

Calendar No. 1038

69TH CONGRESS }
1st Session }

SENATE

{ REPORT
No. 1021

SENATOR FROM MINNESOTA

JUNE 7 (calendar day, JUNE 8), 1926.—Ordered to be printed

Mr. DENEEN, from the Committee on Privileges and Elections, submitted the following

REPORT

[To accompany S. Res. 243]

CONTEST AND PROTEST IN CONNECTION WITH THE ELECTION OF UNITED STATES SENATOR FROM THE STATE OF MINNESOTA, 1924

The Committee on Privileges and Elections herewith submits its report in the matter of the contest and protest relating to the primary and general elections of 1924 in the State of Minnesota for United States Senator, under Senate Resolution 20, Sixty-ninth Congress, special session, adopted March 10, 1925, which reads as follows:

Whereas a petition of contest concerning the election of Thomas D. Schall as Senator from Minnesota for the term beginning March 4, 1925, has been filed and charges have been made touching the excessive and illegal expenditure of money in said election and touching the qualifications of the said Thomas D. Schall to hold the said office and touching violations of law in connection with the said election: Therefore be it

Resolved, That the Committee on Privileges and Elections, or any subcommittee thereof, or any person or persons designated by them, be, and it is hereby, authorized and directed to investigate the charges and countercharges, if any, as may be made in the matter, and that the Sergeant at Arms of the Senate and his deputies and assistants be, and they are hereby, instructed to carry out the instructions of such Committee on Privileges and Elections, or any subcommittee thereof, in that behalf.

Resolved further, That the Committee on Privileges and Elections, or any subcommittee thereof, be authorized to sit during the session of the Senate, or during any recess of the Senate, or of the Congress, and to hold its sessions at such place or places as it shall deem most convenient for the purposes of the investigation, and to conduct the same, if so deemed wise, by agents or representatives appointed by said committee, and to have full power to subpoena parties and witnesses, and to require the production of all papers, books, and documents and other evidence relating to the said investigation; and to employ clerks and other necessary assistants and stenographers (at a cost not to exceed 25 cents per 100 words) to take and make a record of all evidence taken and received by the committee or under its authority, and to keep a record of its proceedings; and to have such evidence, records, and other matter required by the committee printed.

Resolved further, That the Sergeant at Arms of the Senate and his deputies and assistants are hereby required to attend the said Committee on Privileges and Elections, or any subcommittee thereof, and to execute its directions; that the chairman or any member of the committee be, and is hereby, empowered to administer oaths; that each of the parties to the said contest be entitled to representatives and attorneys at the recount and the taking of evidence; that all disputed ballots and records be preserved so that final action may be had thereon by the full committee and the Senate; that the committee may appoint subcommittees of one or more members or other agents to represent the committee at the various places in the making of the recount and the taking of evidence, and the committee may appoint such supervisors of any recount as it may deem best; and that the committee may adopt and enforce such rules and regulations for the conduct of the recount and the taking of evidence as it may deem wise, not inconsistent with this resolution; and that the committee shall report to the Senate as early as may be, and from time to time, if it deems best, submit all the testimony and the result of the recount and of the investigation.

Resolved further, That the expenses incurred in the carrying out of these resolutions shall be paid from the contingent fund of the Senate upon vouchers ordered by the committee, or any subcommittee thereof, and approved by the chairman of the committee.

PETITION, PROTEST, AND ANSWER

Magnus Johnson (contestant) filed with the Senate on the 2d day of February, 1925, a petition contesting the election of Thomas D. Schall (contestee) as Senator from Minnesota in the general election of November 4, 1924, and a protest against the election and the qualifications of contestee. First and second amended petitions were filed by the contestant. The allegations by the contestant were:

(1) That certain violators of the liquor laws were induced to contribute money for the expenses of contestee's campaign by certain persons who were either employed by or were constant visitors at the "Schall political headquarters" at the West Hotel in Minneapolis.

(2) That sums in excess of the amount permitted to candidates for the United States Senate were expended by contestee in violation of the statutes of the United States and of the State of Minnesota.

