69TH CONGRESS
1st Session

SENATE

DOCUMENT
No. 158

SENATOR FROM MINNESOTA

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE COMMITTEE ON PRIVILEGES AND ELECTIONS UNITED STATES SENATE

SIXTY-NINTH CONGRESS

FIRST SESSION

PURSUANT TO

Senate Resolution 20

A RESOLUTION TO INVESTIGATE ELECTION CONTEST WITH RELATION TO THE SENATOR FROM MINNESOTA

JANUARY 28 TO MARCH 8, 1926

JUNE 16, 1926.—Ordered to be printed

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69TH CONGRESS } SENATE { REPORT
1st Session } { 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 subpœna 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.

The 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 Unschuldt 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 have 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.

SENATOR FROM MINNESOTA

THURSDAY, JANUARY 28, 1926

UNITED STATES SENATE,
SUBCOMMITTEE OF THE
COMMITTEE ON PRIVILEGES AND ELECTIONS,
Washington, D. C.

The subcommittee met pursuant to call at 3 o'clock p. m. in the room of the Committee on Privileges and Elections, Capitol Building, Senator Charles S. Deneen presiding.

Present: Senators Deneen, Goff, and Neely.

Present also, Senator Thomas D. Schall, and Messrs. John M. Rees and E. E. Smith, counsel for Senator Schall; and Messrs. Donald G. Hughes and George B. Edgerton, representing the contestant.

The resolution under which the subcommittee was acting is as follows:

[S. Res. 20, Sixty-ninth Congress, special session of the Senate]

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 subpœna 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 one hundred 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.

Senator DENEEN. The subcommittee will come to order. The first thing to be considered is whether you want this to be considered in executive session or in open session.

Mr. HUGHES. So far as we are concerned, we would like to have an open session.

Senator DENEEN. What do you gentlemen say?

Mr. SMITH. I have no objection. It is a matter for the committee to determine.

Senator DENEEN. We will have the hearings in open session, then.

Senator NEELY. Mr. Chairman, I am sorry that a necessity over which I have no control compels me to ask to be excused temporarily. The committee of the Senate on the District of Columbia is investigating the local coal situation, and the situation is extremely tense, as the result of which there seems to be a great deal of suffering in the District of Columbia because of alleged profiteering prices which are being charged for coal. We have a number of witnesses and they are being examined before that committee now, and will continue to be until after 6 o'clock this evening.

Senator DENEEN. We will have this testimony written up and furnish you a copy of it.

Senator GOFF. We will be glad to have you come back if you need a diversion at any time.

Senator DENEEN. Who is the contestant's first witness?

Mr. HUGHES. Peter A. Cosgrove is our first witness.

Senator DENEEN. Will you have the other witnesses sworn also?

Mr. HUGHES. Do you desire to have all the witnesses who are now present sworn?

Senator DENEEN. Yes. Anyone who appears as a witness will stand up and the oath will be taken.

The following persons were at this point sworn by Senator Deneen as witnesses in this contest: Peter A. Cosgrove, Andrew Szysko, A. C. Townsend, S. B. Qvale, and Maurice Silverman.

TESTIMONY OF PETER A. COSGROVE

(The witness had already been sworn by Senator Deneen.)

By Mr. HUGHES:

Q. Your name is P. A. Cosgrove?—A. Yes.

Q. Where do you live?—A. No. 315 West Fifteenth Street, in the city of Minneapolis, Minn.

Q. What is your profession?—A. I am a lawyer.

Q. Admitted to practice in all the State courts in Minnesota?—A. Yes; for 38 years.

Q. Are you acquainted with Thomas D. Schall, the contestee here?—A. I am.

Q. How long have you known Mr. Schall?—A. I was introduced to him possibly in 1904, before he lost his sight, in the Boston Block in Minneapolis, in his office there.

Q. Did you meet him again after that?—A. The next time I met him was some time after he became a Member of Congress. I met him at the office of Louis L. Drill in Minneapolis.

Q. About when was that?—A. I could not say just as to that. He had been in Congress some years at the time.

Q. Do you remember the campaign in Minnesota of the year 1924?—A. Very well.

Q. Did you meet Mr. Schall at any time in that year with reference to the campaign?—A. Yes.

Q. Where did you first meet him?—A. In his office at 554 Security Building.

Q. That is in Minneapolis?—A. Yes.

Q. And do you remember what part of the year it was?—A. It was some time in February. It was a few days after there was a dinner there at the Curtis Hotel to promote Mr. Schall's candidacy.

Q. Did you have any talk at that time with Mr. Schall about his campaign in that meeting?—A. I did.

Q. Do you remember the substance of the talk?—A. Oh, there was—I could not tell you all of it. There was one thing that he was interested in at that time, was——

Senator DENEEN. Relate the substance of the talk. I ask all the attorneys if you will have the witnesses go right to the issue, because some of us have to get away on Friday night. Can you get through with your witnesses by that time?

Mr. HUGHES. Get all through with these witneses?

Senator DENEEN. Yes.

Mr. HUGHES. I hardly believe so, Senator. I do not know. I will try to.

Senator DENEEN. I suggest that you go to the point at once and adhere to it as closely as you can. We are all lawyers here, you know, and if you will get right to the point it will be an advantage to everybody.

Mr. EDGERTON. I think we can, Mr. Chairman.

Mr. HUGHES. Just state the substance of it, Mr. Cosgrove, with reference to the campaign, if anything, that he said.

The WITNESS. The interview with me lasted for something like 2 hours and 20 minutes.

Q. Was it with reference to the campaign?—A. Yes.

Q. Had Mr. Schall filed at that time?—A. No.

Q. Were you active in his campaign?—A. I was, part of the time. If you will allow me to state, I will state that at that meeting the particular thing that he was interested in was knowing whether A. R. Townsend was to be a Republican candidate for United States Senator in Minnesota.

Q. Who was A. R. Townsend?—A. He was a former leader of the party in Minnesota.

Mr. REES. We object. We feel that the order of proof here should be first to get proof that some offense has been committed before taking a lot of testimony which is only admissible if some offense has

been committed. It is the old rule of corpus delicti. It should be enforced, we think. Otherwise nothing can result from an investigation.

Mr. HUGHES. I might state to the committee that the purpose of this testimony is to show the connection between Senator Schall and Mr. Jacobs, and to prove by this witness among other things that A. N. Jacobs was the campaign manager along with Andy Rahn, for Mr. Schall; and then we will follow that up by showing that money was paid into the Schall headquarters, which Jacobs received. That is the purpose of it. These questions may be preliminary.

Senator DENEEN. Will you prove just that money was paid in?

Mr. HUGHES. I have a man sitting right here, if the committee would like to hear him, who will prove that; and I will put him on if you desire. He paid $500.

Senator DENEEN. I think that would be better.

Mr. HUGHES. May I withdraw this witness, then?

Senator DENEEN. Yes.

Mr. REES. For the purpose of making myself intelligible on the matter of the corpus delicti, we feel that the corpus delicti is not established unless there is evidence going to show that this particular money was used or paid in the Schall campaign; that a corpus delicti will not be established unless it is shown that this money was used in the campaign.

(At this point the witness on the stand was temporarily withdrawn.)

TESTIMONY OF ANDREW SZYSKO

(The witness had been previously sworn by Senator Deneen.)

By Mr. HUGHES:

Q. Your name is Andrew Szysko?—A. Yes.

Q. Is that your correct name?—A. Yes.

Q. Where do you live?—A. No. 700 Marshall Street NE., Minneapolis.

Q. Were you living there in the fall of 1924?—A. Not at that time.

Q. Where were you living then?—A. No. 701–709 Ramsay Street.

Q. Marshall Street?—A. Ramsay Street, in the city of Minneapolis.

Q. In the city of Minneapolis?—A. Yes, sir.

Q. Were you, some time during the latter part of the summer of 1924, arrested and accused of violating the liquor laws of the United States?—A. Yes.

Q. In what court was that?—A. That was in the Federal court.

Q. In the Federal court?—A. Yes.

Q. You were to appear in the Federal court in Minneapolis?—A. Yes; in the session there.

Q. Was that the October session?—A. Yes.

Q. And did you later plead guilty in that court?—A. Yes.

Q. What judge did you plead guilty before?—A. Judge McGee.

Q. What was your sentence?—A. Three months in Carlton, Minn.

Q. In jail?—A. Yes.

Q. For three months?—A. Three months.

Q. What were you charged with?—A. Sale.

Q. The sale of liquor?—A. Yes, sir.

Q. Before you plead guilty in court, were you up in the West Hotel in Minneapolis?—A. Yes, sir.

Q. Where is that located?—A. Corner of Fifth and Hennepin.

Q. Fifth and Hennepin Avenue?—A. Yes.

Q. What part of the hotel were you in?—A. The fifth floor; Schall's headquarters.

Q. Can you just in a general way describe those headquarters?—A. Well, when the elevator goes up and stops, Schall's headquarters is right in the hallway [indicating].

Q. Did you see any signs up there?—A. Yes, sir.

Q. What did the signs say?—A. Schall's headquarters.

Q. Schall's headquarters?—A. Yes; Schall's.

Q. You knew they were Mr. Schall's headquarters?—A. Yes.

Q. Whom did you meet up there?—A. First I met Louis Demars. He brought me there.

Q. Where did you meet Louis Demars?—A. He met my brother-in-law, and he spoke that he should get me out of jail.

Mr. REES. I object to what Louis Demars said as hearsay.

Mr. HUGHES. We expect to show that Louis Demars went to this man's brother-in-law and stated that if they came to Schall's headquarters and met a man in there, that they would get immunity by putting up sums of money, and they would not be prosecuted.

Senator DENEEN. Did this conversation occur in the presence of Mr. Schall?

Mr. HUGHES. Oh, no.

Senator DENEEN. Or with his knowledge?

Mr. HUGHES. With his knowledge and consent, as a part of the conspiracy, a general plan.

Senator DENEEN. I know; but this refers to the admission of the witness's testimony. Can you follow it up by showing that Senator Schall knew about it?

Mr. HUGHES. Do you mean what that man said in the store?

Senator DENEEN. Yes.

Mr. HUGHES. No, Senator; I could not do that. But this was in their conspiracy, and Senator Schall was using these men to collect this money, and that he had knowledge. He knew there were men out collecting money.

Senator DENEEN. You do not contend that you can prove a conspiracy by hearsay evidence?

Mr. HUGHES. I do not see why, if they are all in the conspiracy. This man Demars was in the conspiracy to get money.

Senator DENEEN. I read over the petition this morning, and you charge a conspiracy on the part of Senator Schall, Mr. Jacobs, and Mr. Corneaby. Those were the only ones.

Mr. HUGHES. Yes. If we did not name Demars, we will ask to amend and insert his name. That is our contention, that Demars was one of the runners out of that headquarters, that he was paid, and that he got these men up there. Demars was a cigar salesman, and he gave a statement to our county attorney some time ago. He claimed that at that time he supposed they could fix matters for these men, and that he was acting in good faith at the time, in getting the money.

Senator GOFF. Would it be your contention that if money was paid into the Schall headquarters to those in charge there, and that they solicited or collected or received this money, with certain promises connected therewith, that that could be introduced in evidence against Senator Schall, if it is not shown affirmatively or by circumstances of such an impelling character that they would eliminate any hypothesis to the contrary, that he knew of this and was affected by it?

Mr. HUGHES. Yes, sir; we expect, Senator, to show that during the campaign a certain man who himself was collecting money, was in consultation with Thomas D. Schall, at that time knew Senator Schall——

Senator GOFF. Will this man say that he told Senator Schall all these things?

Mr. HUGHES. This man stated in my presence and in the presence of my associate, Mr. Edgerton, that he called up Senator Schall during the campaign numerous times, on the telephone, and told him he was getting this money and he said that it was all right, or words to that effect.

Senator GOFF. Do you not think you ought to start with such a man as that as a witness?

Mr. HUGHES. We tried to start with a man like that; that is, Corneaby. He came to my office, terror stricken, and fainted there, and he said that he would come on here, but he backed out of coming. I wired Senator Deneen about it.

Senator DENEEN. Is Corneaby under subpœna?

The CLERK OF THE COMMITTEE. I do not know. Mr. Mason, your secretary, gave me a list of the witnesses.

Senator DENEEN. Yes; he is. He gave his name, and we sent him a subpœna.

Senator GOFF. The point I wanted to make with you is this, that it has possibly been not the common experience, but I have heard of instances where men in charge of a political headquarters might go out and make reports that they were not authorized to make.

Mr. HUGHES. Yes; that is true.

Senator GOFF. And might raise money for purposes that would serve their own advantage rather than that of the political party; and they would get this money and possibly use it, and use it without the knowledge of the candidate. Now, unless you can bring that home to the candidate, I do not see how the evidence is admissible as tending to sustain the charges.

Mr. HUGHES. We will bring it home. We will show you by Corneaby, presuming that he testifies as he stated to us in our office, that he called up Senator Schall on the phone, and that he visited Schall's house and was with him in his home.

Senator DENEEN. That would be perfectly proper, but you have not Corneaby here.

Mr. HUGHES. I can not prove everything at once. I have got to build this up, a little at a time.

Senator DENEEN. The Sergeant at Arms has just been notified that Corneaby is on the way and will be here to-morrow morning.

Senator GOFF. As a proposition of law I want to state this, and ask you if you do not agree with it. The corrupt practices acts of many of the States provide that a candidate in a primary or in an

election can spend a certain amount of money and no more. This law does not prohibit the individual friends of a candidate, or an association of his friends, from going out and raising money and spending it without his knowledge or his consent. Now, if the mere fact that money was raised and was spent without the knowledge or without the consent of the candidate, would be admissible in evidence against him, that would emasculate all of these so-called corrupt practices acts, would it not?

Mr. HUGHES. Yes; but we do not claim that. We claim this was all done with the knowledge and consent of Senator Schall. Now, I do not say that he would actually know that Demars went there that day and said this and that, but it was in the scheme or plan. We will show that this man Jacobs had the key to his office and that he was his campaign manager; that his campaign manager was right there in his office, and that Corneaby had visited there with men; that Senator Schall knew and could not help but know, not only from what Corneaby had told him, but from the general circumstances of the matter. Senator Schall was not a stranger at the headquarters. He was in there on the night of the primary election to get the returns, and it seems to me——

Senator DENEEN. It is purely a question of following the rules of evidence. You are talking about conspiracy, and we are talking about the rules of evidence to prove a conspiracy. Now, you can not prove anything by hearsay evidence.

Mr. HUGHES. It would seem that it is all involved. If this was an indictment in the United States court——

Senator DENEEN. But you can not prove conspiracy by hearsay evidence any more than you can prove murder.

Mr. HUGHES. But, assume for a moment that Schall was indicted along with Demars and these other men named. Now, we propose to show that while that conspiracy was still pending, these things were said, although not in the presence of Schall.

Senator DENEEN. After you prove the conspiracy. That is the rule, I think. Is not that the rule?

Mr. EDGERTON. Yes; there is no question about it.

Senator GOFF. You will have to establish your conspiracy first, and after you establish your conspiracy, which is nothing more or less than a criminal partnership, and that nothing more or less than a contract or an agreement to do a thing that violates the law—after you have proved that, then, of course, the declarations of the coconspirators would be admissible against each other, and any act on the part of any coconspirator in furtherance of the general plan of the conspiracy would be binding upon all of the members of the conspiracy.

If you should show that Senator Schall had entered into an agreement or contract, either personally or through his representative or his agent, so that the knowledge of the agent would be the knowledge of the principal, then any act that was done by any of the members of the conspiracy in furtherance of this purpose, which would be the raising of money or the making of promises in return for the raising of money, that would all be admissible in evidence. But I do not see how you can start in and attempt to show that certain things were done, unless you first affect Senator Schall with knowledge of those things. If you have not Mr. Corneaby here, and you have

consent to let you introduce your evidence out of order upon your promise that you are going to connect Senator Schall with it, that of course, is a different question.

Mr. EDGERTON. May I say a word?

Senator GOFF. Yes.

Mr. EDGERTON. Mr. Corneaby informed us, Mr. Tiegan and Mr. Hughes and myself, that he was one of several that collected this money from these different men accused of crime, for immunity, and one thing and another, and that he would come here and testify. He said that he not only was a party to doing that, but that Mr. Schall knew all about it, and many times he talked with Mr. Schall about it, that he was collecting this money. Now, it is not our fault that Corneaby is not here, because we tried every way we could to get him to come here.

Senator GOFF. There is no criticism of that.

Senator DENEEN. I am trying to follow the rules of law.

Mr. EDGERTON. Oh, I agree with you, absolutely.

Senator GOFF. I want this to go, as the Chairman has said, in orderly procedure.

Mr. EDGERTON. We are willing to put these witnesses on, if you want them.

Senator DENEEN. Mr. Corneaby will be here to-morrow. I know nothing about this. Mr. Mason in my office had this detail work, and he just sent word through the clerk of the committee that the Sergeant at Arms has received a message by telegraph saying that Corneaby will be here to-morrow, and he should be here at 9 o'clock should he not?

Mr. EDGERTON. He ought to be here at 9 or at 8.30, I believe.

Senator DENEEN. So that if you want to prove anything by him, you will have to wait, of course. He is named as a conspirator.

Mr. HUGHES. I started out to show by my first witness that Mr. Jacobs was Senator Schall's manager. Then we withdrew that witness and put on this witness. We would like to offer this testimony with the understanding or the permission of the committee that if we do not connect it up, it will have to be stricken.

Senator DENEEN. Personally, I do not think we ought to do that. We will take a lot of testimony, you will examine the witness and then there will be cross-examination, and then we may go into collateral issues; and then if the testimony is ruled out we will have wasted two or three hours on it. I do not think we can make any progress in that way.

Mr. HUGHES. I was not aware that the strict rules prevailed in these investigations.

Senator DENEEN. Now, we are not going to invoke any technical matters, but we can not let hearsay evidence come in.

If you make a charge of conspiracy against a man, it must be to do an illegal act or to do a legal act by illegal methods, and the evidence of that must not be hearsay evidence.

As I understand, this gentleman says that he talked to Mr. Louis Demars.

The WITNESS. Yes; he brought me up to the headquarters.

Senator DENEEN. The fact that he went there is competent, but the conversation with him, unless in the presence of one of these three men, is not competent.

Mr. HUGHES. I can proceed, and then I can withhold the Demars part until Corneaby comes. I will do that.

Senator DENEEN. The point of the discussion was, I think, he said a brother-in-law of Demars had asked him to come up.

Mr. HUGHES. Yes.

Senator DENEEN. Why not get him right in the headquarters and start the testimony?

Mr. HUGHES. I wanted to get a picture of this before the committee, and then start him.

Mr. REES. Let me make an observation just on this point. Until a conspiracy is proven we contend that what was said or done in rooms at the West Hotel is also objectionable and is hearsay, and does not bind the contestee. There must be a foundation.

Senator GOFF. That is true. Everything said in the absence of Senator Schall is hearsay unless it was said to his agent who was presumed to report to him each and every thing that transpired; and that has not been established.

Mr. REES. We claim that that is the real objection to any testimony along this line, until they do establish a conspiracy.

Mr. HUGHES. That was just what we proposed to show with the first witness, that Andy Rahn, Republican so-called leader in Minnesota, and this Arthur Jacobs, were the managers of the Schall headquarters, and that Schall from his own lips admitted they were his financiers. I intended to show it by this witness Cosgrove.

Senator DENEEN. You did not ask him the question.

Mr. HUGHES. I withdrew him because they wanted to hear another witness.

Mr. REES. If the committee please, that is not the way that they can establish it. For one man to say that another man was somebody's manager or somebody's agent to do an illegal act falls far short of establishing what counsel is pretending here to establish. There is such a thing here as a legal headquarters. There is such a thing as a legal business. But they must show a conspiracy to do an illegal act. That is the basis of the charge here. Even suppose a commercial institution has a traveling man on the road to sell goods and collect money, and that man should rob a train, it does not hold his firm.

The fundamental thing here is evidence of a conspiracy itself, not by implication; and we object to any testimony being given until it is established, until the corpus delicti of the offense is established and it is shown, not guessed at; not shown by hearsay; not shown by conclusion or conjecture. That is our point.

Senator DENEEN. I want to call attention to the charge. It is on page 18. It is a paragraph only. It reads:

That the said Thomas D. Schall, A. N. Jacobs, and Frank Corneaby continually and at all and divers times throughout the period of five months previous to and including November 4, 1924, and within said State of Minnesota, unlawfully and feloniously conspired, combined, confederated, and agreed together and with divers other persons to commit an offense against the United States, to wit—

Now, this is the offense—

The offense on the part of said Thomas D. Schall of willfully violating the act of Congress approved June 25, 1910, as amended by the acts of August 19, 1911, and August 23, 1912, by giving, contributing, expending, and using, and by causing to be given, contributed, expended, and used in procuring his election as such

Senator at said general election, a sum in the aggregate in excess of the amount which he might lawfully contribute, expend, or use, or cause to be given, contributed, expended, or used for such purpose under the said acts of Congress, to wit, the sum of $50,000.

That is the offense, that he either contributed or expended or used or caused to be expended, and so on, a sum of money in violation of the law.

Mr. HUGHES. There is another charge there.

Senator DENEEN. Yes; but on this particular phase—we are only trying this particular phase of it now.

Mr. HUGHES. No; I have also a charge that Senator Schall and others—giving their names—conspired to receive money from various persons with his knowledge and consent, and failed and refused to make any report to the Secretary of the Senate, and that is what I am depending on here.

Senator DENEEN. That is the one you are depending on?

Mr. HUGHES. Yes; on these bootlegger contributions; that is, the money Schall collected through these men, one of whom was his manager, and that he made no report to the Secretary of the Senate, as required by law, of the names of these bootleggers who contributed to his campaign. We claim that they conspired to get this money and that Schall was in it, and that was a part of the scheme, to get that money at these headquarters, and not report it. It does not make any difference how much or how little he got, but the fact is that he got it and did not report it. As I understand, you violate the law if you do not make a report.

Senator DENEEN. Will this witness testify that he gave Senator Schall $500?

Mr. HUGHES. No; he will testify that he gave it to this man Corneaby.

Senator DENEEN. With the knowledge of Schall?

Mr. HUGHES. Yes; because Corneaby, we will show, turned it over to Jacobs, and he was Schall's manager. And also Corneaby will testify, if he says what he said in our office, that he talked with Schall, and Schall knew what was going on; and of course that Jacobs was his manager at the headquarters. There will be no question, when we get this testimony.

Senator GOFF. Let me put this question: Suppose a man is a manager in the general headquarters. Suppose it is several days before the election. Suppose a friend of the candidate, a very wealthy man, should come into the headquarters, and in the course of conversation with the manager of the headquarters, it should be developed that the headquarters had spent all the money which the law allows it to spend, and this very wealthy friend of the candidate should say, "Well, I will give you $5,000, but of course I do not want the candidate to know anything about it"; and suppose the $5,000 should be passed over to the general manager, and the general manager should take that money, without indicating the fact of this contribution to the candidate, and should go out and spend it. Now, you would not contend under that state of facts that that transaction had in any way affected the candidate as far as the laws were concerned?

Mr. HUGHES. No; I would not; but I would say this: It is charged there in the count that involves the bootleggers that they collected

these moneys under certain promises, and we expect to show by Mr. Corneaby that that general plan was followed out; various sums of money were collected with the promise of immunity and other things; that Mr. Schall knew of that, and that this man Corneaby and Jacobs were acting as his agents.

Senator GOFF. Of course that would be proper proof.

Mr. HUGHES. Yes.

Senator GOFF. You will agree with me that the essential fact in establishing a conspiracy in nine cases out of ten is to have one of the coconspirators who has turned against his associates in the illegal contract.

Mr. EDGERTON. Certainly.

Senator GOFF. And show first by him the formation of this agreement which presumably violates the law; and when you have shown that by him you have laid the prima facie ground for introducing all of the other evidence that connects the parties charged as members with the illegal contract. That is true, is it not?

Mr. EDGERTON. Yes.

Senator GOFF. Now, that has not been done. As I understand, there is no witness here yet by whom you can do it.

Speaking for myself—and, of course, I do not mean to bind Senator Deneen, who is an experienced lawyer—in a matter of this kind where the allegations of the petition recite a fact that would sustain a criminal indictment for conspiracy, I do not feel that we should introduce evidence here which presupposes or assumes the subsequent establishment, legally, of a conspiracy. I think that it is not fair to the committee, it is not fair to the parties involved, to have hearsay testimony brought in here before the ground of connection between Senator Schall and these men concerning whom this testimony is introduced has been shown. That is my position.

Senator DENEEN. And I might add this: Suppose there was a conspiracy of three persons to alter a court record. The orderly proof would be that the record was altered; second, that somebody did it; third, somebody else was in conspiracy with him.

These men may be in the headquarters here; they may be authorized as agents to deal with men in conducting the campaign. You would not say simply because they were the secretaries or assistants of the candidates that he should be bound by what they do, unless you can show first that they were in a criminal enterprise, and in that particular they were acting jointly.

Mr. EDGERTON. I never made any such claim as that. What I do claim is this: We have a conspiracy charge there. Under the bootlegging charge we have said that this money was collected under the plan there set forth, with his knowledge and consent; and that is what we expect to prove, that with his knowledge and consent that money was collected. But we are not to blame that Corneaby is not here.

Senator DENEEN. He will be here to-morrow.

Mr. HUGHES. I question whether he will be here. He expressed great fear to us.

