on that specific point so that you will know that your request has been placed before the Committee.

MR. MARCANTONIO: On the specific point of determining as to whether or not there should be a full investigation?

MR. BARKER: Yes, sir.

MR. MARCANTONIO: I say that nothing on that point has been produced to warrant such an investigation.

MR. BARKER: Well, I will bring that letter to you so that you will know that I have placed that matter specificelly before the Committee and that it was by the Committee, by vote, acted on.

MR. SABBATINO: How many copies may we have of this? May we have two copies?

MR. BARKER: I will take that up with the Committee, too. I will tell them that you want two copies.

MR. MARCANTONIO: Nothing has been produced up to now to warrant an investigation. ThisCommittee has to determine whether or not this was a free election. Nothing has been produced, at least to me - no allegations, nothing, to even cast the slightest shadow as to whether or not this was a free election. The answer is that the people voted and the people voted secretly.

If there were any charges that the secrecy of the ballot had been violated, that would be a different story. Or, if there were any charges that people were prevented from voting, or from exercising their elective franchise as free American citizens, then again, that would be a different story, but there are no such charges.

MR. BARKER: You say there are no such charges?

MR. MARCANTONIO: Yes.

MR. BARKER: Even these articles in these newspapers up here in these four papers, don't they definitely create that impression in the general mind of the people?

MR. MARCANTONIO: No. Let us analyze them. These articles contain a lot of wild charges, but even these articles, at close scrutiny, do not make the charge that John Smith was prevented from voting. Not a single line in any of these articles or in any other articles makes the charge that any single citizen in the 18th Congressional District was prevented from voting. And, mind you, I am going further than what the Committee is concerned with. The Committee is concerned with determining whether there was a pattern or a wholesale scheme to prevent people from voting; not a single line to that effect, even in those articles. There is not a single newspaper that can say that people were prevented from voting.

MR. BARKER: And they have not said that?

MR. MARCANTONIO: And have not said it.

MR. SABBATINO: And it cannot be truthfully said, if said.

MR. MARCANTONIO: Let us assume that even what they said

was true, that I associated with Spanish Rose or with people with records, etc., etc., that would go to the question of determining my fitness, my personal fitness, to be a member of the House of Representatives. That is not a question for this Committee.

MR. BARKER: It is a question for the 80th Congress.

MR. MARCANTONIO: It is a question for the 80th Congress to determine my fitness. They are the judges of that. The question for this Committee to determine is whether Vito Marcantonio, the alleged hoodlum, the gangster, etc., was elected by a free election or not.

MR. BARKER: That is exactly right.

MR. MARCANTONIO: That is the point that is before this Committee; whether or not this election of Vito Marcantonio, accepting their charges against me, - the hoodlum, the gangster, the gorilla, the Communist, and this and that and whatever they say of me, - whether or not I was elected by a free election. If I was elected by a free election, then this Committee has no right to go any further and investigate, and then it is up to the 80th Congress to determine the fitness of Vito Marcantonio and whether he is a fit person to be a member of the House of Representatives.

There are two separate questions: The question that the press raises is a question for the 80th Congress to determine, but the question that this Committee has concerned itself with is simply whether or not there was a free election, and whether the laws pertaining to a free election have been violated.

MR. BARKER: By you?

MR. MARCANTONIO: Yes.

MR. BARKER: You were the successful candidate and the one against whom the fire is directed.

MR. MARCANTONIO: Yes. So, there is quite a distinction betwee the two questions. As to the question of my free election, there is not a single line that will show that any person was prevented from voting or exercising his right to vote as a free American, and there is not a single line of charge that there was a pattern to prevent people from voting or to make people vote a certainway. We had the biggest percentage turnout in the City of New York. How can you get around that?

MR. BARKER: You are more familiar with this than I am. Has there been any charge in the paper that you or your organization were in any wise responsible for the death of Scottoriggio?

MR. MARCANTONIO: They have intimated that there was, although even the Mirror editorial said there is no proof. They say, "We do not charge him with it, but he was Mr. Marcantonio's opponent," and therefore it was political.

MR. BARKER: Those newspapers have carried alleged statements by the DistrictAttorney and his assistant?

MR. MARCANTONIO: Where he says it was politically motivated?

MR. BARKER: Yes.