(3) That false statements about contestant were made by contestee during the campaign for election in violation of the Corrupt Practices Act of Minnesota, which declares the making of such false statement to be a misdemeanor, the penalty for which may be a fine or imprisonment, or both, or removal from office; that said false statements were made at Thief River Falls on October 10, 1924; at St. Cloud on October 18, 1924; at Erskine on October 9, 1924; before a meeting of the League of Women Voters at the People's Church in the city of St. Paul; at Wadena on August 20, 1924; at Wabasha on September 30, 1924; and at Virginia on October 16, 1924; all of which are cities or towns in the State of Minnesota. That contestee caused the publication of 450,000 copies of a paper called the Minnesota Harpoon, and caused said Harpoon to be unlawfully mailed as second-class matter in the United States post office at Minneapolis; that said Harpoon contained a defamatory article against said contestant and that said Harpoon was unlawfully admitted and carried through the mails as second-class matter, notwithstanding its circulation violated the postal laws in several particulars specified in petition.

(4) That said contestee violated the franking law privilege in sending through the mails "millions of copies of speeches and extensions of remarks."

(5) That contestee promised offices and positions for influence and support in his campaign.

(6) That contestee, A. N. Jacobs, and Frank Corneaby conspired to expend a sum of money in excess of \$50,000 in procuring the election of said contestee.

Petitioner prays "that said Thomas D. Schall be declared not elected and also disqualified and not entitled to a seat because of the aforesaid violations of the law".

Contestee, on November 21, 1925, filed a motion to dismiss petition of contestant, setting forth the reasons therefor, which was afterwards overruled by the subcommittee and leave was given to contestee to file an answer. Contestee, on the 18th of December, 1925, filed an answer to the amended petition filed by contestant, denying each and every allegation in said petition contained and prayed that the petition of contestant be disallowed and dismissed.

The subcommittee had hearings on January 28, 1926; January 29, 1926; January 30, 1926; February 1, 1926; February 2, 1926; February 3, 1926; February 5, 1926; February 8, 1926; February 9, 1926; March 4, 1926; March 5, 1926; and March 8, 1926.

The following witnesses testified before the subcommittee: Peter A. Cosgrove, Andrew Szysko, Addison C. Townsend, W. F. Corneaby, Maurice Silverman, S. B. Qvale, Charles E. Llewellyn, and Andrew A. D. Rahn.

Peter A. Cosgrove, called as a witness by contestant, testified as follows:

That he is a lawyer and resides in the city of Minneapolis; that he talked with contestee on August 13; that contestee said that Jake (meaning Jacobs) and Andy (meaning Mr. Rahn) were looking after his affairs; that Mr. Bowen (organizer of the Nonpartisan League) had gone over to the La Follette people, but Mr. Bowen said most of his crowd wanted to be with contestee; that Bowen was not working; that he could not work gratis; that he had to support himself. Contestee said "Let him see Jake and Andy."

That witness talked to Mr. Jacobs about one J. M. Anderson; that witness talked with contestee in April, 1924, about Anderson; that contestee asked witness to get a copy of a letter written in 1923 in the campaign by Anderson and another letter written by Lesoeur, published in some St. Paul papers; that witness got these articles, which contained an attack on Magnus Johnson, and that contestee said that Anderson would write them up for the Harpoon. That contestee told witness that he (contestee) established the Harpoon; that the paper was published by Jacobs at election time; that contestee said that the paper was his and that he (contestee) had merely turned it over to Jacobs, who had never paid him anything for it. Contestee asked witness to assist Jacobs at headquarters in the West Hotel until George Magnusson could come; that Jacobs was the campaign manager of contestee, and would carry it on until Magnusson was ready to take it over. Witness saw Corneaby in contestee's office either in July or August and at other times during the campaign of 1924. Witness called at contestee's home about the 20th of September, 1924. Witness said he was looking after the county newspapers' write-ups for him and against him (contestee).