Senator DENEEN. You know, lots of our troubles never happen; and what is the use of worrying over whether he will be here to-morrow.

Mr. HUGHES. Now, I want to call a witness——

Senator DENEEN. That is all right. You may go on if you want to.

Mr. HUGHES. It does not seem to me that in a charge involving the moral fitness of Senator Schall, the rules required to convict him in a criminal court would have to be adhered to. If we show that this money was paid into the headquarters, that his manager, Jacobs, was there and received this money, and if we show that this man Corneaby, who was a close friend of Senator Schall's, who was in his house, who was in telephone conversations with him during the campaign, and all that connects him up to show his knowledge, it does not seem to me we should be required, in a hearing of this sort, to be bound by the same rules of evidence that we would be if this was in a United States court or any other court in which a criminal action was pending.

Senator DENEEN. Do you think that in a criminal case in a court that involved $100 the rule should be strict, but that in a proceeding that involves the seat of a man in the Senate of the United States it should be tried by gossip?

Mr. HUGHES. No; but if this was a case in a criminal court and it did not involve a seat in the United States Senate but it did involve the guilt or innocence of a man under a criminal act, it might involve a prison sentence. We are trying to prove that these runners were sent out from these headquarters and did these things. We are sort of resorting to the rule of common sense, here; if we can show by Mr. Cosgrove, who was on the stand, that this man Jacobs was his manager, and we can go on to show that a paper was printed in which it was stated that this man that got out the article was getting money from Rahn and Jacobs. I realize it is different if some friend goes out and opens up headquarters for him. That is a different proposition altogether. They could gather money any way they wanted to.

Senator GOFF. And you also realize that in many instances the campaign managers of candidates are dishonest themselves?

Mr. HUGHES. I have never been a candidate, but I know that is true.

Senator GOFF. It is just human nature. Men do not lay aside their human nature or their desire to graft or their desire to get something for nothing merely because they become campaign managers. Suppose you followed out that theory and you should get all the facts of this situation. If you should show these things by testimony which would be in its nature hearsay, unless you affected Senator Schall with knowledge of those things, then you would really have the moral obligation, while you were in the moral field, of showing that all of this money which was so collected was absolutely spent for Senator Schall and not kept by any of the people by whom it was collected. If you are going to go to the end of the moral conclusion which that would involve, you would, of course, have that burden upon you. Now, if you could show that this money was collected with the knowledge and the consent of Senator Schall and that it was money improperly collected for this purpose, then the fact that it was not all expended for that purpose would become immaterial in view of the fact that you had affected Senator Schall with knowledge of the purposes for which it was used; so that there is the reason, and in my judgment the absolute necessity of affecting Senator Schall

at the very threshhold—in limine, as it were—with knowledge of the fact that this money was collected, that it was collected improperly, and that it was to be spent in a manner which the laws of Minnesota do not permit. Is that your theory, Senator?

Senator DENEEN. Oh, yes.

Senator GOFF. Now, I can not sit here as a lawyer and allow evidence to come in, in this record, which I know is improper; but I am here as a lawyer to permit the receipt of any and all evidence, regardless of what it may tend to prove, if it is properly receivable not only under the laws of logic but under the rules of the court. This committee must substantially observe such conclusions if it is to submit its report finally to the Senate of the United States and have the Senate consider either the approval or the rejection of its report. That is another reason we must observe the rules of evidence; and I do not see how we can go on, Mr. Chairman.

Senator DENEEN. There may be other witnesses here.

Senator GOFF. I mean on this theory.

Senator DENEEN. Yes.

Senator GOFF. I just want to make myself clear on that. This is no reflection on your testimony, no reflection on you gentlemen; it is merely that I do not think that the evidence at this stage is admissible.

Mr. HUGHES. Let me ask this: Assuming that it will be shown, which we can show by these gentlemen here, that this man Jacobs was his manager; that Jacobs had charge of the finances. Schall admitted that to Mr. Cosgrove more than once, and he would not dare deny it himself if he came on the stand. Assume that it will be shown that this headquarters was being operated up there in charge of Jacobs; that in writing he had referred to Jacobs. We have letters during the primary where he referred to his friend Jacobs, and it was a matter of common knowledge. They were close together for years; and assuming it to be shown that Mr. Schall operated a newspaper in connection with Jacobs, to show their connection, now, if we show that, coupled along with the fact that from these headquarters where this man Jacobs was operating—leaving Corneaby out for the time being—they sent out to this man Szysko and asked him to put up money, and they sent out to others, and made a business of it, would not that be sufficient in a hearing of this kind, before this committee?

Senator GOFF. You mean to affect Senator Schall?

Mr. HUGHES. Yes.

Senator GOFF. I should say no, unhesitatingly. Let me give you my reason for that.

Senator Schall selects a manager presumably to do for him what he could do for himself within the law. That is the presumption. This man therefore, as his manager, has no authority, under his appointment, to do an illegal act. If he does an illegal act, you must show that that illegal act was done with the knowledge and the consent of the principal, in this instance Senator Schall, the candidate for the office. If you do show that, you have shown the first step in a criminal contract which the law calls a conspiracy.

Now, I do not care how many men around a political headquarters might do illegal things in the way of making promises and receiving

money in response to those promises; you can not affect the individual with knowledge which would in effect ratify this illegal act, unless you bring home to him knowledge of that fact so that he could dissent from it.

I know this from experience in court in causes that have involved the question of conspiracy, and I have had a good deal of experience in trying them in court—and I might say, about that, that I briefed the Newberry case for the United States—and I know just what the questions of law involved in the Newberry case were as to affecting Senator Newberry with certain knowledge—and I do not see how we can proceed here to let in all of this gossip.

Then, another thing, I do not think it is fair. I do not think it is fair to Senator Schall to have evidence brought in here which can not be sustained by the committee or by the Senate, because it does not affect him with knowledge. I do not think the committee should permit gossip of that kind to go into the records of Congress. That is the reason I objected to the introduction of this character of testimony at this time, because it does not affect actually Senator Schall with knowledge. We can not affect him with knowledge presumptively, and we can not affect him with knowledge because we assume that those intimate with him and closely connected with him told him that they were violating the law, so to speak, in his interest and in his behalf. That would be a very debatable question, because many men doing such things as that might, for the very reason that they knew that they had violated the law, refrain from telling their principal that they had done so, knowing that he would disavow, so to speak, their act instantly.

Now, you could, of course, argue back that it would not have been done in this case, but we must not permit the affectation of knowledge to rest purely in debate or purely in assumption. If you are going to introduce letters, which is another way of establishing a conspiracy, that is of course proper; and if you are going to introduce it through the testimony of the witnesses who were parties to it. I think you understand the rules which should govern in matters of this kind.

What I am going to say to you now is purely a question of expediency and not a question of principle. You know that the Senate of the United States would never sustain a report of its subcommittee or of its full committee that was based purely upon hearsay testimony or was based upon evidence that did not observe and follow the rules of law. We have in the Senate of the United States learned and astute lawyers, men who would bring to bear upon a question of this kind a clear and well-defined recognition of the rules of law as they apply to such a case.

Mr. HUGHES. May I go further and add that if we should show that this manager for Senator Schall visited the prohibition officers of Minnesota and asked them to lay off from certain bootleggers' cases, some of whom probably contributed, so that they could vote for him——

Senator DENEEN. By this witness?

Mr. HUGHES. Not by this witness. You understand we have to take this step by step. I am limited to only six people as witnesses, and that makes it harder, as well.

Senator DENEEN. No, you are limited to six people at first. If they make a showing, then you can call others.

Mr. HUGHES. Yes; but there is just the point. You say if they make a showing. Six is our practical limit.

Senator DENEEN. We do not have any such limit if a showing is made.

Mr. HUGHES. I do not know if you agreed on it, but that was the ruling and we had to follow it.

Senator DENEEN. Did we not all agree on that?

Mr. HUGHES. We have followed it.

Senator DENEEN. It has been followed in all the cases. We agreed to it here.

Mr. HUGHES. Of course, the Senators must realize that these acts are never committed in the open. Even a candidate running for office would get money——

Senator GOFF. Senator Deneen and I do not know about that. We do not want to substantiate our experience in such matters; but I think we realize the difficulty of establishing conspiracy, as well as the ease of establishing conspiracy if you have the testimony of a coconspirator who is a member of the illegal agreement. Now, if you bring such a man as that in here and he opens the floodgates, why, we will make Chicago an inland city without an inland sea, if it is necessary, to bring the evidence in here to sustain the proposition.

Mr. EDGERTON. I am perfectly satisfied with the attitude of the committee.

Senator GOFF. I am appealing to you as a lawyer.

Mr. EDGERTON. You are absolutely right, Senator.

Senator DENEEN. The reason for taking so much time in these preliminary matters is to guide you in discussing matters with your witnesses and in examining them.

Mr. HUGHES. I would like to make this statement, that I am as certain as that I stand here, that unless some means is taken to bring this man Corneaby here, he will not be here.

Senator DENEEN. Let us rule on that to-morrow. He has said that he will be here.

Senator GOFF. If he does not come, we will send a Sergeant at Arms after him.

Mr. HUGHES. You may have to send more than one.

Senator DENEEN. You need not worry about that. Let us not worry about things that come up to-morrow.

Senator GOFF. I think we might as well adjourn.

Senator DENEEN. Have you any other witnesses?

Mr. HUGHES. I have Mr. Cosgrove here, and other witnesses. They are prohibition agents whom Senator Schall's manager——

Senator DENEEN. We are not going to be strict about that matter of recalling witnesses. You can recall your witnesses and withdraw them; in preliminary matters that do not go to the gist of things, we will not invoke the rules of law. But we must invoke the rules of law when you get to the gist of the thing, the crime that is charged here.

Mr. HUGHES. We will bring in these people that are all material witnesses.

Senator DENEEN. What is your program? We do not object to your pursuing this. We are ruling that a conversation with a third

man outside of the presence of Senator Schall is not admissible under the present condition of the case.

Mr. HUGHES. I can show that Schall sought this man, but not put any conversation in.

By. Mr. HUGHES:

Q. I believe you testified you went to the West Hotel, to Schall's headquarters?—A. Yes.

Q. Whom did you meet there?—A. Cap.

Q. Cap is Demars's first name?—A. First I met Jacobs.

Q. Jacobs. Do you remember his first name?—A. I do not know his first name.

Q. What did he look like?—A. He looks like dark complected.

Q. Was he a Jew?—A. He looked like a Jew.

Q. What part of the headquarters was he in?—A. He was in his office, the second room.

Q. Did anybody go up there with you?—A. Louis Demars.

Q. What was his business—Mr. Demars's?—A. Well, I don't know what he was doing at the time, but he was one of these fellows that got the customers for Jacobs.

Q. A runner for Schall?—A. Yes.

Mr. REES. I move to strike that out as a conclusion of the witness.

Senator DENEEN. I think it should be stricken out.

Mr. REES. I supposed he was going to prove some line of business that Demar followed.

Senator DENEEN. That will go out.

By Mr. HUGHES:

Q. Did you have a talk with Jacobs?

A. Yes.

Q. What did you do, and what did he say?

Mr. REES. That is objected to for the same reason mentioned before. It is a prerequisite that a conspiracy must be established, and what Jacobs said would not bind Senator Schall.

Senator DENEEN. You do not pretend that Senator Schall was present at this conversation?

Mr. HUGHES. No, no; we do not claim that.

Senator DENEEN. I think that would be hearsay evidence, until you make the connection.

Mr. HUGHES. Then we will go on.

By Mr. HUGHES:

Q. What did you do there at that time?

Mr. REES. That is objected to as immaterial unless they show first that some crime has been committed—what they did. It does not bind Senator Schall, unless agency is established first.

Second, the Senate is not interested in it unless some offense against the law was committed.

Senator DENEEN. I think that is not material until you show the crime—what was done. Have you any evidence that Senator Schall received contribution of a large sum and expended it?

Mr. HUGHES. As I say, we have shown that this money was paid in; $1,000 we will show went into the headquarters, and we will show by Corneaby that he talked with Schall, and Schall knew how they were proceeding about this money; he had knowledge of the means used to collect this money.

I will say that Miss Joswich was in the headquarters; that she was a lady——

Senator DENEEN. You will not try to show that by this witness?

Mr. HUGHES. No.

Senator DENEEN. Why not leave that, then, until you have Corneaby here?

Mr. HUGHES. We propose to show what was put on the statement we have given you there, of what the witnesses will testify to. Now all we propose to show is what we said here that those six witnesses will testify to.

Senator DENEEN. I will ask Senator Goff to read over this statement you have made as to the purpose of this testimony.

(The statement referred to was here examined by Senator Goff.)

Senator DENEEN. Now you may proceed.

The pending question was read by the stenographer as follows:

Q. What did you do, and what did he say?

Senator DENEEN. That would be hearsay until and unless you make the connection between Jacobs, Corneaby, and Senator Schall.

Mr. HUGHES. Well, I will call Captain Townsend if I may withdraw this witness. I will bring something that is not hearsay.

Senator DENEEN. Yes; you may withdraw this witness. You will keep these witnesses here so that you can introduce them after Corneaby comes.

Mr. HUGHES. Yes, sir.

(At this point the witness under examination was temporarily withdrawn from the stand.)

TESTIMONY OF ADDISON C. TOWNSEND

(The witness had been previously sworn by Senator Deneen.)

By Mr. EDGERTON:

Q. Captain, what is your name?—A. Addison C. Townsend.

Q. Where do you reside?—A. In Chicago, Ill., at present.

Q. What official position do you hold in the Government?—A. I am a prohibition agent.

Q. How long have you been a prohibition agent?—A. Since February, 1923.

Q. Before that time what was your business?—A. I was in the United States Army.

Q. How long were you in the Army?—A. In the Spanish-American War, and in the late war up until some time after the close of the war.

Q. What official position did you hold in the war?—A. Captain, all the time.

Q. You have been a prohibition law enforcement officer. Where have you been stationed?—A. In a number of parts of the country, sir.

Q. Whereabouts?—A. Well, I was for a time stationed in Washington, D. C., and then I was supervisor traveling for the prohibition department continuously for over a year.

Q. Were you ever located in Minnesota?—A. I was made a divisional chief of general prohibition agents in March, 1924, and was stationed in Minneapolis for the balance of that year.

Q. Do you know Senator Thomas D. Schall?—A. I do, sir.

Q. How long have you known him?—A. I met him in the summer of 1924.

Q. Where?—A. In his office.

Q. Where?—A. In the Security Building, I believe it is, in Minneapolis.

Q. In the Security Building in Minneapolis, Minn.?—A. Yes, sir.

Q. About what time in 1924 was that?—A. In July or August.

Q. Did you have any conversation with him at that time?—A. I did, sir.

Q. Will you state to this committee what that conversation was?—A. I was telephoned to by some one stating that Senator Schall—or Representative Schall—wished to have an interview with me, and I replied that I should be glad to see him at the office at any time. The party then told me what I did not——

Senator DENEEN. Captain, the question is, What was the conversation between you and Senator Schall?

A. Yes; I will explain to you——

Senator DENEEN. No; the question is as to the conversation.

The WITNESS. Very good, sir. He spoke to me in regard——

Mr. REES. If you will pardon me a moment; I would like to ask counsel to state what they propose to prove by Captain Townsend, so that I will have the opportunity to object if it does not come within the rule.

Mr. EDGERTON. You have the statement that was filed by me as to what Captain Townsend will testify to.

Mr. REES. To that we object that it is incompetent, irrelevant, and immaterial; that it does not tend to establish any conspiracy; that it contains no admission of a conspiracy, no evidence of a conspiracy to violate any law at any time, and that it is therefore inadmissible.

Senator DENEEN. We can not tell what he is going to say.

Mr. REES. They say it is the same statement that he has there, that they have furnished the committee.

Senator DENEEN. I think you had better permit him to answer that question. We can not tell what his answer may be.

The WITNESS. Representative Schall then spoke to me about the case of one Louis Unowsky, who had been caught selling——

Senator DENEEN. Captain, just state the conversation. Tell all the history that was brought out in the conversation, but make your answer responsive to the question.

The WITNESS. Yes, sir. The wine in question belonged to a Jewish rabbi named Horowitz, and Mr. Schall wanted me to leave Horowitz out of the case if it were possible to do so.

By Mr. EDGERTON:

Q. What did he say?—A. He said that this man controlled a number of Jewish votes which he wanted, naturally, for his election as Senator, and if I could leave him out of the case he would probably swing these votes to him.

Q. Did he say anything about the importance of carrying Minnesota?—A. About what, sir?

Q. Did he say anything about the importance of carrying the State of Minnesota?—A. Yes, sir; he stated that Minnesota might be

the pivotal State in the Union for the coming election, and if he could carry it, it would carry for Coolidge also.

Q. Was this man Horowitz being investigated by your department at the time, for violating the law?—A. Yes, sir.

Q. What was said by you in answer to Mr. Schall's request that you should not——

Mr. REES. I object to that as being immaterial. What the captain might say ought not to bind Senator Schall.

Mr. HUGHES. In his presence, Mr. Rees?

Mr. REES. It does not make any difference about his presence. They were adverse.

Mr. EDGERTON. I asked for the whole conversation.

Senator DENEEN. I think the whole conversation should go in.

The WITNESS (continuing). I stated to Congressman Schall that I was bound by my oath of office to do my full duty, and I asked him if he expected to be elected United States Senator. He replied that he did. I then said that there was nothing that I could do in the matter, because the first thing he did after taking his oath of office would be to have me thrown out for malfeasance of office.

By Mr. EDGERTON:

Q. Do you want to say anything more on that?—A. No, sir.

Q. Did you ever have any other conversation with him about Maurice Silverman, who was also a prohibition enforcement officer?—A. Not that I remember, in 1924.

Q. When did you have a conversation, if you did, in regard to him?—A. While I was acting administrator in Minneapolis, in September, 1925.

Q. Was there anything said in that conversation about Mr. Silverman's removal from that State to any other State?

Mr. REESE. Just a moment. That is objected to as wholly immaterial. Under the dates given by the captain, it is evident that this conversation occurred almost a year after the election was over and the result declared, so that it could not have entered into the election and ought not to be considered in determining whether or not a Senator should be expelled.

Senator DENEEN. Have you any argument to present on that matter?

Mr. EDGERTON. Yes; it is this way. Mr. Silverman was approached at numerous times by Mr. Jacobs for him to grant favors to men charged with violating the liquor law, either in the way of immunity or in the way of getting off of a punishment, or getting the cases continued over the October term of court. Now, Mr. Silverman refused to grant these requests, and he gave Mr. Jacobs to understand finally that he did not want him to come to his office for such unreasonable requests.

It is well known that at that time we had in Minnesota a very strict judge upon the Federal bench, Judge McGee, and it was useless to expect that kind of favors. Now, because of that, we claim the Senator was insistent upon Mr. Silverman's removal, and finally, when he did not get his removal from Captain Townsend, both men were removed out of that district. We claim that it is very strange that that should have happened unless Mr. Schall knew that that

thing was going on and that he could not get the relief that he wanted, and then he turned on both of these men, and so we claim that it is material testimony in this controversy.

Senator DENEEN. I think the testimony is obviously immaterial. You charge a conspiracy to elect a man. The conspiracy terminates with the election. Nobody would be bound by the testimony of another conspirator after the conspiracy has been executed.

Mr. EDGERTON. Yes, sir; after the conspiracy failed.

Senator DENEEN. In September, 1925, this talk in question occurred. The election occurred in November, 1924.

Mr. EDGERTON. Yes; but it shows why this antipathy against this man existed, because he could not get the favors he wanted when he was running for office. It is practically in the way of admissions.

Senator GOFF. If you got into that field of immateriality, would it not be necessary for you to eliminate the suggestion that no citizen of Minnesota had come to Senator Schall, then, and asked him to have this man Silverman removed? He might have had complaints made against the man, as we all have complaints made against Federal officials that are located in our States, by our constituents, who give different reasons therefor.

Mr. EDGERTON. Is it not for the Senator to show it, then, if there was any other reason?

Senator GOFF. Of course it would be if the main reason was material; but as Senator Deneen has said, after a conspiracy is a completed act, declarations or acts by members of the conspiracy are not binding upon the coconspirators, and I think of course that is true. If you are going to show by this witness that he knows of his own knowledge that Senator Schall had this man Silverman removed because of Silverman's refusal to do these things, at or about the time of the election, and this witness is capable and willing so to testify, then you have raised a very different question.

Mr. EDGERTON. Let me ask another question.

By Mr. EDGERTON:

Q. Did Senator Schall ever suggest to you that if you would remove Maurice Silverman, your subordinate, from the State, he would do anything for you?

Mr. REES. That is objected to for the same reason. No time is fixed before election. It does not relate to any of the charges which have been amended and specified at different times here. Now, we are getting into a collateral issue, something else that involves something else, and it is wholly immaterial as to whether or not Senator Schall should be expelled from the Senate.

Senator DENEEN. The ruling is that conversations in September, 1925, about Mr. Silverman, or with him, are immaterial so far as presented at this moment.

Mr. EDGERTON. Well, if I may ask a question of the committee——

Senator DENEEN. Yes.

Mr. EDGERTON. Suppose Senator Schall admitted in 1925 that he had taken the course he had in getting these officers removed because they would not comply with his requests and grant these bootleggers immunity; would not that be admissible?

Senator DENEEN. Under your charges here?

Mr. EDGERTON. Yes; to show that he was acting——

Senator DENEEN. Under what particular charge in this petition?

Mr. EDGERTON. I refer to the bootlegging charge.

Senator DENEEN. I know, but that is a very general charge. But how does this apply to your prayers in your petition? I do not see how a thing that occurred after election could be pertinent here, unless it be an admission about something that occurred before the election.

Mr. EDGERTON. Sure; but it is the principal himself that we are directing this testimony to. It is his acts. If he admitted it, it would seem to me that it would be clearly admissible; and if he does acts to show that he caused this man to be removed because he did not get these favors, it seems to me it is admissible.

The pending question was read by the stenographer as follows:

Q. Did Senator Schall ever suggest to you that if you would remove Maurice Silverman, your subordinate, from the State, he would do anything for you?

Mr. REES. It must be connected with the conspiracy in some way in order to be any evidence of conspiracy.

Mr. EDGERTON. Let me ask the committee to read that last count. I am connecting up Mr. Schall with the collecting of that money, under the pretenses under which it was collected from these bootleggers, and this is some evidence, I claim, establishing his connection with it.

Senator DENEEN. The ruling was made that you could not submit testimony until the gist of the case was proven, which is the crime charged here. You are going to prove that by Mr. Corneaby to-morrow, as I understand, or by some other witness.

Mr. EDGERTON. Yes.

Senator DENEEN. But you must show first that there is a crime. You must show the thing that was effected. Obviously that is so; otherwise we might be two weeks on a lot of matters, and then if you did not make the connection, it would be all wasted.

Mr. EDGERTON. Well, I am perfectly agreeable to wait, but if I have got to go on, this is all I can do.

Senator DENEEN. You do not have to go on. We are going to give you all the time you need in this matter. I asked whether or not you could get through to-morrow, but if you can not do so, you are going to get all the time you need. But the case must be put in in an orderly way.

Mr. HUGHES. It seems to me I can not get the theory of this ruling. Here is the talk with Captain Townsend direct with Schall. We can not call him, very well, to the stand, although if I am forced to, I am going to call him. I am going to get these facts, no matter what extremes I go to. I am going to get these facts out in this case.

Here is a talk with Schall and Captain Townsend. As I say, we have charged and stated in the petition that Jacobs, all during that campaign, had gone there to Captain Townsend and to Silverman and to Mr. Qvale and others, to try to hold off and get immunity for these men who had put their money up—had been shook down. We propose to show at this time that Schall said to Townsend after election, at the time when the question of a chief for Minnesota was up, "If you will fire Silverman, I will give you the position." That was the reply back.

I do not see, hardly, that we should be held here to the rules that we would be held to in the district court; and I am not at all sure but if this was in the United States district court under an indictment that testimony would be admissible as an admission.

Senator GOFF. I will reply to that. I am quite confident that the evidence would not be admissible in a court, a State or Federal court, for this reason: It does not in any way connect Senator Schall with the conspiracy which terminated with the election. If Senator Schall had gone to this witness and had said to him, in effect, "I will promise to make you the chief here if you will eliminate your subordinate for the reason that during my campaign for election to the United States Senate, your subordinate refused, in effect, to become a member of a criminal conspiracy in which I was engaged, and for that reason I want him removed," that would in effect be admitting, nine months after the completion of the conspiracy, facts relevant to the essential charge of conspiracy; and of course an admission of that character would always be admissible. But nine months after this conspiracy is completed there might have been reasons wholly disassociated from the conspiracy that might have prompted a man representing his State in the Senate or in the Congress to go to a man in Captain Townsend's position and say to him, "Your subordinates are not making good for the cause in my State, and I can not consent to the reorganization of your department with your subordinates there. If you will eliminate some of these subordinates who are persona non grata to my constituents, then I would be willing to recommend you for the chief of this division." That would be a perfectly proper suggestion from a Congressman or from a Senator, if it was along the lines of recommending Captain Townsend for such a position. But I fail to see any connection between the conspiracy which is here charged, and which terminated in November, 1924, and a conversation of this character in September, 1925, that does not expressly show that the reason for the removal of Mr. Silverman was his failure or his refusal to join in the conspiracy of 1924; and I do not think, with all due respect to your judgment, that that would be admissible in any court to establish a conspiracy already nine months dead.