MR. MARCANTONIO: Let us assume that to be true, if only for the sake of argument. Take any election anywhere. Let us

say this was an election in the State of Kentucky, for instance. Partisans of both candidates get into an argument and a shooting takes place and one, two, three, five or six people get killed. There again, if everybody voted and if the right to vote was not tampered with, where does your Committee come in? You have no more right to go into Mr. Barkley's election, for instance - let us say six people were shot there on Election Day in a political shooting. The only question that your Committee would be concerned with is whether Senator Barkley was elected an an election where the people's right to vote was or was not interfered with. I am going a step further in this. Even if it were established, for the sake of argument, that I am guilty of Scottoriggio's killing, that would still have no bearing on whether or not the people had the right to vote, or were permitted to exercise their right to vote. It would have a bearing on whether or not I was a fit person to be a member of the House of Representatives, which is a question that this Committee has not any power to concern itself with. The only question this Committee has power to concern itself with is whether or not the people in the 16th Congressional voted freely, exercised their elective franchise without molestation, did it freely with a guaranteed secrecy of the ballot; that is the only question before this Committee.

MR. BARKER: You realize, as you have stated, that the question of whether or not you get your seat, or if there is a protest filed, that is a different proposition. That is a

constitutional question.

MR. MARCANTONIO: That is a different matter. If this Committee says, "We have decided to go in and have a full investigation to find out if this election was not a free election," right then and there it casts doubt whether or not there was a free election, and that doubt is cast despite all of the evidence. Itproves conclusively that the election was free, despite the fact that my worst enemy makes no charge that the election was not a free election. The Scottoriggio matter has no bearing on the issue of whether or not this election was a free election, and I say further that if it had not been for the hue and cry of the press in this matter that this Committee would not have been in this picture at all, because the whole Scottoriggio thing, unless you can establish that there was a pattern to prevent people from voting and that people didn't vote, - if you can establish that, then your Committee has a perfect right to be in this thing. I don't see how you can escape that argument.

MR. ALLEN: All instances occurring directly prior to the Election or on Election Day must be taken one by one and either added to or dismissed.

MR. MARCANTONIO: You have to establish that the people didn't vote.

MR. BARKER: That is a matter of proof.

MR. MARCANTONIO: It benemes a matter of proof only when you show that the conduct of the election was such that the secrecy of the ballot was not guaranteed to them. You wouldhave to

establish, like in the Mississippi case - there it is established that the people when they went to vote, were turned away either by moral persuasion or by violence or whatever the persuasion may have been, the physical fact is that the people were turned away and they didn't vote.

Here the physical facts are that they did vote. Here you have not got a single person who say he didn't vote because he was intimidated; nor have you a single person who says he was voting for Marcantonio because he was intimidated. You don't have any of that. You have nothing like that at all. You have a situation where the Committee has come in - and the Committee has the right to come in - I don't challenge that, but in the absence of any charge that either John Jones or John Smith was prevented from voting freely, in the absence of any charge that the secrecy of the ballot was not guaranteed, what right have you to go into those circumstances? You haven't any. That is the argument I would like to have presented to the Committee on Monday.

MR. BARKER: I want to further assure you that this Committee has absolutely no intention of doing anything improperly that would prejudice your rights to your seat.

MR. MARCANTONIO: I know all the members of this Committee, personally. I know they are honorable gentlemen. We are all in public life and we are all susceptible to the press, the hue and cry to lynch Marcantonio spirit that the press has been attempting to create. I say there comes a time when courageous men take a

courageous position, even though it may be seemingly unpopular in the eyes of certain sections of the press, and the only courageou position that can be taken is to take it on the facts.

Here you have an election where more people voted on the basis of registration in my district than in any other Congressional district. You have a registration where there is a smaller falling off from the 1944 presidential year, in my district, than in any other district. You have a situation where, despite all of these wild charges that have been made against me, granting them all, there is still not a single charge that any voter, in his right to vote freely and secretly has been intimidated. You also have the physical facts that people came out to vote. The people did vote and their secrecy was guaranteed. How can you get around that? Nobody questions the count.

MR. BARKER: There has been a charge on that?

MR. MARCANTONIO: No. I won by 6500 votes. I say that you have no case.

MR. BARKER: All right, gentlemen. Shall we adjourn?

MR. MARCANTONIO: Yes.

(Thereupon, at 6:45 p.m., the above hearing was concluded.)

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