Witness said that Herman Rowe had received a letter from Jacobs asking him to "reimburse me (witness) for my expenses," and that Mr. Rowe had refused to do so. Contestee said, "I am busted wide open so far as money is concerned. Can't Jake do anything for you?" I said, "No." He said, "He is out of money, too—well, go and see Andy. Jake and Andy have charge of my campaign." I looked after some of the newspaper work for Mr. Schall and for Mr. Jacobs, and they said that they would be able to reimburse me. I will add that Mr. Jacobs did, after several weeks, contrive to pay me twenty-eight dollars (\$28.00).

Witness had a talk with Jacobs about a copy of the Harpoon, contestant's Exhibit No. 2. This was before the article was published. Witness asked Jacobs what J. M. Anderson was doing there. Jacobs replied, "Well, he is writing it," and he said, "He can not write it; I am going to write it, and when it comes out it will be a scream." Jacobs said to witness, "Have you seen the Harpoon?" Witness said "No." Jacobs said, "Well, here it is over here—take a copy and read it. I have got all that Anderson stuff in. I told you it would be a scream and it is one." This occurred at headquarters at the West Hotel. Witness saw a great pile of the Harpoons at the headquarters. Witness did not know what was in that copy of the Harpoon. Witness took one home but did not read it. Boone Talbott took care of one room at the political headquarters at the West Hotel.

CROSS-EXAMINATION

Witness said, "I was with Mr. Jacobs in the West Hotel and was afterwards at the Ryan Hotel in St. Paul, assisting him in conducting the campaign for Senator Schall." Early in the year 1924 witness began writing to contestee urging him to become a candidate for the Senate. Witness was in charge of headquarters when Jacobs was away; started work at 8 o'clock in the morning and remained there until 12 at night. Contestee asked witness to go to headquarters. Witness was a part of the voluntary committee. There were 60 or 70 members of this committee. Witness went to St. Paul and opened up headquarters and called it a Schall headquarters. "Contestee did not ask me to do this." "Jacobs sent me over there." Witness in the primary wrote a letter to contestee dated March 13, 1924, and asked contestee to give witness authority to raise campaign funds. Contestee did not give witness such authority.

On March 17, 1924, witness wrote contestee asking for duplicate authority to him and Mr. Waters to try to collect some funds. Witness stated that he should have a little change to buy a cigar or a lunch once in a while. On March 20, 1924, witness wrote contestee as follows:

I had a little heart-to-heart talk with Jake. Jake told me he was going to select a big man to manage your campaign. He said he could not take the management himself because he is a Jew. He said he was going to select George A. Mackleson as the manager of the sixth district, but he didn't think George was quite big enough to be State manager. From the little talks I have had with George I think he is not big enough for the job either. (Jake referred to Jacobs.)

On April 5, 1924, witness joined with others urging contestee to become a candidate for the United States Senate. Witness identifies

stationery that was used at West Hotel, "Schall for Senator Club Headquarters," before the primary on a letter dated May 6, 1924. Witness remembers writing contestee a letter asking him for some authorization to go with other men among some high-class Jews and collect campaign money.

In direct examination witness mentioned a conversation between contestee and himself concerning Mr. Bowen. In that conversation contestee did not refer to Jacobs and Rahn as his campaign managers. Contestee said they were handling his affairs. Witness states that he wrote a letter August 13, 1924 (contestee's Exhibit No. 8), as follows:

Bowen met you at Wheaton one time when you were trying a case there and he and you both spoke to the same body of men. He desires very much to meet you and he is also very desirous of getting with the Republican State central committee. I have said nothing about finances and will see what the State central committee can do along that line.

Witness stated that Bowen wanted to get in touch with the State central committee as well as with contestee at that time. In December, 1924, and in January, 1925, witness "wrote a number of letters to Senator Schall (contestee's Exhibits 10, 11, 12, 13, and 14) asking him to assist me (witness) in getting an appointment for a niece of mine, Kathryn W. Cosgrove, as a nurse in the United States Public Health Service.