Mr. HUGHES. It seems to me that if evidence is shown that this man Jacobs—which was a positive fact and Schall can not deny, himself—was around over there after those agents, to try to get them to fix these cases, and then when Captain Townsend went in there, even though it was after the election, he had a talk with him about his appointment, and it was shown that Silverman and that Captain Townsend had refused to fix these cases, and then if Schall without any reason told Captain Townsend, "If you will eliminate Silverman, I will appoint you," it seems to me that would be the strongest admission you could imagine.

Senator GOFF. But you do not connect it up with any knowledge that it was due to the refusal of Mr. Silverman to carry out the purposes of the conspiracy of 1924.

Mr. HUGHES. I do not presume that Mr. Schall will be fool enough, probably, to say to him, "Mr. Silverman turned Jacobs down when he was out getting funds for my campaign. Do not appoint him."

Senator GOFF. Is not that, logically speaking, merely an admission on your part that the evidence is inherently weak for the purpose for which you are offering it?

Mr. HUGHES. I do not think so. It is a powerfully strong admission, I think, on his part.

Mr. EDGERTON. We expect, of course, some time to show, if we are permitted, by Mr. Silverman that there was no other trouble at all that ever came up between him and Senator Schall; that he was very friendly until after his refusal to grant this, and then he wanted him removed to another place.

Senator GOFF. Do you not think, yourself, that that ought to be established first by Silverman, and then this evidence used for corroborative purposes?

Mr. EDGERTON. Yes, sir; I do.

Senator GOFF. Is not that really the proper rule of evidence?

Mr. EDGERTON. Yes; but this witness was on the stand, and I came down to this point expecting, of course, to supply that by Mr. Silverman.

Mr. REES. May I observe, How does Mr. Silverman know; how would he be able to state that Senator Schall did not have some other reason in his mind? How would he be able to come to that conclusion or to pass that conclusion for this committee?

Senator GOFF. I understand that they are going to show something by Mr. Silverman. My position is that until they show this by Mr. Silverman, this evidence in its very character is corroborative evidence, and is not admissible until the main fact is established by Mr. Silverman. In other words, the objection to this evidence is the objection that was raised for the other evidence.

Mr. EDGERTON. But it has been my experience, and I guess it has been the committee's experience, that when a man that stood fairly and well at the bar, says he will supply that testimony through another witness, he is allowed to put that in.

Senator GOFF. Do you not think that it is always the rule in civil trials or in equity proceedings, and strictly not in a criminal case? I just ask you to cast your mind back over that.

Mr. EDGERTON. Yes; of course there is a difference.

Senator GOFF. Here the allegations are made with all the particularity of an indictment, and if they can be sustained, that is one thing; and I think, myself, that you will agree that we are asking you if you will observe in reference to questions of that serious character the rules of evidence.

Mr. HUGHES. May I ask Mr. Silverman just a question or two?

Senator GOFF. Mr. Silverman is here, and if you want to put Mr. Silverman on so that this evidence will become admissible as corroborative testimony, I see no objection to that.

Senator DENEEN. None at all; no.

Mr. HUGHES. Let me ask a question and we will clear this other up.

By Mr. HUGHES:

Q. Captain, do you know a man by the name of Mike Jennings?—A. No, sir.

Q. Do you know who he is?—A. Yes, sir.

Q. Did you have any talk with Mr. Schall after the election with reference to Jennings?

Mr. REES. That same objection.

Senator DENEEN. He does not know Jennings, and now he is asked if he had a talk with Schall about Jennings after the election. Do you object to it?

Mr. REES. The same objection that I made before.

Mr. HUGHES. We propose to show, after we bring this out, if this witness answers as I understand he will, this Jennings is one of these men that put up money. This Jennings is a bootlegger and had been indicted and convicted in the October term of court. He was acquainted with Senator Schall, and we will show that he had gone out of his headquarters and had been seen with Senator Schall campaigning and introducing him around the State. This goes to his moral fitness as well as connecting him up with this Jennings.

Senator DENEEN. You would have to show that Jennings put up some money first, and that it was expended in the campaign, with knowledge or consent of those charged.

Mr. HUGHES. I know; but it seems to me if we are going to meet with that question every time, we might as well quit.

Senator DENEEN. I think you should prepare your case to try it in accordance with the rules of law.

Mr. HUGHES. We have done that.

Senator GOFF. You do not want to condemn a man running for office because of the company that he keeps in his campaign?

Mr. HUGHES. Senator, I would not bring charges against any man unless we had the evidence. This happened to my own client. That is where I first learned of it.

Senator GOFF. Officers are frequently called upon to meet, in the different communities where they go, characters, and shake hands with them, and possibly be introduced by them, when they make their speeches, and they may not be men that they would voluntarily choose; and that is one of the penalties, possibly, of politics; and the mere fact that Senator Schall was seen going around with this man during his campaign should not, it seems to me, in and of itself, affect Senator Schall with any knowledge that he was there in bad company, or it would not tend to prove that he was violating any law.

Mr. HUGHES. We will show, further—we can not show these things all at one time—that this man drove Senator Schall to Washington, and had been there in his house—Jennings, the head of the bootlegging ring in Minneapolis to-day there.

Senator DENEEN. I think you should confine your remarks to explaining the point that you desire to submit. It is obvious to you as a lawyer, I should think, that if you intend to have Captain Townsend testify about Jennings, and if you charge that Jennings paid money, you must show that he paid him money first. It is all based on that. You should have your foundation first. Now, if you have any testimony that Mr. Jennings paid any amount of money, why do you not withdraw this witness and put on the stand a witness to prove that?

Mr. HUGHES. Of course, that is Mr. Corneaby.

Senator DENEEN. Then, let us wait until Mr. Corneaby comes.

Mr. EDGERTON. I would suggest that we wait until Corneaby gets here.

Senator DENEEN. We would prefer to take any testimony that does relate to this, if you have any, now; but if you want to adjourn until to-morrow we will agree to adjourn. However, you must have other witnesses on other subject matters, I should think. I think it is always unwise to try to erect a superstructure before you put down the foundation for the building.

Mr. EDGERTON. I suggest that we wait for Corneaby.

Senator GOFF. While I express no opinion upon your evidence, I do say that you are offering it out of order. That is the objection that I raise.

Mr. EDGERTON. And I concede that.

Senator DENEEN. Have you any other testimony? If you gentlemen want to wait and put your case in order, very well.

Mr. EDGERTON. I think that would be the better way.

Senator DENEEN. There is no objection to that, is there, Senator?

Senator GOFF. No.

Senator DENEEN. You do not care to pursue that further?

Mr. HUGHES. We will be met with the same objections right along, and what is the use?

Senator DENEEN. I thought you might present that phase of your case that relates to the alleged falsehoods that were told. Are you prepared to go on with that?

Mr. EDGERTON. Yes; we had a witness here on that, but I think he has gone over to the House Office Building.

Senator DENEEN. I think he left with a Representative who was here.

Senator GOFF. Shall we send for him?

Mr. EDGERTON. I do not know where we can find him now.

Senator DENEEN. We will have to be absent over Saturday, but we are not going to prevent you from taking all the time you think is necessary in this case.

Mr. EDGERTON. We feel that way about it.

Senator DENEEN. I wanted to keep you from spending a lot of money by keeping your people here; that is the reason I told you we would be absent over Saturday.

Senator GOFF. I would say that I have a very important committee engagement to-morrow at 10 o'clock.

(Informal discussion ensued as to future hearings.)

Senator DENEEN. I will leave Washington Saturday afternoon.

Senator GOFF. Possibly Senator Neely and I could go on Saturday afternoon.

Senator DENEEN. Yes; you could go right ahead.

Senator GOFF. And then we could go on to-morrow afternoon.

Senator DENEEN. If you gentlemen are not able to get your case in by Saturday night, we will continue next week. We are not trying to crowd you.

Mr. EDGERTON. No; I appreciate that.

Mr. HUGHES. And we would ask to have all the witnesses who are now subpœnaed asked to return; and may I ask, if Mr. Corneaby reports to your office, that I be notified, so that I may know if he is here in the city.

Senator DENEEN. Yes. None of the witnesses have reported to my office so far.

Senator GOFF. He might very likely report to the Sergeant at Arms, and the office of the Sergeant at Arms is directly below this room.

Senator DENEEN. We will adjourn, then, until 2 o'clock to-morrow afternoon, and the witnesses who have been subpœnaed will return here at 2 o'clock to-morrow, and until they are heard.

(At 4.45 o'clock p. m. the subcommittee adjourned until to-morrow, Friday, January 29, 1926, at 2 o'clock p. m.)

SENATOR FROM MINNESOTA

FRIDAY, JANUARY 29, 1926

UNITED STATES SENATE,
SUBCOMMITTEE OF THE
COMMITTEE ON PRIVILEGES AND ELECTIONS,
Washington, D. C.

The committee met at 2 o'clock p. m., pursuant to adjournment, Senator Charles F. Deneen presiding.

Present: Senators Deneen (chairman), Goff, and Neely.

Senator DENEEN. The committee will come to order. You may proceed, gentlemen.

Mr. HUGHES. Call Frank Corneaby.

TESTIMONY OF W. F. CORNEABY

(The witness was sworn by Senator Deneen.)

By Mr. HUGHES:

Q. Where do you live, Mr. Corneaby?—A. No. 1505 Second Avenue south, Minneapolis, Minn.

Q. How old are you?—A. Thirty-seven.

Q. Born in Minneapolis?—A. Yes, sir.

Q. Lived there all your life?—A. Yes, sir.

Q. Are you acquainted with Senator Thomas D. Schall?—A. Yes, sir; slightly.

Q. When did you first meet him?—A. At the special primaries, whenever that was. In 1922 or 1923 I met him for a few minutes in his office.

Q. Did you also continue that acquaintance up to 1924?—A. No, sir; I never saw him between that time until the primary election of 1924.

Q. Not until the primary election of 1924?—A. Yes, sir.

Q. And when did you come in contact with him in connection with the primary election of 1924?—A. I went up to his office and offered my services in any way that I could do him any help in his election.

Q. That was about what month in 1924?—A. Some time in March.

Q. March, 1924?—A. Yes, sir.

Q. Where is his office located?—A. No. 554 Security Building, Minneapolis, Minn.

Q. The Senator was in then, too?—A. Yes, sir.

Q. He was then a Member of Congress, the lower House?—A. Yes, sir.

Q. Do you know Mr. Arthur N. Jacobs?—A. No, sir; not until a long while after that. I met him in the convention in St. Paul.

Q. In 1924?—A. Yes, sir.

Q. What convention was that, Mr. Cornaby?—A. The Republican convention.

Q. In 1924?—A. Yes, sir.

Q. And you saw him during the senatorial primary and election of Senator Schall in 1924?—A. Yes, sir.

Q. You saw him quite often?—A. Yes, sir.

Q. Where would you usually see Mr. Jacobs?—A. At 574 West Hotel.

Q. And that is in the city of Minneapolis?—A. Yes, sir.

Q. What was that number, again?—A. I think it was 574. I am not sure.

Q. What was that place?—A. That was the volunteer headquarters.

Q. For whom?—A. For Thomas D. Schall.

Q. For Thomas D. Schall?—A. Yes, sir.

Q. And who was in charge of the headquarters?—A. Well——

Mr. REES. Just a moment; that is objected to as calling for a conclusion, unless he absolutely knows. Just to loosely say who was in charge might be very harmful and inaccurate.

Senator NEELY. I suppose if he knows, Mr. Chairman, he may tell.

Senator DENEEN. Do you know?

The WITNESS. No, sir; I do not.

Senator DENEEN. Then I sustain the objection

By Mr. HUGHES:

Q. You said you knew A. N. Jacobs?—A. Yes, sir.

Q. Did you see him at the headquarters very often?—A. Yes, sir.

Q. What was he doing up there?

Mr. REES. Just a moment; that is objected to for the reason urged yesterday, that until a conspiracy is shown by some evidence this testimony is not admissible. It is unnecessary to reargue the point we went into yesterday.

Mr. HUGHES. Of course it is our position that this is not a trial in court. As I understand it, this is supposed to be an investigation with reference to Senator Schall and the manner in which he conducted his campaign, which we now propose to show. We realize that perhaps we have a hostile witness here; but we are prepared to show by this witness what Mr. Jacobs was doing there. It has been objected to that it was a conclusion. Our position is the same as it was yesterday.

Senator DENEEN. I understood that the position that you took yesterday was that Mr. Corneaby and Senator Schall conspired together to contribute, expend and use, and cause to be given, contributed, expended, and used, certain amounts of money for the election of Senator Schall.

Mr. HUGHES. That is one of the charges, Senator Deneen.

Senator DENEEN. Why not ask him directly; go right to the point.

Mr. HUGHES. I do not think I can get the answer that way.

Senator DENEEN. That is the point which was discussed yesterday, is it not?

Mr. HUGHES. What we are endeavoring to bring out by this examination is what Jacobs was doing. Then we propose to show what this witness did.

Senator DENEEN. Why not ask him what he was doing, or lay the foundation to ask what he was doing?

Mr. HUGHES. But to prove this so-called conspiracy I have to connect that up. By these questions I am endeavoring to connect Jacobs up and prove what he was doing; and I know of no better way to prove what Jacobs was doing in his headquarters than to have the witness tell what he was doing.

Senator DENEEN. I think you should go directly to the point, Mr. Hughes. If you fail to elicit the information, then I think the committee would be liberal with you; but I think you have the right to go into the matter in view of what was stated yesterday, which I do not care to repeat in the presence of the witness. I think that you should go directly to the point.

By Mr. HUGHES:

Q. Do you know Andy Rahn?—A. No, sir; very slightly.

Q. You were connected with this campaign at the West Hotel for Senator Schall?—A. As a volunteer worker; yes, sir.

Q. And what did you do with reference to the campaign?

Mr. REES. The same objection as heretofore urged. This is going into a great deal of speculation and conclusion without the prerequisite——

Senator DENEEN. I think under the charge that they make about Mr. Corneaby that that is a proper question.

Senator NEELY. I wish to say to the committee, Mr. Chairman, that a conspiracy can not be proved by one statement, but probably will have to be proved by a large number of connected circumstances. I do not mean to indicate that any conspiracy did exist, but if it did, they could not prove it all by asking one question. They would have to be permitted, I suppose, to show the various steps by which it was formed and then later what, if anything, they did.

Senator DENEEN. Go ahead and ask him your question; the objection is overruled.

Mr. HUGHES. Will you read the question, Mr. Reporter?

The REPORTER (reading):

What did you do with reference to the campaign?

The WITNESS. General or primary?

Q. In the general election campaign; we will take that up first.—A. I distributed literature and cards and tacked up cards around the city and out in the country—went out to see people; went to the shops; solicited votes—general campaign work that a man does.

Q. You referred to cards, Mr. Corneaby. Whose cards do you mean?—A. Governor Christianson's, Senator Schall's, and all the Republican candidates that were running at that time.

Q. This was not the Republican headquarters?—A. No; but we had all their literature and I went out for Governor Christianson through the southern part of the State with his literature also.

Q. This was exclusively the Schall headquarters?—A. Well, we worked out—the Hennepin committee, Republican committee, Mr. Williamson had charge of that, and I worked under his jurisdiction quite a bit.

Q. Where did you receive your Schall literature?—A. Some was sent over from the State central committee—very little—others we had at the headquarters and some we got from the Republican State central committee.

Q. And whom did you receive the literature from in the Schall headquarters?—A. We just went in and helped ourselves; it was around there in boxes.

Q. Do you know whether they provided that literature or how it got there?—A. No, sir; I do not know how it got there; it was there, though.

Q. It was there?—A. Yes, sir.

Q. Mr. Arthur Jacobs was there?—A. Yes, sir; he was there.

Q. What was his custom as to being there regularly?—A. Well, he was there all the time I was there. I was in and out a whole lot, of course.

Q. How often did you go in and out of the headquarters?—A There were some days I was not in there at all for weeks at a time.

Q. Do you know Andrew Szysko? [Addressing Mr. Szysko:] Stand up.

(Mr. Szysko stood up.)

Q. Do you know this man, Andrew Szysko?—A. Yes; I believe I have seen that gentleman before.

Q. (Addressing Mr. Szysko.) Sit down. Where did you first meet Andrew Szysko?—A. That is hard to tell, Mr. Hughes; I could not be definite and say just where I first met him.

Q. Do you remember meeting him at the Schall headquarters?—A. I believe that I did; yes, sir.

Q. Do you remember about when that was?—A. Some time during the general election. The date I do not know.

Q. That was the general election of 1924?—A. Yes, sir.

Q. Do you remember when the United States court was in session there in October, 1924?—A. I can not say that I exactly remember the exact time, Mr. Hughes; but I do have a faint recollection of its going on; yes, sir.

Q. And it was some time, then, in the fall of 1924 that you met Mr. Szysko?—A. Yes, sir.

Q. And you met him in the West Hotel?—A. I believe it was; yes, sir.

Q. In the Schall headquarters?—A. I would not say to that, Mr. Hughes.

Q. Was anybody there when you met him?—A. No, sir.

Q. Was he alone?—A. Yes, sir.

Q. And what did you do with Mr. Szysko then?—A. I do not know of any particular thing I did with him.

Q. Did you take him in and introduce him to Mr. Jacobs?—A. I think he went in himself.

Q. Went in himself?—A. Yes, sir.

Q. Did you see him talking there with Mr. Jacobs?—A. No; I do not believe that I did. I think that he went in and closed the door. I am not sure.

Q. Did you have a talk with Szysko with reference to his case that was then pending in the United States Court?—A. There was something that came up about it, Mr. Hughes, but I don't just remember what it was now.

Q. Did you receive any money from Mr. Szysko at that time?—A. I received money from quite a few people, and might have gotten some from him.

Q. Do you remember how much?—A. No, sir; I do not.

Senator NEELY. Mr. Hughes, was Mr. Szysko one of the alleged bootleggers referred to yesterday?

Mr. HUGHES. Yes, sir. We wanted to put this other gentleman on the stand who was on yesterday, but under the ruling we had to withdraw him.

By Mr. HUGHES:

Q. At that time you had a talk with him about this case; did you not?—A. There was something said.

Q. Tell the Senators what you said to him.—A. I don't remember anything, Mr. Hughes, that was said to him—it was so long ago and I can not remember the words that were said there.

Q. Well, give us the substance of it.—A. I can not remember.

Q. You talked about his case pending then in the United States court?—A. I don't believe I ever talked with him about his case; no, sir.

Q. Did you receive money from him?—A. Yes, sir; I did.

Q. Do you remember the amount?—A. No, sir.

Q. It was about $500; was it not?—A. I do not believe it was such an amount as that.

Q. You do not believe it was such an amount as that?—A. No, sir.

Q. Have you any idea what the amount was?—A. I remember getting a few $50 contributions.

Q. What did you do with this money that you got from Mr. Szysko?—A. I spent some of it and some, I think, I gave to Mr. Jacobs.

Q. To Mr. Jacobs?—A. Yes, sir.

Q. That is Arthur N. Jacobs?—A. Yes, sir.

Q. And he was the man that you had just met in the Schall headquarters; he was in the headquarters there?—A. Yes, sir.

Mr. REES. I wish, if I may be permitted, to object to the further examination as to what was done in the particulars now inquired of until there is some evidence of a conspiracy, some evidence along the line that we discussed yesterday. It seems that there should be some evidence of a conspiracy as charged here between Schall, Jacobs, and Corneaby before a lot of corroborative, or apparently corroborative, circumstances are shown.

This is inference. It seems to have no connection with Senator Schall any more than anybody else. It opens up a great speculative field. We will travel far and get no farther than mere speculation if we continue along this line.

If they can show a conspiracy, or have any evidence of a conspiracy, we should have that evidence first. We should have the corpus delicti first before we have the corroboration.

They are now attempting to prove incidents. There may be hundreds of things that occurred in such headquarters that could have no bearing upon the question of conspiracy.

Mr. EDGERTON. Mr. Chairman, may I say a word?

Senator DENEEN. Yes.

Mr. EDGERTON. There are two counts in this indictment that are directed, in a way, to the same things. One is count 2 and the other is count 8. In count 8 we do allege a conspiracy, but in count 2 we state specifically that this money was collected of these bootleggers for a certain purpose, and we state further that it was with the knowledge and consent of Mr. Schall.

Is it not pertinent to this inquiry to ask this man these questions about collecting money and then to connect the knowledge of Mr. Schall with it under count 2?

Senator GOFF. Mr. Edgerton, why would it not be more appropriate to show first that this man, or any other man, was the agent of Senator Schall to receive contributions and to expend them? Agency in a conspiracy is an essential element or constituent part of the criminal agreement. It is nothing more nor less than a criminal partnership, as we said yesterday; and when it is once formed each member is a partner for the other.

If this witness was a member of a criminal partnership with Senator Schall or Mr. Jacobs to do these things, then whatever he did according to the purpose of this conspiracy would be admissible as evidence in furtherance of the illegal agreement.

We have had no evidence yet adduced here which in any way connects Senator Schall with knowledge of this undertaking or this agreement. If this witness is the witness through whom you expect to establish that fact, why should not that fact be proved before his conduct in alleged furtherance of the conspiracy is gone into?

It seems to me that that is not only the logical way, but that it is the legal way to do it. Suppose you go ahead and show all of these acts, all of these circumstances, and then you do not affect Senator Schall with knowledge. You know, not only logically, but as a lawyer, that that evidence would not be admissible under these counts which you have alleged here as evidence of what you intend to prove; and I fail to see why we should take the time of the committee in going into these facts without affecting Senator Schall's knowledge of them.

I do not doubt that you intend to show that these men talked with Senator Schall; that Mr. Jacobs talked with Senator Schall. Mr. Jacobs might have been his representative and his manager, but that fact does not, of course, impute knowledge of any illegal act to Senator Schall unless you are going to show that Senator Schall knew of this as a matter of fact. That is my position in reference to this line of testimony. Strictly speaking, I do not think that any of this testimony is admissible under your conspiracy charges, because it does not in any way affect Senator Schall with knowledge of these acts.

Senator DENEEN. That is the law; there is no question about that. Why not go directly to the point on the matter? You have charged this gentleman in the pleadings as being a party. It is easy enough to ask him two or three questions to elicit the information you want.

Senator NEELY. I understand, Mr. Chairman, that the position of counsel for the contestant is that this is a hostile witness and that if he is not permitted to ask him these questions he could not obtain the information.

Senator DENEEN. I think he may ask any question of a hostile or friendly witness that refers to the controversy; we are not going to be technical on that matter.

Senator NEELY. Mr. Hughes, can you show by any witness present in the committee room now, or in Washington who can be called before the committee without a great difficulty, that Mr. Jacobs in dealing with this man who is charged with having been a liquor dealer, or bootlegger, was actually representing Senator Schall in the transaction? If you can prove that, I, personally, think that this evidence is relevant and that it ought to be admitted. Of course, if you can not connect Senator Schall and Mr. Jacobs with the transaction in the relationship of principal and agent, respectively, it would not be relevant.

Mr. HUGHES. Senator Neely, we can show that Mr. Jacobs was Schall's manager; that he had charge of the campaign. We will show if we are permitted to go on with some of the men who it was alleged contributed money were well acquainted with Senator Schall, one of them driving him around, introducing him, driving him down to Washington after his election. We will show also that one of the other names mentioned here was in personal contact with Senator Schall on election night when the returns came in. It is in that way that we will have to show the connection.

Senator NEELY. Mr. Hughes, Senator Deneen has just called my attention to paragraph 10 of your complaint, and the charge therein contained is as follows:

> That the said Thomas D. Schall, A. N. Jacobs, and Frank Corneaby continually and at all and divers times throughout the period of five months previous to and including November 4, 1924, within the said State of Minnesota, did unlawfully and feloniously combine, conspire, confederate—

And so forth. Those are the ones you are charging—Mr. Corneaby Mr. Jacobs, and Senator Schall—with being principals. There is no charge in here that Jacobs conspired as the agent of Senator Schall. Now, inasmuch as you have charged both Senator Schall and Jacobs with being principals——

Senator DENEEN. And Corneaby also.

Senator NEELY. Yes; but I did not want to involve him yet. Inasmuch as you have charged Senator Schall and Mr. Jacobs with being joint conspirators, and in further consideration of the fact that you have the three of them charged as being in the conspiracy, why not ask this witness about his relations directly with Senator Schall instead of with the other of the conspirators?

Frankly, I want you to have every opportunity to prove any relevant improper conduct, if there was any improper conduct, on the part of Senator Schall, or any one of his newly authorized agents for whom he is responsible. But here you have one of the conspirators on the stand, and Senator Schall is charged with being in a conspiracy with this witness. Why not ask him directly what his transactions with Senator Schall were?

Mr. HUGHES. Being a hostile witness and sensing the developments of the last 48 hours, I know what his answer would be.

Senator NEELY. But, Mr. Hughes, whether he be friendly or hostile, you must remember that you have produced this witness in support of your case.

The WITNESS. May I say a word?

Senator DENEEN. No.

Senator NEELY. Not yet. He comes before the committee impliedly upon your assertion that what he says should be believed by those of us who are investigating this serious charge. If you can not rely upon the statements of the witness, of course the committee can not rely upon them.

Mr. HUGHES. But here is my position. It has always been our contention from the beginning of this contest in which we stated, particularly so in the first amended petition, that the funds which were collected through the headquarters were received by Jacobs, Jacobs being the agent of Thomas Schall. That has always been our position. We will show that the manager and Thomas D. Schall or Jacobs went out through the country and gathered in this money, promised these acts of immunity. Then it goes on and shows the various people who took the funds up there were associated with Schall in the campaign. That is our position. I did not take it that we would be held to the same strict rules that would be required in proving conspiracy in court. I take it this is more in the nature of an investigation, or a contest.

