

The New York Times

Trial Is Elusive in an Assemblyman's Drunken-Driving Case

By JOHN ELIGON

March 7, 2010

It had been 14 months since Assemblyman Adam Clayton Powell IV was arrested on a charge of drunken driving, and the judge had just about had it.



Assemblyman Adam Clayton Powell IV, left, outside Manhattan Criminal Court on March 6, 2008, the day he was charged.

After Mr. Powell's lawyer, Stacey Richman, told the court that she could not go to trial that day, the case was adjourned, but not before the judge issued a warning.

"I'm not accepting any, a letter of engagement or notice of engagement, on this case," said the judge, Kevin McGrath of Manhattan Criminal Court, referring to a notice of a lawyer's scheduling conflict. "This is now over a year old."

That was in May 2009.

Even by the standards of New York's sluggish court system, the drunken-driving case against Mr. Powell has seemed to drag on forever.

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Last week was the second anniversary of Mr. Powell's arrest in Manhattan on a misdemeanor charge of driving while intoxicated, and the case — which is on the calendar for Monday — has yet to be resolved.

One reason for the delay is that, unlike most people facing similar charges, Mr. Powell has refused to accept a plea deal, deciding instead to go to trial.

Some of the other reasons are typical of most trials: a dispute over the exchange of evidence, the defense lawyer having other cases to tend to and the unavailability of key witnesses. But Mr. Powell's job has also been a factor.

In at least two instances, the start of the trial was delayed because Mr. Powell had to be in Albany for special sessions convened by the governor. On other occasions, Mr. Powell's lawyer told the judge that several dates would not work because of Mr. Powell's work commitments, including a 10-day period in October in which Mr. Powell had to go on a mission overseas.

Several defense lawyers said that judges might give lawyers' clients an adjournment or two because of their clients' work schedules. But some wondered if Mr. Powell's case bordered on preferential treatment.

“It certainly has all of the bells and whistles of ‘Hmm,’ ” said Mark Cohen, a defense lawyer who regularly handles cases in Manhattan. “I would think that the typical client who is not attending to, quote unquote, state business does not get the courtesy to put his sink in or perhaps go to a trade show.”

But Ms. Richman said this was not preferential treatment because her client had no incentive to have the case drag on.

“It's not a situation where there's any type of avoidance,” she said. “This ongoing situation is more of an inconvenience to him.”

Judge McGrath was not the only judge to express frustration at how slowly the case has progressed.

On July 27, 2009, the trial was again delayed because Mr. Powell had to be in Albany, and a police officer who had to testify was on vacation.

After a new judge, Larry Stephen, suggested adjourning the case to Sept. 29, Ms. Richman said, "Might I suggest, the difficulty is Mr. Powell is to be on a mission out of the country from the 1st to the 11th of October."

Judge Stephen suggested Sept. 21, but the prosecutor said that date would not work because of the availability of the police officers. The judge then suggested Oct. 13, but the prosecutor said that would not work, either.

"Listen, there are no good dates," Judge Stephen responded.

The parties did meet again on Sept. 21, but the case could not proceed because an officer involved in the case had a work conflict. Ms. Richman asked Judge Stephen to set a long delay because she had to attend a convention and because Mr. Powell had "a number of state missions."

The case was scheduled for Nov. 16. Judge Stephen said: "That is a firm date for both sides. Case is going on two years old now."

Nov. 16 came and went: Mr. Powell had to be in Albany for a special session. At his most recent court date, Jan. 19, another special session interfered.

"The extraordinary session is called by the governor to deal with the Race to the Top application for federal funding," Ms. Richman told another judge, ShawnDya L. Simpson.

Arnold J. Levine, a defense lawyer, said he believed that Mr. Powell's excuses might be legitimate.

"Maybe he is entitled to a little extra because of what his job is and how it affects everybody in the state," Mr. Levine said.

Even if both sides were ready, some said there was no guarantee that the case could proceed, because the courts were so overburdened with misdemeanors that a judge or a courtroom may not be available to hear the trial. Mr. Levine said he had a misdemeanor drunken-driving case that was 26 months old for that reason.

But some said the unusual thing in the Powell case was that neither side seemed to be pushing for the trial to start.

"Usually, you either have the defendant's lawyer saying, 'I have a right to a speedy trial,' or the D.A. saying, 'Let's get going,'" said Franklin A. Rothman, a defense lawyer. "Nobody's

saying that. If the D.A.'s office were jumping up and down, pushing and screaming to go forward, you might have a judge taking a firmer stance.”

Mr. Powell was arrested at 2:35 a.m. on March 6, 2008, after his vehicle was seen driving erratically on the West Side Highway, the police said. Mr. Powell registered a blood-alcohol level of 0.07 percent, just below the legal limit of 0.08, but he had blown only a half-breath, not enough to provide an accurate reading, law enforcement officials said.

Prosecutors offered a plea deal — a \$300 fine, a 90-day license suspension and enrollment in a drunk-driving program — but Mr. Powell refused. Even if Mr. Powell is found guilty, experts said it was highly unlikely that he would receive jail time. And while state law requires the expulsion of any legislator convicted of a felony, there is no such requirement for misdemeanor convictions.

“The consequence of a misdemeanor is not supposed to alter someone’s life to the point where they can’t earn a living or it affects their job,” said Joseph Tacopina, who represented [Hiram Monserrate](#), the former state senator, in his assault case in Queens.

Ms. Richman said that Mr. Powell, who is expected to easily win re-election this year, wanted to resolve the court issue, but that he felt an equal obligation to fulfill his responsibility as an elected official.

As for the trial, there already is indication that it will not start on Monday: Ms. Richman said she was told that one of the officers involved in the case had a scheduling conflict.

A version of this article appeared in print on March 8, 2010, on page A16 of the New York edition.