Witness has interviewed a number of witnesses, possibly a dozen, and some of them many times, to get evidence against contestee. Witness has interviewed many other witnesses with a view to developing testimony in this case. Witness has been working hard on this contest. Witness is practicing law in the office of Donald L. Hughes, attorney representing contestant, and has been there since the 1st of October, 1925. Before that time witness had a law office in Minneapolis; went to Minneapolis on September 1, 1921, but did not have a law office in Minneapolis until October 1, 1925. Witness had a physical breakdown in St. Paul and quit the practice of the law. Witness has not followed any business from the 1st of September, 1921, to the 1st of October last year, except what he did in contestee's campaign in 1924.

Witness has received some money for the work he has done in the contest against contestee to cover expenses. Witness has received about \$200 from Henry M. Tiegen. Mr. Tiegen was secretary for Magnus Johnson when contestant was Senator of the United States. Witness is not a man of means; when he does not work, his two boys contribute to his support. In gathering evidence against contestee, witness has consulted with Henry M. Tiegen, Donald Hughes, and Mr. Edgerton and has been working in connection with Henry M. Tiegen. "I have directed him (Tiegen) a great deal of the time and Hughes and Edgerton, too." Witness wrote the heading to be printed on letter. (Contestee's Exhibit No. 15.) The heading is "Ramsey County Schall Headquarters, Parlor 3, Ryan Hotel, St. Paul, Minn." "Contestee did not authorize me to do this. Jacobs did."

Andrew Szysko was offered as a witness to testify to a conversation with A. N. Jacobs at the Schall headquarters at the West Hotel. The subcommittee refused to permit witness to testify until contestant showed a connection between Jacobs and contestee as charged in petition.

Addison C. Townsend, witness for contestant, stated that he was chief of general prohibition agents and stationed at Minneapolis during the year from March, 1924. Witness stated that Senator Schall asked him to have Maurice Silverman sent out of the State for a while; that there was a good deal of objection to Silverman, the charge being that while Silverman was acting chief in Minnesota that he had protected a good many of the Jewish bootleggers who had violated the law; that A. N. Jacobs talked with the witness during the summer and fall of 1924 about cases pending in relation to the violation of the liquor laws; that Jacobs stated that sometimes contestee wanted to know the status of the case. Witness testified:

I do not personally know of Senator Schall having violated any law in regard to the prosecution or in regard to preventing the prosecution of any person charged with bootlegging or with infractions of the liquor law. I do not know personally of Senator Schall having been responsible for anybody else violating the law or preventing the prosecution for violation of the law.

Mr. W. F. Corneaby, a witness called by the contestant, stated that the Schall headquarters in the West Hotel were a voluntary headquarters; that he was a voluntary worker at headquarters; that he assisted in the campaign for State officers who were candidates at said election; that he remembers a contribution from Andrew Szysko of less than \$500; that he spent part of the money and that Mr. Jacobs spent part; that he never talked with contestee about getting campaign funds; that contestee had no knowledge of anything which he and Jacobs did in the headquarters; that he knew Martin Garrett; that he would not deny that he received some money from Garrett but that it was not as much as \$750; that he did not know at the time he received the money that Garrett was awaiting trial in the United States court nor did he know he was a bootlegger.

That he did not give any of his (Garrett's) money to Senator Schall or his agents; that he might have turned over some of it to A. N. Jacobs; that he did not promise Garrett that in return for any money he gave witness that contestee would protect him against the charge of bootlegging, and that contestee did not know that he (Corneaby) received money from Garrett.

That witness received some money from Ed. Teide but not for the purpose of fixing Teide's case. That contestee never told witness that he would obtain protection for bootleggers or habitués of the underworld if they would contribute to the campaign, nor did contestee authorize witness to promise protection to any alleged violators of the law; that witness had no understanding with Boone Talbott with reference to collection of any money from bootleggers; that witness was with Jacobs when Jacobs was soliciting subscriptions for the Minneapolis Republican; that witness Peter A. Cosgrove, since election, offered to give witness (Corneaby) anything within reason if he (Corneaby) would go to Washington and testify right; that Cosgrove made this statement in the presence of the wife of witness and another man on several occasions.