By Mr. HUGHES:

Q. Now. Mr. Corneaby, you said that you were acquainted with Mr. Schall?—A. To some extent I am; yes, sir.

Q. You are pretty well acquainted with him, are you not?—A. No; I am not pretty well acquainted with him.

Q. Were you in his law office during the summer and fall of 1924?—A. I was in there occasionally; yes, sir.

Q. How often?—A. Oh, once a week, maybe.

Q. And Mr. Jacobs went there with you sometimes?—A. Well, I met Mr. Jacobs in there; I never went in there with him.

Q. Did you have a key to that law office?—A. No, sir; I did not.

Q. Did Mr. Jacobs have a key to his law office?—A. Not to my knowledge.

Q. Not to your knowledge?—A. No, sir.

Q. During the campaign of 1924, the election campaign, you had some talks with Senator Schall?—A. Well, Senator Schall—I do not believe I saw him.

Q. Did you have occasion to telephone him?—A. No; I do not believe I ever talked to him over the telephone in my life.

Q. Never talked to him over the telephone?—A. I do not believe I have; I won't say that positively.

Q. You do not believe it?—A. No, sir.

Q. You never talked to him about his campaign?—A. I volunteered my services to assist him in the general campaign; I told him I would do anything I could to help him and he thanked me for whatever I could do.

Q. When was the last time that you saw him before election day?—A. Well, Mr. Hughes, I was around to the school meetings quite a bit. I saw him in company with the attorney general, Mr.

Hilton, and Governor Cristianson, and the rest of the Republican candidates. I don't believe I ever saw him by himself at any of the times.

Q. There was a telephone in Mr. Schall's office?—A. Yes, sir.

Q. As a matter of fact, did you not call up Senator Schall's office during the election campaign and talk to him about getting campaign funds?—A. No, sir; I never did.

Q. Do you recall being in my office—I think it was on Tuesday of this week, after you were subpœnaed?—Yes, sir.

Q. And you remember seeing Mr. Edgerton in there?—A. I do; yes, sir.

Q. And you remember I asked you if you had talked any with Senator Schall——A. Well, Mr. Hughes——

Q. Just a minute——

Senator DENEEN. Let him answer the question, Mr. Hughes.

The WITNESS. You did ask me—you implied that I would say yes; you didn't ask it; you wanted an affirmative answer to what you were asking me.

Q. And did you not state in my office in the presence of Mr. Trigan, in the presence of Mr. Edgerton, and myself, that you had talked during the campaign with Senator Schall on the telephone many times; and that in that talk you stated that you told him you had been around getting money from different bootleggers?—A. No ,sir.

Mr. REES. Just a minute.

Q. You will deny that?—A. Yes, sir.

Q. And did you not also in that conversation state to Mr. Edgerton, to Mr. Trigan, and to myself, that you collected money in the same way in the Leach campaign?—A. I do not remember saying that.

Q. Will you say that you did not say it?

Mr. REES. Just a minute. I will have to object to this as an attempt to impeach their own witness whose statement they have filed here—an attempt to impeach their own witness.

Mr. EDGERTON. If the committee please——

Senator DENEEN. Mr. Edgerton.

Mr. EDGERTON. Are you through, Mr. Rees?

Mr. REES. Yes, sir.

Mr. EDGERTON. I want to say right here in that connection, Senator Goff was not present at Chicago when we had our first meeting with the Senatorial committee.

Senator GOFF. No; I was not a member of the subcommittee at that time.

Mr. EDGERTON. Yes; and the rule was adopted that we would have to give the names and addresses of our first five witnesses and show what they would testify to. I protested against that as emphatically as I knew how, but the rule was adopted. I told the committee then that we were confident that they did not understand the conditions in the Twin Cities as we did; that they would murder men right upon the street there; and they did kill one man upon the streets of St. Paul—these bootleggers did.

Senator NEELY. They do that every place.

Mr. EDGERTON. Yes; and I said this, "If we have to comply with that request they will either intimidate or buy our witnesses." Senator Smith was right there and he did not utter any denial.

Now, then, this man was a witness against Schall. He did it voluntarily. I never saw him before that meeting there; and he came out and told his story. Now, he comes down here. His ticket was bought to come down here with us, and he evaded it. He comes down here some other way instead of coming on the train that we came on; and now he comes in here and takes us by surprise.

If the committee does not want a thorough investigation, of course, that is another thing; but if they want a thorough investigation, we think that we can give them such an investigation as will startle the people of this country with the infamy connected with this case.

Senator DENEEN. Mr. Edgerton, do you desire to say anything about the legal questions involved here?

Mr. EDGERTON. I want to say that we are taken by surprise with this witness and that we ought to have the greatest latitude in impeaching him.

Senator DENEEN. I was going to rule favorably to you. I think you may impeach him if you can; but I want to say this—and I say it because of the fact of the charges being made—that the committee has been very lenient with you gentlemen. Once or twice, or maybe more times, you have prepared your statements and you, Mr. Edgerton, admitted that they were faulty. We could have taken your statements and relied on them and you would not have had any case. We have given you every possible indulgence to correct your pleadings and your statements.

I think hereafter it would be advisable for you gentlemen to confine your remarks to the legal questions raised here and that we will get along a great deal better.

I thought you were going to discuss the legal point, and if so, the ruling would have been in your favor. The committee has been extremely indulgent with you. Furthermore, the rule about requiring a contestant to make his statements is not new in this case; it has been followed in every case, and you remember very well that one of the Senators said that that was the rule adopted in the Mayfield case and all other cases that had been tried before the Privileges and Elections Committee during his experience. You remember that, do you not? We all agreed that we ought not to treat this case differently from the others.

Mr. EDGERTON. I did not agree to that; I never agreed upon——

Senator DENEEN. I understood you had.

Mr. EDGERTON. I never agreed that we were to give these statements of what the witnesses would testify to. I had to do it.

Senator DENEEN. You agreed to it, did you not?

Mr. EDGERTON. Why, I had to do it. It was not an agreement; it was not a stipulation.

Senator DENEEN. Because it was the wish of the committee at that time?

Mr. EDGERTON. I had your order; you passed a motion there requiring it.

Senator DENEEN. Do you say there is any difference between this case and any other case of this kind?

Mr. EDGERTON. I can not deny anything about it; I do not say anything about it. In the Lorimer case——

Senator DENEEN. I do not know what was done in that case; I was not a member of the Senate then.

(Here there ensued a discussion which the reporter was directed not to record.)

Senator DENEEN. I overrule the objection of Mr. Rees. You may ask the witness impeaching questions.

Mr. HUGHES. Will you read the question, Mr. Reporter?

The REPORTER (reading):

Q. And did you not also in that conversation state to Mr. Edgerton, Mr. Tiegan, and myself, that you collected money in the same way in the Leach campaign?

The WITNESS. I don't remember saying that.

Mr. EDGERTON. Will you state that you did not?

The WITNESS. I don't remember saying that, Mr. Hughes.

By Mr. HUGHES:

Q. Will you say that you did not say it?—A. I say I do not remember saying that; I say I do not say that——

Q. Will you say that you did not say that?—A. I do not say that I did or did not.

Senator NEELY. What do you say about it on the witness stand here when you are sworn, if you were to testify about it? Did you collect this money or did you not collect it?

The WITNESS. I did not; no, sir.

By Mr. HUGHES:

Q. You collected money during that campaign from others than this man Szysko?—A. Yes, sir.

Q. And what other people, Mr. Corneaby?

Mr. REES. The same objection; and there is another feature, and I think the witness should be advised of it, that he may be testifying against himself, giving evidence against himself, which is in violation of the Constitution of the United States—that a witness should in any tribunal be compelled to give evidence against himself that might lead to his arrest and trial. The question is whether or not he should be so advised by this committee of his privilege, or whether this committee will extend this privilege to a witness.

Senator NEELY. I assume that there is no doubt the privilege will not only be extended by the committee, but will have to be extended by every judicial or quasi judicial tribunal.

If the witness feels that he will incriminate himself by answering questions and wants to claim his privilege, while I have no authority to speak for my associates, I personally feel that that would end the matter.

Senator GOFF. That is the fifth amendment to the Constitution of the United States.

Senator NEELY. Certainly I am not going to ask that any witness be required to violate the Constitution by compelling a witness to testify to something that might incriminate himself or result in his being prosecuted and sent to jail.

By Mr. HUGHES:

Q. When you collected this money and turned it over to Jacobs, you believed that he would carry out what he promised you to do with it——A. Well——

Senator DENEEN. There are three questions you have asked the witness, Mr. Hughes. I think you should ask them one at a time.

Mr. HUGHES. All right.

Q. Did you have a talk with Jacobs as to what you were to promise people that paid money into this campaign?

The WITNESS. Mr. Chairman, may I ask a question?

Senator DENEEN. You may.

Mr. CORNEABY. I was a witness before the Hennepin County grand jury on this same thing here and I willingly testified to the questions that were asked me by the county attorney, who was of the same political faith as the contestant here, and they could have got a copy of my testimony before the grand jury had they wanted to, and would not have had to go into this at the present time.

Senator DENEEN. What is your question, Mr. Hughes?

Mr. HUGHES. Will you read the question, Mr. Reporter?

The REPORTER (reading):

Did you have a talk with Jacobs as to what you were to promise people that paid money into this campaign?

Mr. REES. Again I request the committee to advise the witness as to his constitutional privilege which we have just been discussing here. He may not understand.

Senator NEELY. Mr. Chairman, I move that you do it to save time.

Senator DENEEN. Under the Constitution you are not required to testify to anything that might incriminate you. If a crime has been committed here, you are not required to testify unless you desire to. If there has been no crime committed in collecting the money, then you have no constitutional privilege to refuse to answer; but you must determine that.

The WITNESS. The only thing is that the Hennepin County grand jury tried to make a crime of it, and although at that time I said there was no crime, and I still say so, they kept insisting that there was one.

Senator DENEEN. Yes.

The WITNESS. And I would like to stand upon my constitutional right and not answer those questions, if I may.

Senator GOFF. What did the Hennepin County grand jury do; did they return an indictment in this matter?

The WITNESS. No, sir; no bill against Schall.

Senator GOFF. Were other witnesses than yourself examined before the grand jury?

The WITNESS. Yes, sir.

Senator GOFF. How many, if you know?

The WITNESS. I do not know, Senator.

Mr. REES. Do you know whether or not Mr. Szysko who is here present was before the grand jury?

The WITNESS. I think he was; there were several bootleggers there. I do not know what their names were.

Senator GOFF. What, if anything, was the charge then under investigation by the grand jury?

The WITNESS. I do not know what they charged us with; no, sir.

Senator GOFF. When was this examination?

The WITNESS. It was after the election in 1924. It was in either the early part of 1926 or the late part of 1925?

Senator GOFF. You mean the early part of 1925—not 1926; this is 1926.

Senator DENEEN. The latter part of 1924 or the early part of 1925?

The WITNESS. Yes, sir; that is right. I have been up since again.

Senator GOFF. Was the matter of your connection with Senator Schall's campaign then gone into?

The WITNESS. Yes, sir; it was.

Senator GOFF. That is all.

By Mr. HUGHES:

Q. And when you were before the grand jury in Hennepin County, did you not state to the jury there in substance that you considered yourself innocent because Mr. Jacobs did not carry out this agreement to "fix" these bootlegger cases?—A. No, sir; I did not say anything like that, Mr. Hughes. If I had, they would have indicted Mr. Jacobs.

Q. You told the grand jury about collecting this money, didn't you?—A. I did not tell the—I told them I took contributions from men that came up to give them.

Q. You told them they were bootleggers?—A. I told them that I would have taken that money whether I knew they were bootleggers or not.

Q. How long were you before the grand jury?—A. I don't just exactly remember.

Q. Well, about how long?—A. Some matter of minutes.

Q. How many minutes?—A. Fifteen, twenty-five, probably half an hour.

Q. It was late in the evening, wasn't it?—A. In the afternoon.

Q. Just before the grand jury adjourned?—A. Yes, sir.

Q. You probably were not there over five minutes?—A. Oh, yes; I was there longer than that, Mr. Hughes.

Senator NEELY. What is the limit of a candidate's expenditures in the State of Minnesota?

Mr. HUGHES. What is that, Senator?

Senator NEELY. What is the limit of expenditures under the law in the State of Minnesota?

Mr. SMITH. Minnesota has no law.

Mr. HUGHES. There is a State law—a certain amount of the salary.

Mr. SMITH. Oh, no.

Senator NEELY. Are you proceeding upon the theory at the present moment that this witness assisted in collecting for the campaign so much money that he violated the statute as to the amount of expenditures that might be made by a candidate for the United States Senate?

Mr. HUGHES. Not that so much, Senator, as we are going upon the theory that we claim that Senator Schall is not morally fit to sit in the Senate; and we used this as one of the illustrations of the manner in which the headquarters were run and this money was collected and the bootleggers were approached.

The WITNESS. Mr. Schall knew absolutely nothing. Whatever we did he had no knowledge of in any way, shape, form, or manner.

Mr. HUGHES. What do you base that on?

Mr. EDGERTON. You told us——

The WITNESS. On absolute knowledge. Now, I never told you anything, Mr. Edgerton. You implied certain remarks by me.

Mr. EDGERTON. Now, didn't you state——

The WITNESS. I only saw you for two minutes, Mr. Edgerton, in my life. This is the second time that I have ever seen you.

Mr. EDGERTON. And did you not state right there in the office of Mr. Hughes when I came in, in my presence and in the presence of several others, that you had telephoned Mr. Schall many times and he approved the collection——

The WITNESS. Oh, now, Mr. Edgerton——

Mr. EDGERTON. Of this money, but that——

The WITNESS. I never said anything like that.

Senator DENEEN. Are you trying to lay the foundation for an impeaching question?

Mr. EDGERTON. I want to do that; yes, sir.

Senator DENEEN. Then I suggest that you ask the questions and not argue with him.

Mr. EDGERTON. He is arguing with me, Mr. Chairman.

Senator DENEEN. Ask the questions without arguing with him.

By Mr. EDGERTON:

Q. Did you not say in answer to the questions that Mr. Hughes put to you at that time that you had telephoned Mr. Schall many times and that he told you that that was all right but to be careful?

Mr. REES. Just a moment. That is objected to for the reason that a party to a litigation can not impeach his own witness in the manner that counsel now seeks to impeach this witness.

Senator NEELY. Mr. Chairman, I think this inquiry is pertinent——

Senator DENEEN. I think the witness should answer it.

Senator NEELY. For the reason that this is a fact the contestant will be permitted to prove anyway.

Senator GOFF. Mr. Chairman, I will make this statement for the record: Mr. Edgerton has a complete right to ask that question upon the ground of surprise even if this man is his own witness. He has now stated to the committee that he is surprised by the witness and he, therefore, asks the permission of this committee to put a question which is within the bounds of the discretion of the committee—to permit him to show the ground of his surprise. That is your position, is it?

Mr. EDGERTON. Certainly.

Senator GOFF. I think that that is within your rights.

Senator DENEEN. In answering such a question as that, you must fix the time, the place, the persons present, and the things said. That is the rule, is it not?

Senator GOFF. That is the rule; and all the circumstances surrounding the conversation.

Mr. EDGERTON. Now, I want to say as I remember it——

Senator DENEEN. You are not testifying; you may simply ask the question.

Senator GOFF. I just wanted my position as a member of the committee made plain, that I feel he has a perfect right, on the ground of surprise, to show that this witness has made statements to the contrary.

Mr. EDGERTON. I have got to put my question a little differently because of the fact that as I remember it, it was Monday afternoon when I was there.

Senator GOFF. That is all right.

Senator DENEEN. Lay the foundation of time, persons present, and things said. That is all permitted.

By Mr. EDGERTON:

Q. Was not this Monday afternoon instead of Tuesday that I was at the office of Mr. Hughes in Minneapolis and found you and Mr. Trigon there?

Mr. REES. Do you mean last Monday, so I can get it straight?

Q. Yes; was it not last Monday?—A. I do not know what day it was, Mr. Edgerton.

Q. It was in the afternoon, was it not?—A. I forget.

Q. About the middle of the afternoon?—A. Yes, sir.

Q. Mr. Tiegon was there, was he not?—A. I met Mr. Tiegon there; yes, sir.

Q. And Mr. Hughes was there, and you three were there when I came in. You remember that?—A. Yes, sir.

Q. And didn't you say, Mr. Corneaby, when I was introduced to you: "And this is the Mr. Edgerton I have heard about?"—A. I believe I said that; yes, sir.

Q. That is exactly what you said. And then Mr. Hughes started to ask you questions.—A. Well, he did; but I did not answer any. He went on with a whole line of stuff; I don't remember just exactly what it was. Mr. Edgerton kept it up for some little while, a whole lingo of questions.

Q. Did he not ask you at that time, Mr. Corneaby, about your making collections of bootleggers?—A. I told him at that time I did not know that they were bootleggers.

Senator GOFF. Mr. Edgerton, don't you think you have gone far enough so that you can put the direct question to him: "Was not this question then and there propounded to you?"

By Mr. EDGERTON:

Q. Then did he not ask you this question: "You collected money of various bootleggers, didn't you?"—A. It turned out afterwards that they were bootleggers; yes, sir.

Q. Yes; but did he not ask you that question?—A. Not directly; no, sir.

Q. And did you not say, "Yes; I collected money for Mr. Schall's campaign?"—A. For the volunteer committee, I said, Mr. Edgerton, and you know that I said that.

Q. Did he not ask you, "Did you assist Jacobs in collecting money from bootleggers?"—A. I do not remember of him asking me a question of that kind.

Q. Did he not ask you, Mr. Corneaby, this question, "Did Schall know about this?"—A. If he asked me that question, my answer was emphatically no.

Q. Did you not tell him in answer to that question, "Yes, and I telephoned him many times about it?"—A. No, sir; I did not say anything like that.

Q. And did you not say, Mr. Corneaby, that he approved of it but said to be careful?—A. No, sir; I never said anything like that.

Mr. EDGERTON. Those are all the questions I have to ask.

By Mr. HUGHES:

Q. Mr. Corneaby, do you remember meeting me in the hall in front of the police court at Minneapolis, Hennepin County, Minn., about three weeks ago?—A. I do. That was the first time I ever saw you.

Q. That was the first time you ever saw me?—A. Yes, sir.

Q. And you came up to me?—A. And I spoke to you.

Q. Introduced yourself?—A. Yes, sir.

Q. And can you fix about that time?—A. Sometime in the morning around 11 o'clock, I believe.

Q. Was that after I had come back from Washington?—A. I do not know about that, Mr. Hughes.

Q. You do not remember that. But it was some time probably in this month of January?—A. Yes, sir.

Q. And did you not state to me there at that time that you had talked with Senator Schall about the money that had been collected from these bootleggers during the campaign?—A. Now, Mr. Hughes——

Q. Answer the question "yes" or "no."—A. I would like to say something before I answer that question.

Q. Did you state that to me?—A. No; I did not. Do you ask me a question like this: You said the matter what Mr. Cosgrove had sent down here, I didn't know what it was—a whole package of stuff that you said you asked me if that were true what Mr. Cosgrove had sent to this committee.

Q. And what did you say?—A. And I told you that I would have to find out what it was before I would answer it, before I would know whether it was true or not.

Q. Did I not ask you whether you had talked or not with Senator Schall?—A. I do not remember Mr. Schall's name being mentioned, Mr. Hughes, because I do not believe you asked me that.

Q. Will you say that I did not say to you, Mr. Corneaby, "Did you talk with Senator Schall about this bootlegger money during the campaign?"—A. Yes, sir; I will say that you did not.

Q. You will say that I did not ask you that question?—A. Yes, sir.

Q. Now, when did you see Senator Schall after his election?—A. If I remember, a few minutes one afternoon, Mr. Hughes, out to his home.

Q. Out to his home?—A. Yes, sir.

Q. Where is Senator Schall's home?—A. It is out on Cortland Avenue some place.

Q. Do you know the number?—A. No; I do not know the number. It is near Lake Street.

Q. You had been there before?—A. No; I have only been there once, Mr. Hughes.

Q. That was the only time you had ever been there?—A. Yes, sir.

Q. When was this you were out to his house after the election?—A. Some time in December, I believe.

Q. In December of 1924?—A. Yes, sir.

Q. Was that after this contest had been started; after you had heard of it?—A. Well, I don't remember about that.

Q. Was that about the time the grand jury was in session in Hennepin County?—A. No, sir; the grand jury—I think it was all over then.

Q. When were you before the grand jury; do you remember?—A. No, sir; I don't remember what month it was.

Q. Was it before or after you had been to Mr. Schall's house?—A. That I don't remember.

Q. You don't remember?—A. No, sir.

Q. As a matter of fact, you were before the grand jury in the latter part of December, 1924, were you not?—A. It might have been.

Q. Before Christmas?—A. I am not sure of the date, Mr. Hughes.

Q. And it was about December that you were to Schall's house, was it?—A. Some time in the early part of December I should imagine, around that time.

Q. How long were you there?—A. A very few minutes.

Q. A very few minutes?—A. Yes, sir.

Q. Who was there when you were there?—A. Well, there was a great number there. I don't remember who they were.

Q. Do you remember any of them?—A. No, sir.

Q. Was Jennings there?—A. Who?

Q. You know Jennings, don't you?—A. Which Jennings?

Q. The bootlegger.—A. Which bootlegger? There are a lot of them by the name of Jennings.

Q. Do you know Mike Jennings?—A. Yes, sir.

Q. Do you know Ed Jennings?—A. Slightly; yes, sir.

Q. Was Mike Jennings there?—A. I never saw Mike Jennings there in my life.

Q. What does Mike Jennings do?—A. He is another bootlegger.

Q. Another bootlegger?—A. Yes, sir.

Q. What does Ed Jennings do?—A. I don't know what Ed Jennings does.

Q. Was Mike Jennings there?—A. I never saw him there in my life.

Q. You never saw him there in your life?—A. No, sir.

Q. Do you know Dan Moriarty?—A. I do; yes, sir.

Q. Where does Dan Moriarty live?—A. That I don't know.

Q. You are acquainted with him?—A. Slightly; yes, sir.

Q. You knew him in 1924?—A. I had met him; yes, sir.

Mr. REES. We object to this as immaterial. It is traveling far afield without limit when the corpus delicti of the offense has not been established. Neither has it been established that there was any conspiracy with Senator Schall or that any money received was spent in Senator Schall's campaign with his consent or knowledge; and I hold that the true rule is "under his direction." This evidence does not relate to any issue in this case—the issue of conspiracy and the commission of the offense charged.

Senator DENEEN. Have you finished?

Mr. REES. Yes, sir.

Senator DENEEN. Mr. Hughes, do you expect that the answer to this question about the witness knowing Dan Moriarty has anything to do with any conspiracy?

Mr. HUGHES. Yes, Senator. We expect to show by this witness that he will testify that—he may claim his privilege, but we expect that he will testify that—he received $2,125 from Dan Moriarty which was turned over to Jacobs. Further, we expect to show by this witness that on election night when the returns came in in

November, 1924, he was at Dan Moriarty's house; that there was a radio installed there at the house; that the election returns came in over the radio and that then Dan Moriarty in the presence of this witness called up Senator Schall and reported to Senator Schall the election returns; and further that Dan Moriarty is a notorious underworld character and gambler in the city of Minneapolis. That is what we propose to show.

The WITNESS. I will answer you, Mr. Hughes.

Senator DENEEN. Go ahead and answer, Mr. Corneaby.

Mr. HUGHES. Mr. Reporter, will you give us the connection in the record?

The REPORTER (reading):

Q. Do you know Dan Moriarty?—A. I do; yes, sir.
Q. Where does Dan Moriarty live?—A. I don't know.
Q. You are acquainted with him?—A. Slightly; yes, sir.
Q. You knew him in 1924?—A. I had met him; yes, sir.

Mr. REES. I object to it as being immaterial and not relating to any of the issues in this case.

Senator DENEEN. I can not see from the question right now that it does; but we will let him pursue it further to see if it does. We will let him ask another question to see what he is driving at. Proceed, Mr. Hughes.

By Mr. HUGHES:

Q. Were you in the city of Minneapolis on election day, 1924, Mr. Corneaby?—A. Yes, sir; I was.

Q. And on the evening of that day also?—A. Yes, sir; I was.

Q. And did you see Dan Moriarty on that night—election night?—A. I did.

Q. Were you at his home?—A. I was.

Q. And was there a radio set there in his home?—A. There was.

Q. And there were election returns coming in over the radio?—A. There was.

Q. There was a telephone there in the house, was there?—A. There was.

Q. Did you hear Mr. Moriarty telephone to Senator Schall?—A. He called his office. I do not know whether he talked to Senator Schall or not. He also called Governor Christianson's office.

Q. Never mind Christianson. You seem to volunteer so much about him. We are not trying him. You heard him call up Mr. Schall's office, did you?—A. I think—I will not say for sure, Mr. Hughes, whether I did or not. You asked me that question once before, and you were telling me something about the installation of a radio, something about that. I do not know why you asked me that particularly.

Q. Because there was a radio there. Now, Mr.——

Senator DENEEN. I suggest that you do not argue with the witness. Just ask your questions.

Q. Do you recall what the conversation was you heard on the telephone?—A. I do not, Mr. Hughes.

Q. None of the conversation over the telephone?—A. I can not. I do not know; I do not remember; it is so long ago.

Q. So long ago?—A. Yes, sir.

Q. What was Mr. Moriarty's business at that time?—A. I do not know what his business is. He has got a health resort and he has got a boxing club, or a pleasure resort.