That one Unschuldts offered to give witness \$1,000 if witness would get affidavits that would result in the unseating of contestee; witness never saw contestee in the headquarters at the West Hotel either before or after the election. Witness only talked with contestee on one occasion and that was at a political meeting at Red Wing, Minn. Witness congratulated contestee on the speech he had made.

Witness never discussed funds with contestee or mentioned them; witness never talked with contestee regarding opening headquarters at the West Hotel.

Maurice Silverman, produced as a witness by contestant, stated that he was assistant divisional chief of general prohibition agents, in the twelfth division; that he had held the position since April 15, 1922, and was changed to another territory on October 16, 1925; that he knew A. N. Jacobs; that they were raised together on the north side of Minneapolis; that he called at Senator Schall's residence in January or February, 1925; that the conversation related to securing a permanent appointment as divisional chief in the Minneapolis division for witness; that contestee told witness he was pleased with his work and for the witness not to worry about appointment. Contestee stated that on returning to Washington he would do whatever he could to secure the permanent appointment of witness. Contestee never asked witness to violate any law nor did he offer him any inducements so to do or make any suggestions to him to that effect or that witness should have anyone under him violate the law; that during the campaign Mr. Jacobs said to witness, "Now, Maurice, can't you do this or that for me and let this fellow plead to sale or to possession? If you can, Tom would like it," or "would appreciate it."

S. B. Qvale, a witness offered by contestant, stated that he was a banker and resided at Willmar, Minn.; that he was Federal prohibition director of the State of Minnesota from September 1, 1921, to September 15, 1925. Witness stated he knew Mr. Jacobs; that Jacobs had spoken to him about 14 or 16 cases regarding violations of the liquor law; that Jacobs had asked him to have those cases continued until after the election. Witness stated to Jacobs that he would have to take up the matter with the United States district attorney. Jacobs said, "I don't care what becomes of the cases after election"; he said, "it is my opinion they are all going to plead guilty, but they would like to have a chance to vote before they go to the pen."

On cross-examination, a letter by witness was introduced, dated January 10, 1926, as Exhibit No. 1, in which witness wrote:

I will not testify that he, Senator Schall, asked me to use my influence to nolle or modify the cases. I will not testify that Jacobs stated that he represented Senator Schall.

Charles E. Llewellyn, offered as a witness by contestant, stated that he was deputy fire marshal in the fire marshal's office; that he heard a speech by contestee at St. Cloud, Minn., on the 18th day of October, 1924; that contestee said, "Two days or a few days before I left Washington a gentleman came into my office with a highly perfumed cigar. He put his hand on my shoulder and he said, 'Tom, if you go back to Minnesota and work for the World Court, I have got \$25,000 for you.'" Contestee said that a few days after he met Magnus Johnson and Magnus Johnson told him he was against the World Court and that a week after that his wife brought him a paper reading that Magnus Johnson was for the World Court. Contestee said, "Did Magnus see the man with the highly perfumed cigar and the \$25,000?"

Andrew A. D. Rahn, offered as a witness by contestant, said he resides at Crystal Bay, Lake Minnetonka, Minn.; that his business is farm implements, mortgages, bonds, and loans, and the lumber business. The lumber company's name is Shevlin-Carpenter-Clark. That he has known contestee for 26 years. Witness is a member of the Republican State central committee. That there were several Schall headquarters in Minneapolis. That the Schall headquarters in the West Hotel was an independent headquarters. Witness wanted it closed because there was no occasion for committees overlapping; that there was objection by the members of the Republican State central committee to having independent headquarters; that witness had nothing to do with the Schall headquarters at the West Hotel. That witness has known Arthur N. Jacobs for 12 or 14 years; that Jacobs was connected with the Schall campaign only to the extent of a newspaper publisher; that Jacobs and witness did not carry on the Schall campaign and operate the headquarters in the West Hotel.