Q. Where is that located?—A. Out at the lake.

Q. As a matter of fact, is it not a matter of common knowledge in Minneapolis that Dan Moriarty is an underworld character?—A. They say he is. He has never been convicted as such, though.

Q. But that is what they say around Minneapolis?—A. Yes, sir.

Q. And is it not a matter of common knowledge that he has a general reputation of being known as a gambler around Minneapolis?—A. I could not say about that, Mr. Hughes. I do not know him well enough to know whether he is a gambler.

Q. How did you happen to go over there that night?—A. Mr. Smith, a barber, took me over.

Q. You had met him before this?—A. Yes; several times.

Q. When did you first meet him before this time?—A. I do not remember; no, sir.

Q. Had you met him during the campaign of 1924, the election campaign?—A. No, sir; he never was in our headquarters.

Q. Did you meet him—our headquarters, did you say?—A. The volunteer committee headquarters.

Q. Did you ever meet him outside of the headquarters?

Mr. REES. We object, on the ground that we are getting into an endless amount of inconsequential and immaterial matter. We urge the objection on the ground that it is immaterial.

Senator GOFF. They have asserted that this witness is a hostile witness who has taken them by surprise. I think they should be permitted a reasonable latitude to test the reliability of the witness. If they exceed that at any time, then I think it is a question for the committee to rule upon. I should say, under the phase of the matter which we are now investigating, that the question is permissible.

Senator DENEEN. Go ahead.

Mr. HUGHES. What is the last part of the record, Mr. Reporter?

The REPORTER (reading):

Q. Had you ever met him during the campaign of 1924, the election campaign?—A. No, sir; he never was in our headquarters.

Q. Did you meet him—our headquarters, did you say?—A. The volunteer committee headquarters.

Q. Did you ever meet him outside of the headquarters?

By Mr. HUGHES:

Q. Did I understand you to state that you had met him during that campaign?—A. Yes, sir; I had.

Q. During the fall of the campaign?—A. Yes, sir.

Q. And had you met him in reference to Senator Schall's campaign?—A. Not that I remember, Mr. Hughes; no.

Q. You did discuss that with him?—A. I don't remember discussing it with him; no, sir.

Q. Was he working on Senator Schall's campaign?—A. No, sir.

Q. He was not, you say?—A. No, sir.

Q. Did you receive from Mr. Moriarty a sum of money for Mr. Schall's campaign?—A. No, sir.

Q. You deny that, do you?—A. Absolutely.

Q. You recall the 18th of October, 1925; you were in the city of Minneapolis at that time?—A. I do not know why I should recall that.

Q. You know Mr. Cosgrove, who is sitting here, do you not?—A. I certainly do.

Q. And you recall in October visiting him at home in his apartment on Fifteenth Street in Minneapolis between LaSalle and Spruce Place?—A. I don't remember it, Mr. Hughes; I might have.

Q. You have been in his apartment?—A. Yes, sir.

Q. You have talked with him about this contest?—A. Well, some; yes.

Q. Did you not state there to Mr. Cosgrove on or about the 18th of October, 1925, at the premises indicated, that you received from Dan Moriarty the sum of $2,125 during the campaign of Senator Schall which you turned over to Jacobs?—A. Mr. Cosgrove, was that the night that Mr. Tiegan was hiding in the bedroom?

Q. I am not asking you that; you are not doing the examining; I am asking you if you made that statement?—A. I do not remember making that statement, Mr. Hughes.

Q. Will you say that you did not make that statement?—A. I will say that he——

Q. You deny——A. Asked for a list. If you will let me explain——

Senator DENEEN. You have no objection to his giving an explanation to his answer; you do not dispute his right to do that, do you?

Mr. HUGHES. He may explain.

Senator DENEEN. You may go ahead.

The WITNESS. Mr. Cosgrove came to me, kept coming to my apartment and asking me over to his apartment and about some imaginary bootleg list. He wanted a list of bootleggers and he promised me $500 if I would secure him this list. Mr. C. F. E. Peterson, who was on the Civil Service Commission in Minneapolis, knows about this $500; and he is the man that stopped Mr. Henry Tiegan from giving me this $500. So I thought that it was an easy way to make $500, and I made up a list of men who had been convicted of bootlegging in the city of Minneapolis and gave it to him. That is this list they are talking about now.

Senator GOFF. Did you get the $500?

The WITNESS. No, sir.

By Mr. HUGHES:

Q. Showing you contestant's Exhibit 1, is that the list you refer to?—A. (Examining paper.) Well, I do not know whether that is the list or not. They had a man around our office by the name of Red Foster, who had been the first one that gave it to Mr. Cosgrove, long before I had a chance of giving him anything.

Q. This looks like the list you saw there, does it?—A. Yes.

Q. With all this writing?—A. Yes; I don't know anything about that.

Q. You had a talk with Mr. Cosgrove that night, did you not, when that list was there, in which you instructed him to write down certain names; or was this in the daytime?—A. I think this was the night I met him in Mr. Elwell's office.

Q. Who was Mr. Elwell?—A. Senator Elwell.

Q. He is a Republican?—A. Yes.
Q. That is Senator Elwell?—A. Yes.
Q. The name of Oscar Brodine appears on this list. I will ask you whether it is false or true that you received money from Oscar Brodine.

Mr. REES. Now, we renew the former objection.

Senator NEELY. Mr. Chairman, in order to get through with this, I am in favor of letting the witness go ahead. Frankly, I do not see where anything has been developed so far, but I would like for us to get rid of it, and I am in favor of him just being allowed to go ahead and tell everything he knows, whatever it is, within the limits of reason.

Senator GOFF. I want to ask Mr. Hughes this question.

Mr. HUGHES. Yes, sir.

Senator GOFF. When you are bringing out the names on this bootleg list, and you are bringing out the politics and personal connections of this witness with them, do you intend to show by this witness or by some other witness the fact that all of this was known by Senator Schall; and if not known by him at the time it occurred, that it was subsequently known by him and ratified by him prior to the election in November, 1924?

Mr. HUGHES. It is my purpose to show that this man Jennings, whose name appears on here, was in close touch with Senator Schall; that he was his chauffeur; that he stopped at his house; that he drove him down here. Jennings is out on bond, and his case is continued in the circuit court of St. Louis.

Senator DENEEN. Do you show that by this witness?

Mr. HUGHES. No; not by this witness.

Senator NEELY. How would that affect Senator Schall, even if his chauffeur had turned out to be a bootlegger; he might not know it.

Mr. HUGHES. No; we will show that he was a bootlegger and that Senator Schall knew it; and he was convicted right while the election was on. That we attempted to show yesterday that Senator Schall had talked to Captain Townsend before the election about this man Jennings, this convicted bootlegger, who was driving Senator Schall around; and we claim that this man Jennings put money into this campaign.

Senator DENEEN. Will you prove that by this witness or by Jennings?

Mr. HUGHES. We attempt to show by this witness that he received these sums. Now, he has denied specifically that these people on this list gave him money. We attempt to show now that this list is true. He could not dare deny that Brodine gave him money, because Brodine testified before the county attorney that he gave money to Mr. Corneaby.

Senator DENEEN. Did you mean to try to show by this witness that he collected money with the knowledge of Senator Schall, and turned it over to him?

Mr. HUGHES. Turned it over to Jacobs.

Senator DENEEN. No; that he turned it over to Schall; or that Jacobs turned it over to Schall?

Mr. HUGHES. That the money, this money, was turned over.

Senator DENEEN. No; I mean do you intend to show that Jacobs turned over this money to Senator Schall, and that Senator Schall knew of it?

Mr. HUGHES. Not by this witness. I do not presume we could; he is so hostile.

The CHAIRMAN. You have to connect the illegal act and the actors?

Mr. HUGHES. As I understand, this is an investigation and not a court. Here is a man who was the authorized manager of Senator Schall. Now, I am satisfied we can prove that Jacobs was his manager; there is no question about that; we can show that. He had a key to Senator Schall's office; he was in partnership with him; running a newspaper; running the Harpoon. They ran it together. He was his partner in the newspaper business. He was his manager and operated these headquarters. This young man here was induced, with others, to go out and approach these bootleggers who were awaiting trial and solicit sums of money from them under the pretext that the Government was fixed. Now, this is our case, practically. Whether we are forced to show that Senator Schall actually had knowledge of that as an absolute fact might be another question; but here was his manager, that man who was in consultation with him, as we can show, the man who operated this Harpoon newspaper with him.

That is what we propose to show. I will grant that if a manager shook down one or two bootleggers, there might not be anything to it; but we are here to show that this was a wholesale business, and we can bring a man here from Leavenworth—I did not know it at the time, that he had been shook down by this boy right here, a man named Gerrick, for $500. We are not standing on such technical grounds. Perhaps we can not show that all of the money was turned over, but we go on this theory, that it raises a moral issue. Here is a man running for the office of United States Senator. Is he a fit man to sit in the Senate of the United States when he has a manager who has been close to him for years, not a new or a strange manager but a close friend and business associate, with whom he has been making a wholesale business of shaking bootleggers down? We attempted to show yesterday, but were unable under the rulings to do so, that Jacobs as his manager haunted and hounded the prohibition officers there in Minneapolis, trying to get these cases continued before the late Judge McGee.

Senator DENEEN. Do you expect to show this by this witness?

Mr. HUGHES. As much as I can. He is a hostile witness.

The WITNESS. I am not hostile, Mr. Hughes.

Senator DENEEN. We will have to decide these matters as they are raised. We can not decide on what you will ask other witnesses, as we will be compelled to rule on the questions you ask this witness. If there is anything you can ask this witness that will indicate that there is a combination here, I think that would be proper; but I do not think under the rules of law anywhere that you can pursue a line of questions between him and some one else, unless you can show the connection with Senator Schall that would require Senator Schall to go into the defense of these matters. You could take any man's property away, or his life, under such a course, if that were allowed. The gist of the matter is the charges you make here, and you must

limit yourselves to the charges you make. If you can pursue any questions with this witness that would show a combination between him and Jacobs and Senator Schall——

Mr. HUGHES. That is what I am endeavoring to do.

Senator DENEEN. If you can do that, I think it is proper.

Mr. HUGHES. I would say that my purpose in interrogating him on these lines is that he has denied this and has intimated that this was a fake list, and apparently fooled Mr. Cosgrove and Mr. Tiegon. I propose to show that it is not true; that there are names of people on here who actually contributed money. If he denies it, we will have people that will come on here and testify that they paid money. There is no question that they paid the money.

Senator GOFF. Of course, you do not claim that the source from which the money came—that is, if it came from bootleggers, you do not claim that that source—is any more reprehensible than if it came from ministers of the gospel?

Mr. HUGHES. Not at all, Senator.

Senator GOFF. Because money loses its taint the moment it passes into the hands of the person who is going to use it.

Mr. HUGHES. Money has no earmarks.

Senator GOFF. Does not your question lead to this, that after you have shown all this, we will assume by way of illustration, as you have set in your petition, that you could show that $50,000 was raised from bootleggers and passed over to the campaign manager of Senator Schall. You come then to a chasm between the knowledge of this manager and Senator Schall's knowledge. You are going to bridge that by presumption. You do not show by this witness that Senator Schall knew of it.

Now, a man is not to be condemned, I take it, in a case of this character, by the company that he keeps in politics. If that were so, I suppose that all of the people who vote for you who were below a certain moral standard might contaminate you by their votes.

I want you to show, if you can, Senator Schall's knowledge, ratification, connection, or consent to anything either illegal or reprehensible; and if you can not show that, what is this evidence worth in this contest?

Mr. HUGHES. Let me answer it in this way. Now, Senator, it is true, I concede, that if a Senator desires to take contributions from bootleggers, that standing alone would be no crime. If he wanted bootleggers to contribute, all well and good. But we go further than that; we claim that the way it was gathered was fraudulent from its conception. These runners went out, and of course stated to the bootleggers, who were awaiting trial, or to their friends, that Senator Schall could fix the Government attorneys, that they had Mr. French fixed, the district attorney of Minnesota, and they had the general prohibition office fixed, and they said you go up to Senator Schall's campaign headquarters and put up the money and your case is fixed. That is the end of it. Do not show up.

Now, it is an undisputed fact; there is no question that a good many thousands of dollars were paid in that way; and then this money was received by Senator Schall's manager—all the money this boy got—I am satisfied that he probably profited very little by it—was turned over to A. N. Jacobs, who at that time banked in the American Trust bank, or some bank in Minneapolis, and Jacobs was

the manager of Senator Schall, close to him, in partnership with him in running a paper. There was the position. I will concede that if bootleggers want to contribute to a man's campaign, that might be all right, and perhaps he would not know about it; and perhaps if he did know about it it would not make any difference; but to go out and say to the bootleggers or anybody else, to send out runners to say to them, "Go to the headquarters and put up and it will be fixed," that is the point. Now, that is why I want to ring in to show that Senator Schall was around with these bootleggers, associated with them, some of them that put money up; that he was around with them and mixed with them.

We will show, if we are allowed, that Senator Schall had a bootlegger in his home, a woman named Joswich, who is now indicted in St. Paul as a bootlegger, and that he himself endeavored to get her permit back. This is just like a bundle of sticks, to show this conspiracy. Take it stick by stick and make the bundle. No one witness can supply what is lacking. That is your position. I take it that is true, Mr. Edgerton?

Mr. EDGERTON. Yes. May I just add one remark, there?

As I said without any criticism at all of the motives of the committee, we were limited to a few witnesses, and we had one subpœnaed, Mr. Corneaby, and you will recall that we called him as a witness because he told us that he would testify so and so, to the truth as he claimed it, only last Monday. We asked for him. We telegraphed and had him subpœnaed. He comes down here and evidently he does not remember it as he did on Monday.

We have offered here the witness that we relied upon, and we are taken by surprise on that one witness, in regard to the knowledge of Senator Schall.

The WITNESS. Mr. Edgerton, may I ask you a question?

Mr. EDGERTON. Certainly.

Mr. REES. Counsel have stated here that they are not going to connect Senator Schall except by the circumstances they mention. Does not that end this case? Are you going to get anywhere; are you going to expel a man from the Senate upon mere rumor? In many cases that the Senate has decided they have said that they will not do such a thing.

They have told the committee now—counsel have both told the committee—in finality, two things that they are not going to prove; they have no evidence to prove that Senator Schall was in any conspiracy at all. They have no evidence to prove that any money collected was even put into the campaign. There are many disreputable people in Minnesota. They are going to ask this committee to hold Senator Schall, literally, while they smear him with the record; attempt in the eyes of the Nation, attempt in the eyes of the press, to smear him here in the Senate of the United States with all the infamy of Minnesota. It is, it seems to me, an unprecedented thing. Why, it is a crime to be a Senator, if this thing is permitted. Where are we here? There is nothing here but a contest. In the end they say it is a protest. What is a protest? It is a citizen of Minnesota saying to the United States Senate "Expel one of your Members." "Upon what?" "Upon information which I give to you." And the Senate says, "Well, what have you? Let us see what you have got." That is all this is. It is all it can mean. It is

the essence of what we are doing. The Senate is saying, "What have you got?" "No proof; but still we ask you to hold a Member here, just literally hold him, and let us smear him with all the infamy in Minnesota." I myself have never heard, it seems to me, of a thing that is so far-reaching; that is so destructive. There is no way that the Senate can wipe that from the back of this man. What you do to Senator Schall here to-day may be done to you to-morrow; one law, one principle, for every Member of the Senate. We submit that before they smear this man they must show to the Senate that he has committed some offense, that he has committed some wrong, that renders him unfit, that will render him unfit, to sit in the Senate. They offer no proof of that at all. They say, "We have got none of that. We want to show a lot of bad people up in Minnesota. We want to lay it upon the back of this man. We want to destroy him at home; we want to destroy his prestige here, and we want you to help to do it." They ask the Senate to become an accomplice of the greatest national outrage that I have heard.

Senator DENEEN. It seems to me that this is the situation. You gentlemen have asked to have a witness subpœnaed and he is brought here by subpœna from the Senate, and after hearing him you say that you are surprised, and you then try to impeach the witness, and you take the position that you ought to impeach him, and yet you take the position that he should be believed.

If the witness has surprised you, I should think you would withdraw him; but you put on both sides of the question, and you go far afield from the issue. Now, if you can show the connection between the three, between him and Jacobs and Senator Schall, if you care to pursue that, I think you can; but I think you ought to connect up. That is the usual way.

You say that you can go out and get all this evidence and put it in and later connect. The point is to connect first, because all of this would be thrown out unless you did connect.

Mr. HUGHES. It is understood——

Senator DENEEN. I am asking you, is not that your view of the law?

Mr. HUGHES. My view is——

Senator DENEEN. I am asking you to answer that question. Would not all this evidence have to be thrown out unless later you make the connection?

Mr. HUGHES. I think it is all a part of the conspiracy. Conspiracy can only be shown indirectly, and you have got to follow it up step by step. Of course in a law court the evidence is often received to be stricken out subject to the making of the connection.

Senator DENEEN. But it has to be connected?

Mr. HUGHES. Yes.

Senator DENEEN. Now you produce a witness here, and you charge that he is a conspirator, and you ought to pursue the policy of ascertaining his connection, to fasten blame upon Senator Schall.

Mr. UGHES. Would it make any difference whether he was a conspirator or not, if the fact remains that he went out of that headquarters soliciting funds from these people, as he has testified here, for Senator Schall's campaign?

The WITNESS. I did not say that.

Mr. HUGHES. Now just a moment, Mr. Corneaby—soliciting funds for Senator Schall's campaign, and turned them over to his manager? Those are the facts, and it does not make any difference——

Senator DENEEN. Now, Mr. Hughes, do you not think you ought to refrain from repeating over and over what you charge the facts to be? You are not under oath. You are not a witness. It is not proper to make the statement. You may state what you intend to prove.

Mr. HUGHES. That is what I am telling you.

Senator DENEEN. But you ought not to try to testify indirectly in argument.

Mr. HUGHES. I am stating what we propose to show here.

Senator DENEEN. You have made that statement a number of times. If you and Mr. Edgerton care to go on the stand and testify, that is permissible. I do not suppose there is anything to prevent it.

Mr. HUGHES. I want to show——

Senator DENEEN. You may go on asking questions, and we will rule upon them.

Mr. HUGHES. I understand this is an investigation and not a trial. It is to bring out all the facts.

Senator DENEEN. Do you claim that the rules are different in an investigation, either in law or in logic; that you can charge a man with something and call it an investigation and then bring in anything you care to bring in, regardless of the rules; hearsay evidence, insinuation, and innuendo, and have a man answer.?

Mr. HUGHES. That may be, but——

Senator DENEEN. You must make up the issue so that the defendant can meet it, whether it is an investigation or not does not make any difference.

Mr. HUGHES. I claim that all of this is material in every way. He has denied that this list is authentic. He has claimed that it is a faked-up list. We want to show by this interrogation that some of the folks on there actually did contribute money. Then we expect in some instances to show that these people were acquainted with, in connection with Senator Schall, this man Jennings. It is for the purpose of proving the connection. We have not Mr. Jacobs here. We asked for a subpœna for Jacobs, and it was not issued, although I grant we were to bring only five witnesses. But we wrote a letter to the effect that we understood that Mr. Jacobs was at the time in Washington and we would like to have him subpœnaed, and notwithstanding the fact that he would be a hostile witness, we would like to put him on the stand—Senator Schall's manager. We would like to see him go on the stand and deny that he received this money. Then, if he admitted that he got this money, they would have the option to investigate and trace it up there.

Senator DENEEN. You state that Mr. Jacobs was in Washington?

Mr. HUGHES. So we understood.

Senator DENEEN. I asked you how I could learn, and you stated to me that if I would inquire of Senator Schall he could tell me.

Mr. HUGHES. Yes.

Senator DENEEN. I did inquire of Senator Schall, and he said he did not know that he was here and that he could not locate him; so that you furnished the committee with no means of locating him. Otherwise he would have been subpœnaed.

Mr. HUGHES. I met Mr. Jacobs on the street at home, and learned from him that he had been here, and he said that he had seen Senator Schall while he was here.

Senator DENEEN. I pursued the exact course you suggested.

Mr. HUGHES. That shows you why I have not all the witnesses we were instructed to bring.

Senator NEELY. Mr. Chairman, I am in favor of letting Mr. Hughes, for the next hour, ask any questions he wants to ask that have any remote connection even with the subject. We are all lawyers and we know what value to attach to what is elicited, and in order that we may see whether these witnesses know anything that incriminates Senator Schall—frankly, up to this time I do not see that anything has been shown that does incriminate him, but in order that there may be no complaint that we have not proceeded to extend every opportunity to these gentlemen to show any incriminating circumstances that exist—I am in favor of letting this witness go on in his own way, and for the next hour let Mr. Hughes ask him any questions that he wants to.

Senator DENEEN. I want to state my position in the matter. The reason I have adhered to the rules of law is this, that if you are permitted to come in with all sorts of statements, then Senator Schall would be permitted to ask the committee, and the committee would have to indulge him in that, to send to Minnesota and bring in a lot of witnesses whose testimony would not relate to the issues in the case. You are accumulating a lot of expense, and lengthening the investigation, and it gets nowhere and does not throw any light on the issues. If you bring in men who have nothing to do with the case, whether 40 or 400, Mr. Schall would have the right to ask us, if we pursue that policy, to bring witnesses to disprove what they may say, and if you bring in 400 he may want 400. You see where it leads to; and I am trying to proceed along the line of keeping to the issues, to save expense, to save time.

The pleadings have been arranged after consultation, running over five months, and the evidence should relate to the statements in the pleadings, it occurs to me. That is the reason I am ruling as I do. You may think it is rather strict, but you see where it is going to lead to otherwise.

Senator NEELY. Of course, another observation might be made. We do not appear to be getting anywhere. They are going to impeach this witness, and I think they have done so. If they succeed in doing that, all this evidence amounts to nothing, and we are just where we started, and I would like to let the attorneys for the protestant go on in their own way, and let us see what they are going to develop. I am in favor of letting them proceed.

Senator DENEEN. Senator Goff?

Senator GOFF. I am in favor of letting you proceed provided you introduce substantial evidence. I am opposed to opening the floodgates of rumor and malice and slime and bringing it in here where it tends to prove nothing, except that the character of some of the people who voted for and supported Senator Schall was not of the highest. I think if this is what this examination should show, and this committee would go to the floor of the United States Senate, it would be very justly open to chastisement for the Senate, for having taken the time and spent the money of the Government to

collect together gossip that I assume could be collected together in every State in the Union, and to bring it in on both sides of the political household, to show the character of the men who had supported the different candidates and who had been seen around the differnt headquarters. It is within the experience of everyone within the sound of my voice that characters of the underworld sometimes come to political headquarters of both parties; that they play both parties and that they promise both parties, and that they are not persons of principle and they are not people who are actuated by any high motives in supporting the candidates, and that they will support such candidates as they think best serve their individual purposes.

I wish you gentlemen as lawyers would confine your questions to the relevant propositions bearing in mind always that this committee is indulging you; because if you had been in a court of justice you could not, with this evidence, have stayed in court five minutes.

I want my position in this matter to appear clearly upon the record, and in making this statement I make it not only in behalf of this subcommittee but in behalf of the full committee and in behalf of the Senate of the United States of which the full committee and the subcommittee are but mere agents.

Senator DENEEN. There is no pending question. You have heard the views of the committee. What is the next question?

By Mr. HUGHES:

Q. Mr. Corneaby, you are acquainted with Oscar Brodine?—A. I would not say that I was.

Q. You introduced in this list the name of Oscar Brodine?—A. Yes.

Q. And of Oscar Sauterburg?—A. Yes.

Q. You gave those names to Mr. Cosgrove?—A. Yes, sir.

Q. And stated to him that you had received from Mr. Brodine $500 to fix the cases of himself and Sauterburg?—A. No, sir; that $500 was Mr. Cosgrove's writing and not mine.

Q. That is not what I asked you. Did you not tell him that?

Senator NEELY. Just answer whether you did or not.

The WITNESS. No, sir; I did not.

By Mr. HUGHES:

Q. As a matter of fact, you did receive $500, did you not, from Mr. Brodine?

Mr. REES. The witness may be confused on the point I raised before, as to testifying against himself.

The WITNESS. If the committee will pardon me, I would like to ask again. I would not want to answer any questions where I was laying myself liable to prosecution.

Senator DENEEN. We do not know what the facts are.

Mr. REES. If the chairman will allow me to remind him, this name of Brodine is given as that of one of the men who paid money in the conspiracy, and committed a crime; and now this man Brodine and the others, their names are all mentioned. If this witness received that money it is apparent that it relates to a crime.

Senator DENEEN. Well, that does not follow. If he received the money himself, there was no crime; that is as far as you have gone.

If he received it and used it later in a criminal way, then it might be a crime, but just receiving it was not a crime.

Mr. REES. But this charge is of a conspiracy in receiving the money.

Senator DENEEN. But the law which would apply would have to depend on his answer.

Mr. HUGHES. That is just why we have to ask you to be more liberal, Senator, than we would be in a court, because no immunity can be given here. In the Federal court they can give a coconspirator immunity.

Senator GOFF. Yes; he can, and I think it is for him to determine that. We can not determine as to whether or not this is going to incriminate him. That is a matter between him and his own conscience, illuminated by the facts which he knows.