Witness discussed the political situation with Jacobs as it affected the whole ticket. Witness knows of no money collected in the Schall headquarters from people who were charged with violation of the liquor laws. Shortly before election rumors came to witness that practice was being carried on and witness thinks he called Jacobs and told him about it. Jacobs denied any knowledge of anything. Witness never discussed this matter with Senator Schall or with the Republican State committee. Witness took up the matter with Jacobs in his capacity as a representative of the Republican Party and the State central committee; as witness had taken up many rumors of other kinds that came to him at that time. Witness knows J. M. Anderson, formerly of the Equity Exchange. Anderson submitted to witness the matter of the Equity Exchange article. The information had been used in the previous year in the J. E. O. Preus campaign for governor. Witness does not think any money was paid to Anderson at that time or later.

Witness did not take up this matter with contestee. Witness does not remember whether he took it up with Jacobs but has no recollection of a conversation with Jacobs about this. When Anderson came to witness, Anderson had a certified copy of the court record on the Equity Exchange, showing the evidence that was introduced in the trial and it was a matter that had already been published by the State central committee two years previous and it was used in the Preus campaign. Anderson called on witness during the Schall campaign and witness does not know whether the evidence Anderson had was used by the State central committee in any way. "I know some of it was used in the Harpoon, as it was called to my attention." Witness did not have anything to do with it being used in the Harpoon and did not advise Jacobs to use it in the Harpoon. Mr. Jacobs represented his newspaper; he had been publisher in the State of Minnesota for 10 or 12 years. The Harpoon was one of his papers. He had two or three.

FINDINGS OF THE COMMITTEE

The certificate of the Minnesota State canvassing board filed with the secretary of state of Minnesota shows the vote on United States Senator as follows:

UNITED STATES SENATOR IN CONGRESS

	Votes
Thomas D. Schall received.....	388, 594
Magnus Johnson received.....	380, 646
John J. Farrell received.....	53, 709
Thomas Keefe received.....	4, 994
Merle Birmingham received.....	8, 620

The count as stated in the certificate was not questioned.

In the opinion of the committee:

(1) The evidence does not show that any violators of the liquor laws were induced to contribute money or did contribute any money for the expenses of contestee's campaign for election or that the contestee received or expended any such funds.

(2) There was no testimony offered to show that contestee expended any money during his campaign for election as United States Senator, or in the primary which preceded it. There was no testimony to show that contestee received any money during the campaign preceding the election of November 4, 1924, or at the primary immediately before it.

(3) Regarding the allegations that the contestee violated the corrupt practices laws of Minnesota, your committee states that said statutes—

(a) Prohibit certain acts and make them grounds for contest or annulment of election;

(b) Give to the defeated candidate or to 25 voters the right to bring an action to contest or annul the election;

(c) Require that such action be brought within 30 days after election;

(d) Require such action to be brought in the district court of the county where contestee resides;

(e) Require such action shall be tried according to law;

(f) "If a candidate for United States Senator be adjudicated guilty, the court, after entering such adjudication, shall forthwith transmit to the presiding officer of the Senate a certificate setting forth such adjudication of guilty."

No such contest has been filed in the district court of Minnesota where contestee resides.

The Senate is a judge of the election and qualification of its members and a judgment of a court under the provisions of the Minnesota law referred to would not be binding upon the Senate, but it would have great weight. It should not be expected that the Senate act as a substitute for a district court of that State.

Regarding the publication of the Minnesota Harpoon, the testimony does not support the allegation that contestee published the paper or knew the contents of contestant's Exhibit No. 2; or mailed or caused to be mailed the paper of which contestant's Exhibit No. 2 is a copy, or knew that it was mailed.

Furthermore, the testimony submitted does not create any issue upon the alleged false statements made in speeches or published in the Minnesota Harpoon.

(4) No testimony was offered in support of the allegation that the franking privilege had been abused.

(5) The testimony does not show that any promises were made of offices or positions in return for influence or support by contestee in his campaign for nomination or election.

(6) The testimony does not support the allegation that contestee conspired with A. N. Jacobs and Frank Corneaby to expend a sum of money in excess of \$50,000 or any sum in securing the election of contestee.

Your committee therefore unanimously recommend that the contest in this case be dismissed and that the protest against the seating of Thomas D. Schall be overruled.