Mr. HUGHES. I was just going to say that this illustrates more than ever why in a hearing of this kind a more liberal rule would have to be applied than in a court, because in a court the judge could give immunity to a coconspirator; but if the evidence should——

The WITNESS. I never asked for that immunity before the grand jury, Mr. Hughes.

Mr. HUGHES. Just a moment. Of course, he can not have the benefit of that here.

Senator DENEEN. Do you want to be heard on the law on that?

Mr. HUGHES. I would not say that I would be prepared to argue the law now.

Senator GOFF. I want to make a statement to this witness.

Senator DENEEN. Yes.

Senator GOFF. The Constitution of the United States as well as the constitutions of several States of this Union extend to a witness the immunity of not testifying to any matter of fact or thing which in his judgment might incriminate him or tend to incriminate him. That means it might be an admission that you had entered a conspiracy or that you had violated the law. The only person who can answer that is yourself, applying this rule to you. No one else can answer that.

If you refuse to answer a question because within your knowledge the answer may be taken as an admission that you have violated the law, then you have the right to claim an immunity from testifying, and no one can deny you that right under the Constitution.

The WITNESS. I ask for that right.

Senator GOFF. Mr. Hughes asked you a question, and it is for you to answer that question, or for you to decline to answer that question and put your declination upon the ground that the answer may tend to incriminate you.

Now, I would like to make this suggestion to you: I wish you would answer, wherever you can, the questions more directly. That will help the committee and it will help counsel. Whatever you do answer, answer directly; be free and frank, full, and impartial in your statements. You are here to tell this committee the truth as you know the truth.

The WITNESS. Yes, sir.

Senator GOFF. Not as the truth is, but as you know the truth. That is all the committee can ask of you; and I think you ought to answer more frankly. He asks you a question and you do not give

a responsive answer; I have noticed that in your testimony several times here lately, and I think that the committee is entitled to responsive answers from you, of either yes or no, as much as the attorneys.

The WITNESS. Yes, sir.

Senator NEELY. Mr. Hughes, just go on now and ask your questions; and you answer them by yes or no if you can, Mr. Witness. Answer in that way and make a short explanation and one that will be to the point. Let us get on with this.

By Mr. HUGHES:

Q. Do you know Martin Gerrick?—A. Yes.

Q. Whose name appears on this list?—A. Yes.

Q. And you knew him during the campaign of Senator Schall?—A. I am not quite sure I met him then.

Q. You met him in the fall when the court was in session?—A. Yes.

Q. The Federal court?—A. Yes.

Q. Where does he live?—A. I do not know.

Q. Does he not live on the East Side?—A. I do not know.

Q. Did you see him in the Schall headquarters?—A. No, sir.

Q. What did you do with the money he gave you?—A. What money?

Q. That Martin Gerrick gave you?—A. I don't remember of his giving me any money.

Q. Will you say you did not get some money from Martin Gerrick?—A. I am not sure whether I did or did not, Mr. Hughes.

Q. Or from his wife? Do you know his wife, Etta Gerrick?—A. No, sir.

Q. You would not want to deny that you got $750 from Martin Gerrick?—A. Yes; I will absolutely deny it.

Q. You will absolutely deny that you got $750?—A. Yes, sir.

Q. Will you absolutely deny that you got any money from him?—A. No; I will not.

Q. How much did you get?—A. I don't remember.

Q. It was quite a large amount, was it not?—A. No; it was not.

Q. Martin Gerrick at that time was awaiting trial in the United States court before Judge McGee?—A. About that time he was.

Q. At the time you received the money from him you knew he was then awaiting trial?—A. No, sir; I did not.

Q. What was his business?—A. I don't know what his business was.

Q. You knew, as a matter of fact, he was a bootlegger, did you not?—A. No; I did not.

Q. What were the circumstances under which you got the money from Martin Gerrick?—A. I don't remember.

Q. You can not tell the Senators what the circumstances were?—A. No; I don't remember.

Q. What did you do with the money?—A. I might have kept it. I might have spent it. I don't know what became of it.

Senator NEELY. Did you give any of it to Senator Schall or any of his agents?

The WITNESS. Not one dollar.

Senator NEELY. You are positive of that?

The WITNESS. Yes.

By Mr. HUGHES:

Q. Did you give any of it to A. N. Jacobs?—A. I don't know. I might have turned over some of it to him.

Q. Of this Gerrick money?—A. I don't know about Mr. Gerrick particularly, on that particular point, Mr. Hughes.

Q. Now, Ed Carlson; did you know him?—A. No, sir.

Q. Whose name appears on here—Ed Carlson?—A. No, sir; I didn't know him.

Senator NEELY. Did you promise this man Gerrick in return for any money he gave you that Senator Schall would protect him against the charge of bootlegging?

The WITNESS. No, sir; I did not.

Senator NEELY. Did Senator Schall know that you had received this money?

The WITNESS. No, sir; he did not.

Senator NEELY. From this bootlegger?

The WITNESS. No, sir.

Senator NEELY. Did he know it on the day of the election?

The WITNESS. No, sir; he did not.

Senator NEELY. To your knowledge, was it used to purchase votes for Senator Schall or was it used in violation of any law?

The WITNESS. It absolutely was not.

Senator NEELY. To your personal knowledge did Senator Schall receive any of it directly or indirectly?

The WITNESS. No, sir; not a cent that I know anything about.

By Mr. HUGHES:

Q. But you can not tell us what you did with the money you got from Martin Garrett, unless you might have given it to Jacobs?—A. That has been a year ago. I don't know what I did with the donations that came in.

Q. Now, Ed Carlson; you don't remember him?—A. No, sir.

Q. He lives over on the East Side, there on Fifth Street and Central Avenue SE.—a bootlegger?—A. No, sir.

Q. You know Louis Demar, do you not?—A. Yes; I do.

Q. Who was Louis Demar?—A. Well, he is a restaurant man; he runs a restaurant in western Minnesota some place.

Q. Was he selling cigars along there in the fall of 1924?—A. No, sir; he was selling automobiles.

Q. Did he come up to the headquarters?—A. Yes; he came there. He lived at Silver Lake at that time.

Q. Did he bring up different men to the headquarters?—A. He brought up several men who wanted to make a campaign donation.

Q. To make a campaign donation?—A. Yes.

Q. Do you remember some of the man that he brought up there?—A. No; now I do not.

Q. You can not recollect any?—A. No, sir.

Q. Do you not remember as a matter of fact he brought Ed Carlson up there to you?—A. He might have; but there are so many people by the name of Carlson that I don't remember just one.

Q. Do you remember Melvin Stubskins?—A. I never saw Melvin Stubskins in my life.

Q. Is it not true that Melvin Stubskins paid to you $2,750 during the Schall campaign at the West Hotel?—A. No, sir; he did not.

Q. You want to swear to that?—A. Absolutely.

Senator NEELY. He is under oath. Whatever he is saying he is swearing to.

By Mr. HUGHES:

Q. Do you know Einar Erickson?—A. Yes.

Q. What is his business?—A. He is proprietor of a hotel.

Q. Where is that?—A. On Third Avenue south, Minneapolis.

Q. What is next door to that place?—A. I don't know.

Q. You were acquainted with him during the campaign, were you?—A. Yes.

Q. Did he use to come to the headquarters?—A. He never was in there when I was there.

Q. When did you see Einar Erickson last?—A. He is quite a good friend of mine. I see him quite occasionally.

Q. Did you see him last Tuesday night of this week?—A. I don't remember that I did.

Q. When did you see him last before you left for Washington?—A. I believe a week ago this coming Saturday I saw him.

Q. He contributed money to the Schall campaign through you, you, did he not?—A. No, sir; he did not.

Q. Never did?—A. No, sir.

Q. It is not true that Einar Erickson put up $500?—A. Not a penny did he put up.

Q. Do I understand that you deny also that Oscar Bordine put up $500 with you?—A. I don't remember any amount of that kind, Mr. Hughes.

Q. You know where Shakopee, Minn., is?—A. Yes, I do.

Q. Were you there during the campaign of Senator Schall in 1924?—A. I was all over the State, so that I might have been there.

Q. Did you know a man named Ed Teiden?—A. Yes; I have heard of that name.

Q. What was his business in the fall of 1924?—A. He is a restaurant proprietor, I believe.

Q. Soft-drink parlor?—A. I would not say it is soft drinks. I know he runs a restaurant.

Q. Did you see him there at the Schall headquarters, or in his restaurant there, in the fall of 1924?—A. I don't just remember that I did.

Q. Is it not true that you received $1,000 from him for the Schall campaign?—A. No, sir.

Q. You received money from him, did you not?—A. Yes, sir; I might have received——

Q. You know, as a matter of fact, that you got money from Teiden to fix his case?—A. No; I didn't get any money to fix his case.

Q. Did you not make it your business to go around to men who were charged there and were awaiting trial before Judge McGee and tell them that if they would put up various sums of money Senator Schall would fix their cases so that they would not be tried?—A. No, sir.

Q. Did you not, in the Schall headquarters, instruct men like Martin Gerrick and Ed Carlson and Brodine and Sauterburg and others that the money had been paid over, and that they did not need to show up in court?—A. No, sir.

Q. You did not?—A. No, sir.

Senator NEELY. Just a moment, there. Did Senator Schall ever say to you, or did you ever hear him say to any other person, that if these alleged bootleggers and habitues of the underworld would contribute to his campaign, he would obtain protection for them against prosecution?

The WITNESS. No, sir.

Senator NEELY. And whether you do or do not recall your conversations with these persons who contributed, tell the committee whether Senator Schall at any time authorized you to promise protection to any of these alleged violators of the law in return for contributions to his campaign.

The WITNESS. He absolutely did not; no, sir.

Senator NEELY. Did he know of you, or do you know of his having knowledge of anyone else, making such representations to these persons who are alleged to have given money to his campaign?

The WITNESS. No, sir.

Senator GOFF. Let me ask you a question. Did any of these so-called bootleggers, as you refer to them, in Minnesota, ever say to you that they had given money to the Schall campaign, in reliance upon the fact that their prosecutions were to be discontinued?

The WITNESS. No, sir.

Senator GOFF. Mr. Hughes, do I understand that there is no law in the State of Minnesota limiting the amount of money that can be spent in an election?

Mr. HUGHES. No. That is, there is a law limiting it to a certain amount—I have not the statute handy, but it provides a certain percentage of a candidate's salary for the first year, and I think that applies to a United States Senator as well as any other.

Mr. SMITH. Pardon me, Mr. Chairman, the law of Minnesota does not limit the amount, and the Attorney General has repeatedly held that under the law of Minnesota there was no limitation upon the amount that a candidate for the Senate can expend; and that is the statute and there is no question about it. There is no limitation.

Senator GOFF. Then the limit out there is the sky?

Mr. SMITH. So far as the State law is concerned.

Senator NEELY. Subject only to the limitations of the act of Congress on this subject?

Mr. SMITH. That is all there is to it.

Senator NEELY. Just one more question. Do you know whether any of the prosecutions pending against these alleged bootleggers who were charged with having contributed to Senator Schall's campaign fund were dismissed because of their having made these contributions?

The WITNESS. No, sir.

Senator NEELY. Do you personally know of Senator Schall, or anybody authorized by him to do so, having obtained the dismissal of any of these criminal prosecutions?

The WITNESS. I do not.

Senator NEELY. Because of their having made contributions to his campaign fund?

The WITNESS. No, sir; I do not.

Senator NEELY. I mean, because of the persons charged having made contributions?

The WITNESS. No, sir.

Senator GOFF. Did you ever hear anyone complain that a prosecution against them had not been dismissed because Senator Schall had not used whatever influence he was supposed to have in their favor?

The WITNESS. No, sir.

By Mr. HUGHES:

Q. Now, asking you somewhat along the line on which Senator Neely interrogated you: Do you know whether Mr. Jacobs ever made any statements there in your presence in the headquarters, to bootleggers that paid money, as to what Senator Schall would do for them?—A. Never made any statements in my presence, Mr. Hughes.

Q. You recall Szysko, sitting here [indicating]?—A. Yes; I do.

Q. You remember meeting him in the Schall headquarters in Minneapolis?—A. Yes; I think it was there I saw him.

Q. And getting $500 from him?—A. I don't remember that.

Q. Getting some money from him?—A. Yes, sir.

Q. What did you do with that money?—A. I don't remember. I spent it, I guess.

Q. Did you bank it?—A. No; I never had a bank account.

Q. As a matter of fact, you turned it over to Mr. Jacobs, did you not?—A. I might have given him some. I might have spent some some other way.

Q. What is your explanation with reference to the money you turned over to Jacobs that you collected?—A. Well, I don't believe Mr. Jacobs ever spent a cent of it on the campaign, either.

Q. That is not the question. How did you come to turn that over to Jacobs? That is what we want to know.—A. Mr. Jacobs was up there with the voluntary committee, and he knew Schall longer that I knew him. I had no right to that money.

Q. You had no right to the money? You considered that money that was collected, then, belonged to Jacobs?—A. Not necessarily. It belonged to anybody that——

Q. What do you mean by the statement that you had no right to the money?—A. It was given to me for the voluntary committee.

Q. Have you any idea as to the amount you collected around Minneapolis and the countryside there during the campaign?—A. I never was out in the country collecting any money.

Q. Did you always receive the money at the headquarters?—A. Yes; I believe most of it. They could give it to anybody.

Q. They usually came first to Mr. Demar, did they not?—A. No; not always.

Q. And they all met Mr. Jacobs, did they not?—A. I am not sure that they all did, Mr. Hughes.

Q. You heard complaining in the headquarters, did you not, about the fact that their cases had not been fixed, and that they had to go to jail, and they wanted their money back?—A. Well, a month before the election I was taken sick and was taken to the hospital, and I was out of the campaign then, Mr. Hughes.

Q. You had people coming and demanding their money back, did you not?—A. I was in the hospital. None of them ever came to the hospital and demanded any money back from me.

Q. Do you remember Mrs. Sauterburg came there, I think during the campaign along in October, or the fall, and asking that you return the money that her husband had turned over to you?—A. I never seen Mrs. Sauterburg in my life.

Q. You never saw her?—A. No, sir.

Q. You deny that she asked the return of this money from you?—A. No, sir.

Q. Do you know Leo Glückman?—A. No, sir.

Q. You have heard of him?—A. Yes.

Q. What is his business?—A. I don't know.

Q. Is he the man that was involved with the Glückman brothers in St. Paul?—A. I don't know a thing about that murder case?

Q. You knew Mike Jennings, did you?—A. I met him; yes.

Q. You have seen him in the Schall headquarters?—A. No; I never did.

Q. Where did you meet him?—A. At the barber shop on Eleventh and Marquette.

Q. And Ed Jennings?—A. I believe at the same place.

Q. The same place, in the barber shop?—A. Yes.

Q. You never saw them in Schall's house?—A. No, sir.

Q. Or in his office?—A. No, sir.

Q. You never saw Ed and Mike Jennings in Schall's office?—A. I never did.

Q. You spent quite a lot of time in the headquarters, did you not?—A. No; not a lot. I was out around the shops.

Q. What was your work? What were you doing? Were you employed at the time?—A. No; I didn't have any job. I just volunteered my services up there.

Q. When had you worked before the campaign of 1924?—A. Always.

Q. Are you employed now or not?—A. No, sir.

Q. Were you employed in the month of August, and clear up to November, and including November of 1924?—A. Yes.

Q. Where?—A. I was working for the Grand Portage Town-site Co.

Q. What was that?—A. A town-site company. They are floating a campaign down on the shore of Lake Superior.

Q. Were you on a salary or commission?—A. No, sir; commission.

Q. Where had you been employed prior to that on a salary?—A. Prior to what?

Q. Prior to when you worked for the Grand Portage Townsite Co.

Mr. REES. I think it is my duty to object to this as immaterial to the issue.

Mr. HUGHES. I just wanted to show that he had no regular employment.

Senator DENEEN. For the purpose of impeaching him?

Mr. HUGHES. No; for the purpose of showing that he had plenty of time to go out and approach bootleggers. That was his business.

Senator DENEEN. Do you claim that this witness was a bootlegger himself?

Mr. HUGHES. No, sir; I want to show that this man's business was that of a collector for those headquarters; that he received money and turned it over to Jacobs. That is what we want to show by the evidence.

Senator NEELY. Now, if you can show that by the witness, why waste time in showing that this man had an opportunity to do it? If that proof is available, why not introduce it directly instead of showing that this man has no other occupation, except going out and approaching these bootleggers?

Mr. HUGHES. Of course we are confined to six witnesses. We could not show that unless we had more subpœnas and could bring the people in that paid him the money.

Senator NEELY. I have understood that in some cases a man is amenable and could be arrested under the vagrancy law, but I never understood that he could be arrested for having no employment.

Mr. HUGHES. He claims that he can be arrested. He asked for his privilege, here.

Senator DENEEN. If that is the point, I do not think that it is pertinent to the case. If you want for other reasons to do that, that is proper; but simply because he had time to do a thing, that he did it—I do not think I should waste time on that.

By Mr. HUGHES:

Q. You know Mr. Andy Rahn?—A. No; I don't know Andy Rahn.

Q. Did you ever see him in the Schall headquarters?—A. No, sir; I never did.

Q. You want to swear to that?—A. Absolutely.

Q. When did you see him last?—A. A year ago last October.

Q. Where?—A. I didn't see him then. I got orders to get out of headquarters.

Q. You got orders to get out of headquarters?—A. Yes.

Q. From whom?—A. I don't know who from.

Q. You do not know from whom?—A. No, sir.

Q. Did you see Andy Rahn at that time?—A. No, sir.

Q. Was that after Judge McGee had called his calendar?—A. I don't remember.

Q. Do you know Mr. Boone Talbot?—A. Yes; I do.

Q. Mr. Boone Talbot, did you see him in the Schall headquarters?—A. Yes.

Q. During the election?—A. Yes, sir.

Q. Was he there during the primary?—A. I was not in the headquarters during the primary. I was out in the country all the time.

Q. You saw him there during the main election?—A. Yes.

Q. What month did you see Boone Talbot?—A. In October—it is hard for me to tell, because I went to the hospital in October.

Q. What was Talbot doing in the headquarters?—A. He was doing a lot of writing. I don't know what it consisted of; never inquired into it.

Q. You used to have consultations with him?—A. No, sir; I never had consultations with him.

Q. He was aware of the means you were using to collect campaign funds?

Senator DENEEN. You are asking him to testify to what this other man was aware of.

By Mr. HUGHES:

Q. Mr. Talbot had an understanding with you in reference to the collection of these bootlegger funds, did he not?—A. No, sir.

Q. He did not?—A. No, sir.

Q. You told him what you were doing?—A. No, sir.

Q. And you talked there with bootleggers in the presence of Talbot?—A. No, sir; not that I remember of.

Q. You have talked to Mr. Talbot about this contest since it has been started?—A. Yes; we have talked about it considerable.

Q. When did you see him last?—A. Some time before Christmas.

Q. You had a long talk with him?—A. Not a long talk, I wouldn't say.

Q. What is he doing now?—A. I don't know if he is doing anything or not.

Q. As a matter of fact, he has a position, has he not, with the collector of internal revenue at St. Paul? You know of that, do you not?—A. I heard he was over there, but I have never seen him over there.

Q. Where did you hear that?—A. Just talk. I don't remember where.

Q. Talk. You saw Mr. A. N. Jacobs after the campaign, did you not?—A. Yes.

Q. And you made trips with him during the months of July and August in 1925, after the campaign?

Mr. REES. That is objected to as wholly immaterial. That is a year after the campaign.

Mr. HUGHES. It is to show his connection with Mr. Jacobs, Mr. Schall's manager.

Mr. REES. It is a mere matter of inference, "Mr. Schall's manager." He is still repeating, notwithstanding the warning of the chairman. It is a mere inference.

Mr. HUGHES. It is to show his connection; that he kept it up, with Jacobs. We propose to show that he and Jacobs continued to carry on a line of assessments with reference to Senator Schall; that after they had worked the bootleggers during the campaign then they started out and went into certain congressional districts where there were Farmer-Labor Congressmen, and there went around and attempted to get money from the postmasters—they had a paper—and to get money from other men, in which the same promise was held out to these postmasters that had been held out to the bootleggers. The purpose of that is to show that he was still connected with Jacobs; that they were not collectors as he gives it out here.

Senator GOFF. This was after the election?

Mr. HUGHES. Yes.

Mr. REES. A year after.

Mr. HUGHES. It is to show that he continued with Jacobs.

Senator GOFF. Was this matter ever presented to the United States attorney?

Mr. HUGHES. The bootlegging matter?

Senator GOFF. No; the matter of holding up postmasters.

Mr. HUGHES. That I can not say. I do not know.

Senator GOFF. Was it ever investigated by the Post Office Department?

Mr. HUGHES. That I do not know. There was some matter in the public press about it. Mr. Rudolph Lee, a prominent Republican, came out in the paper with an exposé of the matter. There was some matter about it in the daily papers.

Senator NEELY. Had he been an unsuccessful applicant for the office?

Mr. HUGHES. Mr. Lee?

Senator NEELY. The man who came out with this exposé?

Mr. HUGHES. Mr. Lee runs a newspaper. He was not a candidate for election. He was not a candidate for office in the election.

Senator NEELY. Was he a candidate for any office?

Mr. HUGHES. No; he runs a big newspaper.

Senator NEELY. Newspaper proprietors frequently run for office.

Mr. HUGHES. No; not at that time. He was a candidate for governor 10 or 15 years ago and was defeated.

Senator DENEEN. Under what branch of the charges does that fall?

Mr. HUGHES. That would go to show——

Senator DENEEN. No; I mean under the charges in the petition. Can you refer to the petition where there is a charge of that kind? I do not recall it.

Mr. HUGHES. I do not presume there is any charge of that kind in the petition. We set it forth in what this man would testify to in our statement.

Senator DENEEN. But will you refer to your petition and see if there is anything in it?

Mr. HUGHES. No; there is nothing in the petition in regard to the postmaster stuff. The only purpose of that is to show the continued connection between Jacobs and Corneaby. He denies that he knew Jacobs well and says that they did not meet much; and this is to show their connection.

Senator NEELY. In order to save time, I move that we go ahead and let him answer the question. We will waste an hour discussing it. I would rather let him answer the question, whether it is strictly appropriate or not.

Mr. REES. May I call the attention of the committee to one thing? Are you aware that you are releasing and making privileged by making it public here, all of this irrelevant and scandalous matter?

Senator DENEEN. You chose that the hearings should be public.

Senator NEELY. You agreed that the hearings should be publ c instead of in executive session. You can not complain about that. If you gentlemen wanted this to be in executive session, you should have said so yesterday. I was here when the chairman asked you that question, and you said the sessions should be public.

Senator SCHALL. Let him talk. Let him go on and say anything.

Senator NEELY. That is my feeling about the matter, to let them go ahead with it, and tell their story. I think 90 per cent of the evidence that has been introduced is irrelevant, but I do not want to tell an attorney how to try his case. If that is the way they want to try it, all we can do is to sift the evidence when they get through with it, and appraise its value, and if any crime has been committed, find accordingly, and if not, all we can do is to reject it. I do not think we have any right to restrict the attorney so long as he is not invading somebody's rights, and he certainly is not up to this time;

or unless it is absolutely outraging some rule. I think we have no right to prescribe how he shall proceed. I am in favor of letting him go ahead and ask any questions he wants to.

Senator DENEEN. My position is this, that this is a charge of conspiracy to induce certain persons to accumulate a fund to be used in the election. Now, any evidence that relates to that is admissible. Here is a charge that men were solicited to give money for appointment as postmasters, and that two or more were engaged in that conspiracy. That would be criminal. But the conspiracy falls when the purpose for which it was arranged is past, and this was after the election. There is nothing in the pleadings that would justify this.

Senator GOFF. I agree with what the chairman has said. I do not see what is the purpose, to prove that eight or nine months after the election these men went out and collected additional money. I do not see what that tends to show. This witness has stated that prior to meeting Mr. Jacobs in the Schall headquarters he had had nothing to do with him and had not known of him. Now, as to what this tends to prove, to show that the relationship continued, I fail to see the relevancy of it. There are no allegations in the petition about it. But, since the members want you to ask any kind of a question along this line, I am not going to be the only one to object. I wish you would hurry up and put your questions, and just be snappy about it as you can, and let the witness answer the questions in a snappy way.

By Mr. HUGHES:

Q. We will be snappy, all right. Now, you say you saw Jacobs after this campaign?—A. Yes, sir.

Q. And you traveled around with him over the State?—A. Yes.

Q. And you went to a town called Gary in Minnesota?—A. I do not just exactly remember that town.

Q. Well, you called on the postmaster, did you not, you and Mr. Jacobs?—A. We called on a lot of people; not only postmasters.

Q. And you solicited funds from various postmasters—you and Jacobs?—A. From a great many people, Mr. Hughes; not only postmasters.

Q. I am asking you about postmasters. Did you solicit funds from some postmasters?—A. No, sir; I did not.

Q. Did Jacobs?—A. I don't know. I never was in a post office with him when he done it.

Q. You never were in a post office with him?—A. No.

Q. You know, as a matter of fact, you and Jacobs went around calling on postmasters throughout Minnesota and asking them to make a donation to Mr. Jacobs, and saying that he, in turn, would use his influence with Senator Schall to get them appointed postmaster or reappointed postmaster?—A. I never heard Jacobs say that.

Q. You never heard him?—A. No, sir.

Q. But you went around with him over the State?—A. Maybe I am——

Senator GOFF. Go ahead and answer and make any statement you want to.

By Mr. HUGHES:

Q. What is your statement?—A. Yes; I was around with him, around the towns around the country.

Q. What were you doing, you and he?—A. We were soliciting subscriptions for a newspaper.

Q. What newspaper?—A. The Minnesota Republican.

Q. How many issues did you get out?—A. I never got out any.

Q. Did you receive subscriptions from postmasters?—A. I never did; no, sir.

Q. Did Jacobs?—A. Not that I know of. I never seen him get one.

Q. Is it not true that you received a check from the postmaster at Gary, Minn.?—A. We might have.

Q. With reference to the sale of a post office?—A. No, sir.

Q. Have you that check with you??—A. What check?

Q. That you received. Do you know what became of the check?—A. Where we sold the post office?

Q. Yes; where you sold the post office. That is right.—A. How big was the check?

Q. Yes; how big was it?—A. I don't remember.

Q. You got that check for selling a post office?—A. No, indeed; I never got a check for selling a post office.

Q. Did Mr. Jacobs?—A. No, sir.

Q. You showed that check, did you not, to Mr. Cosgrove?—A. Not that I remember.

Q. Not that you remember. When was it that you and Jacobs went around last in Minnesota?—A. I have not seen Jacobs for six months.

Q. For over six months?—A. Yes.

Q. You saw him last July and August?—A. I must have.

Q. Do you know what Jacobs's business was before he undertook the management of Mr. Schall's campaign in the election?—A. I never heard of him before in my life.

Q. Did you not know, as a matter of fact, that he was employed with the Veterans' Bureau?—A. No, sir.

Q. You never knew that until to-day?—A. I knew it after I got acquainted with him. You asked me if I knew that before.

Q. He told you that he had been employed by the Veterans' Bureau?—A. Yes.

Q. Did Mr. Jacobs have a talk with you during the Schall campaign, in which he stated that while he was in the employ of the Veterans' Bureau, he prepared an honest report concerning Fred Jenson, who was investigated concerning the Oregon United States land swindle, and that Andy Rahn induced him to change the report and cover up the real facts?—Do you remember that statement?—A. I don't recall any statement of that kind. I remember him talking about the Argonne Farm case, and about him making an honest report, but I don't remember him saying that Andy Rahn made him change it.

Q. He admitted that he changed the report, did he not?—A. Not to me, he did not.

Q. As a matter of fact, did you not state to Mr. Cosgrove just what I have previously stated to you here, that Jacobs told you that he made an honest report in that matter, and at the instance of Andy Rahn he changed it?

Senator GOFF. What is the purpose of the question? Is it to render this witness below and beneath resurrection, or unbelievable? I fail to see the purpose of any such question as that.

Mr. HUGHES. We have stated that Mr. Cosgrove has been told by this witness that Mr. Jacobs was an employee of the Veterans' Bureau; that there was a swindle there in which the service men were swindled on land, and that Jacobs was asked to make a report on that swindle, and Mr. Fred Jenson, representing a committee of this body, had made an investigation; that Mr. Jacobs had prepared or turned in what was an honest report. Andy Rahn was involved in this. He was one of those who was in this swindle, and he used his influence to get a State loan so that this money was loaned on this land. Now, Jacobs, by admitting that Andy Rahn got him to change this report, connects up Andy Rahn with this whole campaign, and connects up Mr. Schall, because Mr. Schall has written a letter, which I have in my satchel here, referring to Mr. Andy Rahn, who will reimburse her for campaign work.

Now, we will show that Andy Rahn was around the headquarters and frequently there, and that Mr. Schall held him out as his manager; and it connects both Jacobs and Andy Rahn up with the campaign.

Mr. REES. We make the same objection we have been making here before. The sole purpose of this is to see how much slime they can cast over persons. I am going to renew my objection to that line of testimony that is so far-reaching and so remote.

Senator DENEEN. What is the next question?

By Mr. HUGHES:

Q. Since you were in my office have you talked with anybody about this case?—A. No, sir; I have not.

Q. You say you have not talked with anybody at all?—A. No, sir.

Q. Not with any person?—A. No, sir.

Q. Where are you stopping?—A. I stayed at Mr. Williamson's house last night.

Q. What is his address?—A. I don't know.

Q. How did you happen to go to Mr. Williamson's house?—A. He is a friend of mine for a good many years.

Q. What is his business?—A. I don't know what his business is.

Q. How did you get out there? Did he meet you, or what?—A. No; I telephoned to his office.

Q. What is that?—A. I telephoned to his office.

Q. What is his business?—A. I don't know what his business is.

Q. Do you not know where it is located here in the city?—A. I know the building where it is located.

Q. What building is it?—A. I think it is the Arlington Building.

Q. The Arlington?—A. Yes.

Q. How did you get up there? Did you go all alone?—A. I walked up.

Q. You walked up from the depot?—A. Yes.

Q. And then went out to his house?—A. Yes.

Mr. HUGHES. That is all.

Senator DENEEN. That is all. Call the next witness; or do you care to cross-examine him?

Mr. REES. Yes; I want to ask him a few questions.

Senator DENEEN. Very well.

By Mr. REES:

Q. How frequently have you seen Mr. Cosgrove since the election in 1924?—A. Hundreds of times, Mr. Rees.

Q. Where have you seen him?—A. He has been at my home, and at my office, and I have seen him at his home and on the street.

Q. What has been the subject of his conservations with you? What have you seen him for or what has he said to you?—A. He has always been after me for information where he could go down and get—and I do not want to use the names that he called, Senator, because there are ladies in the room.

Senator GOFF. I think you ought to tell us what he said of Senator Schall. This committee wants to know his feeling.

Mr. HUGHES. We object to it as not proper cross-examination. It is hearsay, not in the presence of Senator Johnson.

Senator GOFF. Hearsay? I do not see the hearsay character of it. You present a witness here, and of course you impeach him and then he must be subject to cross-examination. These questions are relating to conversations that have taken place with a man that you have examined about his relationship with in going into this man's room where he was supposed to receive a sum of $500 for furnishing the bootleggers list. It seems to me it is within the reasonable scope of the subject matter of your direct examination to permit cross-examination on it. Mr. Witness, answer the question.

The question was read by the stenographer as follows:

Q. What has been the subject of his conversations with you? What have you seen him for or what has he said to you?

The WITNESS. He has always come to me for information so that they could go down to Washington and get that "blamed ——," and "that blind —— —— ——."

Q. To whom was he referring?—A. To Senator Schall. He called that right out.

Q. Who said that to you?—A. Mr. Cosgrove; said it in the presence of my wife and other witnesses.

Q. How many times has he talked to you about getting Senator Schall?—A. Hundreds of times.

Q. And how has he referred to him, generally?—A. Always in the most "ungreating" language possible.

Q. Has Cosgrove ever said anything to you about your being paid if you would get Senator Schall?—A. Yes, sir.

Q. What did he say about that?—A. He told me he would give me anything within reason if I would go down here and testify right.

Q. How many times has he said that to you?—A. He said that in the presence of my wife and another man on several occasions.

Q. What did he say about if you did not testify right, if anything?—A. He said they would give me my railroad fare down here to Washington and he would make me walk back.

Q. If you did not testify right?—A. Yes, sir.

Q. When did he say that to you?—A. When he told me I was going to be subpœnaed here, about two weeks ago.

Q. Did he say anything about Senator Schall at that time, what he would do to Senator Schall in the hearing down here?—A. Yes; he said that if Senator Schall would ever call him a liar, like he called Mr. Hughes, he would get up and break the blamed bastard's head with his cane.

Q. Here in this room?—A. Yes; right here in this room.

Q. Now, at what place other than your own home, and the other places you have mentioned have you seen Cosgrove since the election?—A. Oh, I have seen him in Mr. Hughes's office; I have seen him in the courthouse; over to his home and in my home, and in the office and on the streets and several places.

Q. How about his telephoning to you, if at all?—A. Well, I will say 500 times, at least.

Q. What has been the subject of the conversation on the telephone?—A. Always wanting some information to get Tom Schall. They said on different occasions he telephoned me. He said, "It is not only the Farmer-Labor Party that wants to get Senator Schall; it is the Republicans that want to get him." He said, "There are some big Republicans back of this thing," and he named Mr. Caswell and Mr. Tom Mahan, and Christianson, and Attorney General Hilton, and others. He said all of those were interested in seeing Schall kicked out of the Senate.

Q. That is what he told you?—A. Cosgrove told me in the presence of my wife.

Q. In connection with the St. Paul post office, did he say anything about Schall?—A. Yes; he said that Schall and Frank B. Kellogg were a couple of damned dirty crooks, and that they were going to get them both kicked out and get them indicted.

Q. When you say "both," whom did he mean?—A. Frank B. Kellogg, Secretary of State, and Senator Schall.

Q. Where was Cosgrove when he said that?—A. In my home, No. 15 Second Avenue, south. That is just as true as that there is a God in heaven. That is his exact words.

Q. Was anybody else present when he made this last statement?—A. Yes; my wife.

Q. At any other time that he has made these statements villifying Schall, Kellogg, and Schall and others, has anybody else been present?—A. Yes; a man by the name of L. A. Case.

Q. When was that?—A. I would not fix the exact date, Mr. Rees, but on hundreds of different occasions, where he was telephoning. He has called them all the names one man could think of calling another. Said he was a pimp, and everything he could lay his tongue to.

Q. Mr. Cosgrove?—A. Yes.

Q. Getting to money transactions between yourself and Cosgrove?—A. Yes; he offered me $500 if I would furnish him the bootlegger list, so that he could come down here and get "that —— —— pimp."

Q. That is what Cosgrove said?—A. Yes, sir; that is what he said.

Q. Did he give you the $500?—A. No, sir.

Q. Did he give you anything?—A. He gave me five or ten dollars in the Elwell campaign.

Q. And that is all?—A. Yes.

Q. Did you ever know a man named Unschuldt?—A. Henry Unschuldt; yes, sir.

Q. Has he been talking to you about coming to Washington and testifying?—A. Yes.

Q. How recently?—A. A month ago.

Q. Did he talk to you in the presence of Cosgrove?—A. No, sir.

Q. Was anyone else present when he talked with you?—A. Yes; L. A. Case.

Q. What did Henry Unschuldt say to you about coming down here and testifying?

Mr. HUGHES. This is objected to as hearsay and not cross-examination on Unschuldt.

Senator NEELY. Who is Unschuldt, and what connection has he with Magnus Johnson?

By Mr. REES:

Q. What connection did he say he had with Magnus Johnson?

Mr. HUGHES. That is objected to as hearsay.

Senator DENEEN. I do not think it is cross-examination, on Mr. Unschuldt. His name has not been mentioned, has it?

Mr. REES. I wish to show that Unschuldt made substantially the same offer to this witness within six weeks or two months, that if he would come down here and testify in such a way as to get Schall expelled from the Senate, the people behind Johnson would see to it that he got a job at $10,000 a year. I want to show what is behind the charges made here.

Senator DENEEN. The committee rules that in view of the fact that you went into all these matters against the view of the committee, constantly, you have opened the gates, and they are entitled to cross-examine on it.

Mr. EDGERTON. I did not object to it.

Senator DENEEN. You went into the motives of the witness and you opened a pretty broad field, then.

By Mr. REES:

Q. How did it happen that you saw Unschuldt?—A. The first time I met him was through O. R. Lee when he was trying to get a permit to sell a $300,000 issue of bonds from the State Securities Commission.

Q. How long ago?—A. Three months or more ago.

Q. Did he ever talk to you about Senator Schall?—A. Yes.

Q. And about how long ago was the first conversation?—A. Two months ago.

Q. Where was that conversation?—A. In his office.

Q. Where is his office?—A. At 809 Ambrose Building, Minneapolis.

Q. What did he say to you?—A. He said if I would give him some affidavits that would get Senator Schall thrown out of the Senate, he would give me his check for $1,000; and he said that he had a note of Magnus Johnson's for $1,000, and he would take it to Mr. Turner, president of the Mercantile State Bank, and he would discount it for as much cash as he could get, and turn the balance over to me.

Q. Did you talk to him at any later date about this subject?—A. Yes; over to Mr. Case's house.

Q. What did Unschuldt say to you there?—A. He said I was a —— —— fool if I did not come down here and get on the stand and cross Schall off.

Q. Was anything said about a position for you?—A. Yes; he said more than likely we could both get a good position in some big lumber company in the northern part of the State of Minnesota, if we got Schall out. He referred to the Backus-Brooks Co.

Q. How do you know?—A. He said so.

Q. He said so?—A. Yes, sir.

Q. Did he say what the position might be or would be?—A. He said it ought to be worth $10,000 apiece; and I said that he was horning in pretty cheap.

Q. Who else has been to you about testifying here?—A. Why, Mr. Rees, they bothered me and haunted me for the last year.

Q. Who else?—A. Henry Tiegan, Senator Johnson's secretary.

Q. He was the private secretary of Senator Johnson?—A. Yes, sir.

Q. How many times have you seen him?—A. Several times.

Q. Who else?—A. W. D. Montgomery.

Q. Who is he?—A. He runs a scandal sheet, the Twin City Reporter.

Q. And he has interested himself in getting you to come and testify?—A. Yes; he has threatened me with what would happen if I did not go before the grand jury and testify the right way.

Q. Montgomery did?—A. Yes.

Q. What did Mr. Tiegan say to you?—A. He said Schall was no more fitted for the——

Mr. HUGHES. This is objected to as not proper cross-examination.

Senator GOFF. The committee feels that they have let the bars down on the direct examination of the witness, and they are going to do the same in regard to the other side.

By Mr. REES:

Q. Just what did Mr. Tiegan say?—A. He said Schall was no more fitted to sit in the Senate of the United States than some yellow dog, and they wanted to get him and they were going to get him; that they had enough evidence not only to drive him out of the Senate but to send him to the pen.

Q. What did he say to you about testifying?—A. They have all, him and everyone included, said that I would be a fool if I did not come down here and cross off Schall so that they could throw him out of here.

Q. Who else besides Henry Tiegan, Cosgrove, and Montgomery and Unschuldt have talked to you about this thing?—A. I don't know any names directly. There have been a lot of anonymous telephone calls. I don't know who they were.

Q. Yes.—A. They called my wife one time at 12 o'clock at night, when I was out of town, and told her that if she wanted to see me she wanted to hurry up and come down right away, that I was down in the morgue, and she called a taxicab and went down there to identify me, in the middle of the night.

Q. You do not know who did that?—A. No, sir.

Q. Mr. Corneaby, did you ever see Schall at these headquarters in the West Hotel?—A. He never was in there in his life, that I saw him there.

Q. Either before or after the election?—A. No, sir; he never was in there.

Q. That you saw?—A. Yes, sir.

Q. During the election, as I remember it, you stated that you saw him probably once or twice. Is my memory correct on that?—A. I saw him more than that, but I only talked with him on one occasion.

Q. Where was that?—A. At Red Wing, Minn.

Q. Was there a political meeting there?—A. Yes; there were several political candidates down there speaking that evening, and we all drove down to hear it.

Q. When you say "We all drove down," whom do you mean?—A. Myself and my wife and my brother and his wife and Mr. ——— and his wife.

Q. How much did you see of Schall?—A. Just enough to get out and congratulate him for the speech he made. He made an address there along with other political candidates.

Q. There was quite a meeting there?—A. Yes.

Q. Did you at any time ever mention to Schall, either at that time or any other time, that any money was being collected over at the West Hotel?—A. No, sir; I did not.

Q. Did you ever telephone to Schall and tell him anything about any of these moneys that it is claimed you collected?—A. No, sir; I did not.

Q. Never, at any time?—A. Never, at any time; no, sir.

Q. Let me ask you about opening up those headquarters. Did you ever talk to Schall about opening up those headquarters in any way?—A. Now, Mr. Rees, I would like to answer that, but it will take me, maybe, a little different way from what you want me to answer it.

Q. Answer it and tell us.

A. I did not talk to Mr. Schall, but I understood Mr. Jacobs talked to Schall about the headquarters, and Mr. Schall told him he did not want those West Hotel headquarters opened; that the city of St. Paul was going to take care of him. That is what Jacobs told me Schall told him.

Q. Was any reason given for it?—A. Mr. Jacobs said Mr. Schall said that the State central committee was going to take care of him.

Q. I see. Did you work there in the primary?—A. No, sir; not at headquarters.

Q. You were not there at all?—A. No, sir.

Q. You were not connected with Jacobs or the movement, or whatever it was, in the West Hotel in the primary?—A. No, sir.

Q. Do you know if the primary headquarters in the West Hotel, that is the headquarters in the primary election, or for the primary election, were the same as in the election, or do you know?—A. I do not know for sure, but I do not think they were. I think it was altogether a different office.

Q. A different place?—A. Yes, sir.

Mr. EDGERTON. I would like to ask him a few questions.

The CHAIRMAN. Yes.

By Mr. EDGERTON:

Q. Mr. Corneaby, last Monday afternoon was the first time you ever saw me, was it?—A. Yes; it was, Mr. Edgerton.

Q. You knew that out side had requested from the chairman here a subpœna for you?—A. Mr. Tiegan called me on Monday evening.

Q. You knew that, did you not?—A. Not until I talked with you Monday evening, or Sunday, perhaps it was, Mr. Tiegan called me.

Q. When was it?—A. It might have been Sunday or Monday.

Q. It was Monday we had this talk in Mr. Hughes's office?—A. I say I am not sure it was on Monday, or the Sunday night previous, Mr. Tiegan called me.

Q. So that you knew it at the time we met in Mr. Hughes's office?—A. I am not sure. I do not know whether Mr. Tiegan told me Monday or Sunday night. I am not sure.

Q. You knew it when you saw me, did you not?—A. No, sir; that was Monday afternoon when I saw you.

Q. You knew that we contemplated going the next day?—A. Yes, sir.

Q. And there was talk of getting a ticket for you to go?—A. They said something about seeing if they would take me in the first bunch; yes, sir.

Q. You expected to come down at that time as a witness for our side, did you not?—A. I expected to come down here and tell the truth; yes.

Q. You expected to come down——A. As a witness. I did not care who it was for as long as I was able to tell the truth.

Q. But you expected to come down and testify for the contestant, whom we represented?—A. To the truth.

Q. Of course, to the truth.—A. Yes.

Q. Now, you knew that, and you knew that we were going to provide a ticket for you?—A. I knew that you would get it back, too.

Q. Well, that may be; but did you say anything to us about this remarkable testimony which you have testified to here to-day?—A. I never said anything to you about any testimony that I would offer, Mr. Edgerton.

Q. You knew all about what you have testified here, at that time, did you not?—A. Yes; and if you had asked me, I would surely have told you.

Q. You did not claim, to us, that you would not at that time be a valuable witness on the side of the contestant, did you?—A. And I never claimed that I would be one, either.

Q. After that conversation a ticket was gotten for you by Mr. Hughes, was it not?—A. He told me he was going to get one; yes.

Q. And you came to the office of Mr. Hughes on Tuesday, did you not?—A. I did; yes, sir.

Q. You at that time exhibited fear in regard to coming down here, did you not?—A. Well, not for my own self; no, sir.

Q. You were afraid to come, were you not?—A. I didn't want to come; no, sir. Certainly I did not want to come.

Q. You were afraid on account of personal injuries that might result if you came down and testified as you told us the day before.—A. I am never afraid of personal injuries, Mr. Edgerton.

Q. You were not?—A. No, sir.

Q. You did not intimate any of these things to us that day, when you knew that we were expecting you to testify for the contestant?—A. No; you tried to do the same thing with me when you took me before the grand jury.

Q. Did I have anything to do with the grand jury?—A. You knew about it.

Q. How did I know about it?—A. I don't know.

Q. You do not know anything about my knowledge of that, do you?—A. You don't know anything about my knowledge of this, either.

Q. Did I ever have anything to do with the grand jury in Hennepin County?—A. I don't know whether you ever did or not.

Q. No. Well, you know that I did not, do you not?—A. No; I do not.

Q. Did anybody ever tell you I had anything to do with it?—A. You are Magnus Johnson's attorney.

Q. How is that?—A. You are Magnus Johnson's attorney.

Q. Would that cause me to have anything to do with a criminal prosecution in Hennepin County?—A. No; it should not.

Q. No. Well, you know it did not.—A. No; I don't know that; no, sir.

Q. Did you ever see me around the court room, there?—A. No; as I told you, that is the first time I ever saw you in my life.

Q. Why do you insinuate that I had anything to do with your prosecution?—A. I am not insinuating it, Mr. Edgerton.

Q. What I want to get clear here is this: You never intimated to us that you were a hostile witness that day.—A. I never mentioned that I was your witness, either. It was all done by implication, what you were going to do with me.

Q. Did I ask you any questions?—A. No; you did not.

Q. Did you not answer the questions?—A. No, sir.

Q. And did they not follow it up by trying to get you to discuss this?—A. Yes; they did.

Mr. EDGERTON. That is all. That will carry for itself.

Senator DENEEN. Now, have you some other witness?

Mr. HUGHES. We might put Mr. Szysko back for a time.

TESTIMONY OF ANDREW SZYSKO—Resumed

(The witness had been previously sworn.)

By Mr. HUGHES:

Q. You saw the witness, Corneaby, who was here awhile ago?—A. Yes.

Q. I will ask you to state whether you paid money to him in the Schall campaign in 1924?

Mr. REES. The same objection as I made yesterday, that the corpus delicti of an offense against Senator Schall has not been shown; that the Senate is not interested in anything else. We can go on here indefinitely and make a great record, unless it is required that some offense be first shown.

Senator DENEEN. Have you any other witness that you can use to-night? We ruled on this yesterday, and you may have other evidence you can use, and let him testify later. You have just proved by your own witness that no money reached Senator Schall.

Mr. HUGHES. As I have indicated so often, Senator, and I do not like to repeat, because it may be misunderstood——

Senator NEELY. The point is, had you not better withhold this witness until you get a correct foundation in so that you can present his testimony? The witness that you put on to establish connection has, up to this point, proved you out of court, because that witness said that none of the money went to Senator Schall; that he did not spend any of it for him, and Senator Schall did not even know that it had been collected.

Mr. EDGERTON. As I understand the law, it is our duty to show that Senator Schall had knowledge, and we will. If I may state, we relied upon this witness, and you are satisfied that he has changed his views about this case, evidently.

Senator DENEEN. I would not say we are satisfied about him until we have heard your argument, but we know what he has testified to.

Mr. EDGERTON. At least, that he has disappointed us.

Senator DENEEN. I do not know; but from your conduct I should say that he had.

Mr. EDGERTON. And he is one of the five witnesses we relied upon to prove that.

Senator DENEEN. I would suggest that you should withhold this witness. You may make the connection that will enable you to put him on. Have you another short witness now?

(At this point the witness made a remark which the reporter did not understand.)

Mr. REES. I object to that.

Senator DENEEN. I do not know what he said, but whatever he said, it will be stricken out.

Mr. HUGHES. Do not say anything until I tell you to, Mr. Szysko.

My position is this, Mr. Chairman, that we are not in a conspiracy case; we are here investigating Senator Schall and the manner in which his headquarters through his manager, Mr. Jacobs, acquired a campaign fund. Now, Mr. Jacobs is not here. He is not one of those subpœnaed. The witness that we have here, as far as the bootlegger part is concerned, will testify as indicated by these prohibition agents, one of whom was on the stand yesterday, that Jacobs went to the prohibition agents and endeavored to continue these cases; that Senator Schall later had a conversation with one of these agents. Now, that is along the line—and the testimony of Mr. Cosgrove; I am speaking of what is here in the city—that Mr. Jacobs was in fact Senator Schall's campaign manager.

Now, we do not need to rely on Mr. Cosgrove alone for that. We have a witness in Minneapolis, a man who came voluntarily to my office, a reliable man—I do not care to divulge his name at this time—an old employee there in the city.

Senator DENEEN. I suggest that you refrain from arguing the value of your evidence until the time for argument comes. Now, if you have your prohibition agent here who can refer to Senator Schall, why would it not be the proper thing to put him on?

Mr. HUGHES. We can put him on.

Senator DENEEN. It is obvious that if this man should testify that he gave money to Mr. Corneaby, and stop there, you could not expect Mr. Schall to be called upon to go into the transaction between them unless you made the connection.

Mr. HUGHES. Let us come right down to brass tacks—to use the vernacular—and here is the thing you narrow down to. It is how far a man can go in running a business office with his campaign manager out shaking down bootleggers——

Senator DENEEN. You have not proved that he was his campaign manager.

Mr. HUGHES. I know, but that we will prove.

I have a witness who will testify to it, who was here yesterday and tried to testify, and now we are so foreclosed—that was Mr. Cosgrove.

Senator DENEEN. We ruled on the questions you asked. If you had Mr. Cosgrove here and he has any information that is proper——

Mr. HUGHES. That very question was asked him, leading up to it.

TESTIMONY OF ADDISON C. TOWNSEND—Resumed

By Mr. HUGHES:

Q. I believe the question was asked you yesterday with reference to a conversation which you had after the election, with Senator Schall, concerning your appointment, and also with reference to what he said concerning Maurice Silverman. Do you recall that question being asked of you?—A. I believe so.

Q. Now I will ask you to state what that conversation was; what you said at that time and what Senator Schall said in response.

Mr. REES. When was that conversation, so that we can get it?

The WITNESS. In September, 1925.

By Mr. HUGHES:

Q. Whereabouts?—A. At Mr. Schall's house—the Senator's house.

Q. In Minneapolis?—A. In Minneapolis.

Q. Who was present at the conversation, if you know, besides yourself?—A. No one but the Senator and myself.

Q. Now I would like to ask you, first, before we ask for the conversation, how you happened to go there to his house?

Mr. REES. All of this is objected to.

Senator DENEEN. Yes; we ruled on that yesterday. It is a matter of indifference how he happened to go there, if he arrived.

Mr. REES. Now I object to the question that was asked.

Senator NEELY. Is there really a question that he went there at Senator Schall's request to take up this particular matter?

Mr. HUGHES. That is what I am trying to develop. I do not know.

Mr. REES. This conversation occurred in September, 1925, Captain?

The WITNESS. Yes.

Mr. REES. That would be 10 months after the election, or 11 months after.

Senator DENEEN. Under what charge does this proposed testimony come? To what charge does it relate?

Mr. HUGHES. It comes under the bootleggers' charge, upon this theory.

Senator DENEEN. Will you indicate whether it is under the first, second, third, fourth, or fifth charges?

Mr. EDGERTON. It is under No. 2.

The pending question was read by the stenographer as follows:

Q. Now I would like to ask you, first, before we ask for the conversation, how you happened to go there to his house?

Senator DENEEN. Now state the conversation; not your mental processes, but whether Senator Schall talked to you about going there, whether you were invited by him.

The WITNESS. No, sir; Mr. Arthur Jacobs came to me and said Senator Schall wished to see me.

By Mr. HUGHES:

Q. Whom do you mean by Arthur Jacobs?—A. A. N. Jacobs, a Minneapolis man whom I knew to be associated to some extent with the Senator; had been while I was there as divisional chief.

Senator NEELY. What is the reputation of this man Jacobs?

The WITNESS. General repute, not very good.

Senator NEELY. What business is he in?

The WITNESS. I do not know.

Senator NEELY. Where did you first meet him?

The WITNESS. Sir?

Senator NEELY. How did you happen to meet him in the first instance? Did he come to you as a messenger—as an alleged messenger—from Senator Schall? I mean, is that the first occasion on which you ever met him?

The WITNESS. No; I had met him before, in 1924.

Senator NEELY. In what capacity had you known him?

The WITNESS. That I can not answer accurately. I knew that he was connected with the campaign.

Senator NEELY. Was he a general campaign manager for the Republican Party, or was he employed particularly, to your personal knowledge, by Senator Schall?

The WITNESS. To the best of my knowledge he was personally employed by the Senator. Shall I proceed?

Senator DENEEN. There is no question pending.

Senator NEELY. Go on, Mr. Hughes.

By Mr. HUGHES:

Q. Will you please detail the conversation you had with Senator Schall, as I asked in the previous question?

Mr. REES. That is objected to on the grounds already stated. It seems to have occurred 11 months after the election in 1924.

Senator NEELY. Mr. Chairman, it might be an admission. If one were to commit an offense and five years afterwards were to admit it, of course, the evidence would be material, and it would be relevant. I can see no way that we can tell in advance whether this is proper or improper. We will have to go into it and then decide later whether it is proper or not. I think that it should go into the record with the understanding that we will strike it out if the committee does not think it is proper.

Senator DENEEN. You may answer.

By Mr. HUGHES:

Q. Go ahead.—A. The Senator, as I recollect it, stated that he was glad to see me again; complimented me on my——

Senator DENEEN. State what he said and what you said. You are testifying to a conversation now, and not your inferences from it, Captain. State what he said in substance, and what you said.

The WITNESS. That is what I am trying to do.

Senator DENEEN. When you say that he complimented you, that does not mean anything as evidence.

The WITNESS. He said, "I am glad to see you back again."

Senator DENEEN. That is what we want.

The WITNESS. He said, "I am glad to see that you are selected for the position here, and I trust you will be confirmed. I had confidence in you while you were here," or something of that sort.

Then, in the course of the conversation, he stated that if I would get Mr. Silverman, my assistant, out of the State for a couple of months or so he thought there would be little difficulty in my being confirmed. He stated that there was a good deal of objection to Mr. Silverman, and that among other things he was accused, while he was acting chief there, of protecting a good many of the Jewish bootleggers, which made for sentiment against him.

I replied that I had been very intimately associated with Mr. Silverman, had the most absolute confidence in him in every way, and that I would go down in the wreckage before I would do him such an injustice.

Senator NEELY. Did what Senator Schall say indicate to your mind that he wanted to get this man Silverman out of the State so that the law could be violated, or because of the fact that there had been a charge that he had been countenancing the violation of the law?

The WITNESS. I do not think I can answer that. I could not read the Senator's mind that far.

Senator GOFF. He did say to you, as I understood your answer as I came back into the room, that there had been objection to Mr. Silverman because a certain class in the community had charged him with protecting Jewish people who had violated the law?

The WITNESS. Yes, sir.

Senator NEELY. That did not indicate to you that Senator Schall was trying to bring about a situation that would permit the law to be violated?

The WITNESS. No, sir; absolutely it did not.

Senator NEELY. And you did not feel that way about it?

The WITNESS. No, sir.

Senator NEELY. That is all.

Senator DENEEN. You may go ahead now, Mr. Hughes.

By Mr. HUGHES:

Q. Can you assign any reason why he wanted Mr. Silverman not reappointed?

Mr. REES. That is objected to as calling for a conclusion of the witness.

Senator NEELY. No; did Senator Schall assign any reason? That is the question.

Senator DENEEN. I think it should be answered.

The WITNESS. No, sir; he did not; other than what I stated, that there was objection to him for the reasons stated.

By Mr. HUGHES:

Q. From your knowledge and acquaintance with Mr. Silverman, and from your position there, was there any foundation for the charge that Senator Schall made against him, that you spoke of?

Mr. REES. That is objected to as immaterial, what the judgment of this witness might be.

Senator DENEEN. You are asking about his judgment. You can always ask him about a conversation that he had with Mr. Schall, of course.

Mr. HUGHES. He was, of course, under Captain Townsend.

Senator DENEEN. Yes; but you are not offering him as an expert witness.

The WITNESS. I would like to answer that question.

Mr. REES. We object to it, in justice to Mr. Schall.

Senator DENEEN. The only function he could have here is to testify to the conversation. Now, as to what he thought, that could not be testimony.

Mr. HUGHES. My question would be this: I do not know as I know how to ask the captain, but I think, from a conversation that I had with the captain, that he could clear that up, if he was permitted to.

Senator DENEEN. You may ask him as to any further conversation.

Mr. HUGHES. I do not know that it can be shown by any further conversation, but Captain Townsend can clear that up.

Senator NEELY. Can you show this by anything that Schall said that can clear that up, why he did not want Silverman there?

Senator DENEEN. Of course you could not show it by any conclusion of this witness.

Senator NEELY. The committee knows what the conversation was, and the committee can determine for itself. I am sure that the gentleman's conclusion would be honest, but the committee will have to draw its own conclusion as to what Senator Schall had in his mind, from what he said.

By Mr. HUGHES:

Q. Did you make any reply to Senator Schall after that?

Mr. REES. It seems to me that is objectionable. That merely give his opinion.

Senator NEELY. This is the full conversation. He asked him if he made any reply, and this is merely exhausting the conversation.

Senator DENEEN. If it does not relate to the issue, a motion will be made to strike it out. You may answer.

The WITNESS. I stated to the Senator I would have a list of the cases made by the agents during the eight months that Mr. Silverman was acting chief, and would give him a copy of that list.

By Mr. HUGHES:

Q. Did you do so?—A. I had that list made, and it showed that about one-third of the cases——

Q. Pardon me, did you then show it to Senator Schall?—A. I gave him, later, a copy of it.

Q. What did that list show?

Senator DENEEN. Do you think that is proper?

Mr. HUGHES. It is to clear it up.

Senator DENEEN. You can not ask the witness to speculate as to what the list indicated. The list itself would be proper evidence, no matter what it showed.

Mr. HUGHES. I will ask Senator Schall to produce that list.

By Mr. HUGHES:

Q. You delivered the list to him, did you?—A. I did, to the best of my recollection.

Mr. HUGHES. I will ask Senator Schall's counsel to produce that list.

Mr. REES. Never heard of it before. Maybe we can; I am not sure.

Senator DENEEN. I do not think it is important to have it.

Senator NEELY. What would the list prove, even if it was here?

Senator DENEEN. I do not see what it could show.

Mr. HUGHES. The list would prove what Mr. Silverman had been doing—his activities.

Senator DENEEN. This witness is on the stand testifying to a conversation between himself and Senator Schall. That is the purpose, I understand; and what he thought about the matter outside of Senator Schall's presence, do you think that would be proper?

Mr. HUGHES. I think so. Maybe I am wrong.

By Mr. HUGHES:

Q. Let me ask you this: What were Mr. Silverman's duties there under your administration?—A. He was acting divisional chief of all the agents in that division. It was his duty to catch and prosecute bootleggers.

Q. And how long were you divisional chief?—A. Nine months.

Q. With reference to the month of October, 1924, what was your position?—A. I was divisional chief in charge of the agents.

Q. What was your position at the time you talked with Senator Schall?—A. I was then acting administrator of the new judicial division.

Q. You say that Mr. Silverman had been under your direction or under your control for about nine months?—A. Yes; in 1924.

Q. Did he have anything to do with the issuance or recommending of alcohol permits?—A. No, sir.

Q. Who would have that?—A. Mr. S. B. Qvale, the director for Minnesota.

Q. Would he be consulted in regard to applicants for permits?—Would that be your practice in some cases?—A. No, sir.

Senator NEELY. Did Senator Schall at any time obstruct you in the enforcement of the law in Minnesota as prohibition director, or endeavor to have you violate any laws? I am speaking of Senator Schall personally.

The WITNESS. No, sir.

Mr. HUGHES. I think I can clear that for you.

Senator NEELY. I do not know how you could clear that. He says he did not. I just want to know the truth about the matter. That is all I am interested in. I think there is evidently some very bitter factional feeling there in Minnesota. I am not interested in the least in that. If Senator Schall has been guilty of the violation of any law and ought not to be here, I want, in the performance of my duty, to expell him. On the other hand, if he is entitled to a seat here, I would do anything in my power to keep him in. That is all I want to get—the truth. I have no interest in Magnus Johnson or in Senator Schall, except to try to get the truth on this issue and determine it, and this witness says that Senator Schall did not obstruct him in the performance of his duty. One of the charges is that Senator Schall has, at least by implication, if not in words, been obstructing the enforcement of the prohibition law in Minnesota, and I should think this gentleman is in a position to answer about that. He was in charge there, and he says that Senator Schall has not obstructed him.

Mr. HUGHES. In your absence yesterday, Senator Neely, this witness related a conversation that he had in Senator Schall's office in Minneapolis.

Senator NEELY. With Senator Schall?

Mr. HUGHES. Yes; with reference to a liquor law violation.

Senator NEELY. Of course, I did not hear that. I was not here.

Senator DENEEN. Whatever he testified to is in the record, here.

Mr. HUGHES. I will just ask that question, and then if the Senator wants to follow up, he can do so.

By Mr. HUGHES:

Q. Senator Neely asked you if you had had any conversation with Senator Schall——

Senator NEELY. No; I did not ask him that. I asked him if Senator Schall had obstructed him in the enforcement of the prohibition law in the State of Minnesota.

Mr. HUGHES: I beg your pardon.

By Mr. HUGHES:

Q. Captain, I believe you did relate yesterday a conversation which you had with Senator Schall in his office during the campaign with reference to certain liquor law violations, or infractions of the liquor law?—A. Yes.

Q. And you related that yesterday?—A. Yes.

Q. You stated that you knew A. N. Jacobs?—A. Yes, sir.

Q. Can you recall when it was that you first met him?—A. No, sir; I can not.

Q. I will ask you if you recall whether you met him at any time during the campaign, in 1924, of Mr. Schall for the Senate?—A. I saw him a number of times during 1924.

Q. And where did you see him?—A. Principally at my office.

Q. Where was your office located?—A. In the Federal Building at Minneapolis.

Q. Did Mr. Jacobs have any talk with you concerning certain persons who were then charged, under your jurisdiction, with violation of the United States liquor laws?—A. Yes; at various times.

Q. Do you recall the October term in Minneapolis of the Federal court, in 1924?—A. Yes.

Q. With reference to that term of court, do you recall whether Mr. Jacobs discussed with you any cases pending at that term——

Senator DENEEN. Just a moment.

Mr. HUGHES. I will call for the conversation in a moment.

Senator DENEEN. No, no; but that is not connected in the least with the case. You are asking about Mr. Jacobs, are you not?

Mr. HUGHES. Yes, about Mr. Jacobs.

Senator DENEEN. Not Senator Schall?

Mr. HUGHES. Not Senator Schall.

Senator DENEEN. Do you not think you should make the connection and lay the foundation of it with Mr. Jacobs?

Mr. HUGHES. That we can do. I have a witness here, Mr. Cosgrove, who was on the stand yesterday, and by him we will be able to show and prove that Mr. Jacobs was Senator Schall's campaign manager during that campaign.

Senator DENEEN. By whom can you prove that?

Mr. HUGHES. By Mr. Cosgrove, the gentlemen who was on the stand yesterday, and then we have other witnesses at home. We can show that by a man here.

Senator DENEEN. I think you should lay the foundation for it. You have your witnesses here and you should show the connection. Otherwise you are going afield as to what Jacobs did.

Mr. HUGHES. I can put on a witness and by him we can establish that Mr. Jacobs was the manager for Senator Schall and that he had charge of the headquarters at the West Hotel and was the manager when he talked with Captain Townsend.

Senator DENEEN. And yet the answer to your petition denies that. I have had that in mind.

Mr. HUGHES. I think it does.

Senator DENEEN. It denies that fact. Why not put Mr. Cosgrove on the stand and go right to the point and clear it up?

Mr. HUGHES. I can do that. His testimony will be quite long.

Senator DENEEN. Not on that point, will it?

Mr. HUGHES. His testimony will go over a good many transactions. It shows his connection, the getting out of this paper, and the appointment of Mr. Anderson, and writing the articles.

Senator DENEEN. Captain, have you any personal knowledge as to the relations between this Mr. Jacobs and Senator Schall—any knowledge of their connection?

The WITNESS. Nothing, Senator, that I can testify to as a matter of absolute knowledge. General repute.

Senator DENEEN. Well, that would not be admissible. In view of his statement, Mr. Hughes, do you care to pursue your inquiry further on that?

Mr. HUGHES. Yes; I make this proposition, and we would like to connect it up, that we will show by the testimony of Mr. Cosgrove, who is the only witness I have here now on that point, that Mr. Jacobs was Senator Schall's campaign manager and was associated with Senator Schall in operating this Harpoon newspaper, and that Mr. Jacobs had access to Senator Schall's office and was in charge of the headquarters.

Senator DENEEN. I think you should put Mr. Cosgrove on the stand for that. We can give you some more time—up to 6 o'clock.

Mr. HUGHES. I thought if we could receive this testimony of Captain Townsend subject to our connecting it up, that Mr. Jacobs was the manager, we would do that. You see, we would have to take Captain Townsend off.

Senator DENEEN. That is disputed on the record. The answer denies it, and we must take the answer just as we take your statement in creating the issue, and I think you should connect up; because if you do not connect up, that stops that. If you do, you open up a vast field.

Mr. HUGHES. I should withdraw the captain, then?

Senator DENEEN. Yes; he will be here to-morrow. I have asked him.

Mr. HUGHES. Mr. Cosgrove's testimony will be very long, quite a little in detail; but if I can just put him on to show that one point, so that I could enable the captain to come back to-morrow and get through with him so that he might go back to his work——

Senator GOFF. That is all right.

Senator DENEEN. Yes; we will permit you to withdraw witnesses as you choose.

TESTIMONY OF P. A. COSGROVE—Resumed

(The witness had previously been sworn.)

By Mr. HUGHES:

Q. Mr. Cosgrove, you knew A. N. Jacobs?—A. Yes; very well.

Q. Do you know whether or not he was the manager of Senator Schall's campaign in the election for the office of United States Senator in the year 1924?

Mr. REES. That is calling for a conclusion, clearly.

Senator DENEEN. You could not prove it that way.

Mr. HUGHES. I will go into all the conversations.

Mr. REES. Why did he not ask him, if he knew?

Mr. HUGHES. I will go into the conversation.

By Mr. HUGHES:

Q. Did you ever have any talk with Senator Schall during the election campaign of 1924 with reference to A. N. Jacobs and as to whether he was his manager? Answer that yes or no.—A. Yes.

Q. What was that talk?

Mr. REES. This is so important that I think we ought to have it located; time, date, and place.

Mr. HUGHES. I will supply that.

By Mr. HUGHES:

Q. Do you recall where the talk was—where it took place?—A. Yes.

Q. Whereabouts?—A. I had one talk with him in his office. You refer to the fall campaign?

Q. The fall campaign.—A. Yes. I had one talk with him in his office at 554 Security Building.

Q. At Minneapolis?—A. In Minneapolis.

Q. Do you know about what date that was?—A. If you will let me refer to a memorandum, I can place this. I did not expect to be called. I have it in my pocket.

Q. Have you the memorandum with you?—A. Yes.

Q. In your possession now?—A. Yes.

Q. And by referring to that memorandum are you able to refresh your memory as to the date of that talk?—A. Yes; I can give you the exact date.

Q. I will ask you to refer to that memorandum.—A. (After consulting memorandum.) The 13th day of August, 1924.

Q. Will you please go ahead and state what the conversation was; what you said and what Senator Schall said?—A. I went to Senator Schall's office to talk with him about one A. A. Bowen, who had been an organizer of the Nonpartisan League. I told him that I had met Mr. James R. Waters that morning, who was going out of the State, and that he had asked me to go and see Mr. Bowen about Mr. Schall's campaign.

Mr. REES. Now, is this the talk you had with Schall?

The WITNESS. Yes; in his office, at 554 Security Building.

By Mr. HUGHES:

Q. Just relate the conversation.—A. I will tell you what I told him.

Q. Go ahead.—A. And Mr. Schall said to us, "I know Mr. Bowen. I spoke with him on the same platform in some parts of western

Minnesota. I want Mr. Bowen," he said. "Jake"—meaning Mr. Jacobs; that was the name he called him—"Jake and Andy"—meaning Mr. Rahn—"are looking after my affairs." He said, "Have him go and see them." I said, "He wants an appointment with you"; and he said, "All right."

(At this point the witness again consulted memoranda.)

Senator DENEEN. You may go ahead.

The WITNESS. I am just trying to refresh my memory. And he said that he would meet Mr. Bowen at his office at 2 o'clock the following day, and I made the appointment.

I had another conversation with him at his house.

By Mr. HUGHES:

Q. When?—A. Later.

Q. Can you fix the time?—A. I can not exactly fix the time, but if you would let me go in and explain——

Q. It was after this time?—A. Yes; concerning Mr. Bowen, also.

Q. Go ahead and state what the conversation was.

Mr. REES. We would like, if possible, to have the time, and who was present.

The WITNESS. There was no one present but Mr. Schall and myself.

Senator DENEEN. Can you not locate it within a reasonable time?

The WITNESS. I did; on the 13th.

Senator DENEEN. Yes; the first one; but this one?

The WITNESS. It was within a short time thereafter.

By Mr. HUGHES:

Q. Relate the conversation.—A. I went to—I talked with Mr. Schall again about Mr. Bowen, and I said to him, "Mr. Bowen has gone over with the La Follette people, but he says that most of his crowd want to be for you. He says that he is not working, that he can not work gratis; that he has to support himself." Mr. Schall said, "Mr. Bowen can be for La Follette and he can be for me, too. Let him see Jake or Andy." I said, "Well, how would it be if he would see Andy? Will you square it with Andy," meaning Mr. Rahn? He said, "I will."

I went to see Mr. Bowen and delivered him the message.

Q. You delivered the message?—A. Yes. I also know of my own knowledge——

Mr. REES. Now, just a minute about your conclusions. We object to the witness giving his conclusions.

By Mr. HUGHES:

Q. Do you know J. M. Anderson?—A. I do.

Q. Where did you first see him?—A. In Mr. Schall's office at 554 Security Building.

Q. Minneapolis?—A. Minneapolis, Minn.

Q. About what time did you see him?—A. It was either on the 13th day of August, 1924, or the 14th day of August, 1924.

Q. Were you introduced to him by anybody there?—A. I was.

Q. Who introduced you to him?—A. A. N. Jacobs.

Q. This was in Mr. Schall's office?—A. Yes, sir.

Q. Was Mr. Schall there at that time?—A. Not there in that part where I was introduced. He was in his own office. He had just come out——

Q. Just come out?—A. Mr. Anderson came out of Mr. Seaburg's, is it, there?

Q. Do not pay any attention to what Mr. Rees says.—A. I am just asking. There are three offices there, Mr. Rees's office, Mr. Schall's, and the office of an attorney named Seaburg.

Mr. REES. It is Seaburg.

The WITNESS (continuing). Anderson came out of that office, and Jacobs introduced him to me, and Anderson went into Mr. Schall's office.

Q. Had you had any talk with Mr. Schall prior to that time about Mr. Anderson?—A. Oh, yes.

Q. Can you tell us when that talk was?—A. It was prior to April 24, 1924.

Q. And where was this talk?—A. That was in the office at 554 Security Building.

Q. That was with Mr. Schall?—A. Yes.

Q. And that talk was in reference to this man Anderson?—A. Yes.

Q. That you were introduced to by Jacobs?—A. Later.

Q. At the time when you had the talk back there, later, with Schall, did you know Anderson at that time?—A. No.

Q. You did not?—A. No, sir.

Q. Now, will you state to the committee what talk there was with Mr. Schall in April, 1924, with reference to this man Anderson?—A. Senator Schall asked me, "Do you know anything about a letter that was written last year in the campaign by J. M. Anderson, a former president of the Equity Exchange, published in some of the St. Paul papers?" I said, "I think I read it at the time, but I do not know which paper it was in." He said, "Could you find it?" I said, "I think I can," and then he said, "There was another letter published at the same time by Arthur Lesoeur. Do you know anything about that?" I said, "I read it at the time." "Do you think you can find it?" I said, "I think so," and I said "I will go to St. Paul and see Mr. Lesoeur," and I went there and saw Mr. Lesoeur and got the article. He had a clipping. He could not tell me where I would get the Anderson article. The clipping I got from Mr. Lesoeur, if my memory serves me right, was from the Pioneer Press.

Q. What did you do with the clipping?—A. Just a minute—and I went to the Pioneer Press and got a copy of the paper; and we could not find the Anderson article and I went to the Daily News and I got a copy of the paper containing Anderson's article, which was written just prior—the two were published just prior—to the special election held in the middle of June, the special election for Senator, held in the middle of June, 1923; and I got the two clippings and I took them back to Minneapolis, and that evening there was a meeting of a few people at the Schall headquarters, 372 and 374, I think, or possibly 272 and 274, in the West Hotel, and Mr. Schall was there—came there and attended the meeting—and I gave him the two articles, to himself.

Q. Those were articles that purported——.—A. The one written by J. M. Anderson, attacking Magnus Johnson in the special election in 1924, and the other by Arthur Lesoeur, attacking Magnus Johnson; and I want to state that in the first conversation Mr. Schall told me that Mr. Waters had informed him of those articles.

Q. You mentioned the word "Harpoon." What do you mean by that?—A. Why, that is a newspaper published by Jacobs at election time.

By Mr. HUGHES:

Q. Did you ever have any talk with Senator Schall about the Harpoon, and the ownership of it?—A. Yes, sir.

Q. When was that talk and where?—A. In Mr. Schall's office at 554 Security Building, some time in February, 1924.

Q. What was that talk?—A. We had been discussing—let me preface my statement. We had been discussing the management of the campaign to be carried on in 1924, and I said to Mr. Schall, "If I become identified with your campaign"—or I might have put it this way, "I will not become identified or have anything to do with your campaign if your campaign is conducted in the manner that it was at the primary a year ago, and particularly if the Harpoon is conducted in the way. Now," I said, "it is a possibility that Judge Hallam may be a candidate for the office of Senator. Judge Hallam served a great many years on the district bench in St. Paul, and he served several years on the supreme bench, and he is one of the outstanding men in this State, and I do not want to be connected with a campaign that will cartoon Judge Hallam as he was cartooned in 1923, Spark Plug, with Judge Hallam on it." He said, "It will not be conducted that way. Why," he said, "I own the Harpoon. I established it," he said, "and when I went to Congress I turned it over to Jacobs, he never paid me anything for it, but it is mine just as much as it ever was; and I will see that Judge Hallam is treated right."

(At this point, at 6 o'clock p. m., the subcommittee adjourned until to-morrow, Saturday, January 30, 1926, at 10 o'clock a. m.)

SENATOR FROM MINNESOTA

SATURDAY, JANUARY 30, 1926

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE
ON PRIVILEGES AND ELECTIONS,
Washington, D. C.

The subcommittee met, pursuant to call, at 10 o'clock a. m., in the room of the Committee on Privileges and Elections, Capitol Building, Senator Charles S. Deneen presiding.

Present: Senators Deneen and Goff.

Present also: Senator Thomas D. Schall and Messrs. Rees and Smith, counsel for Senator Schall; and Messrs. Hughes and Edgerton, representing the contestant.

TESTIMONY OF PETER A. COSGROVE—Resumed

By Mr. HUGHES:

Q. Showing you contestant's Exhibit 2, I ask you if you know what that is?—A. Yes, sir.

Q. What is it?—A. It is a paper known as the Minnesota Harpoon.

Q. Is that the Harpoon that you were talking about in your testimony yesterday?—A. It is one of them.

Q. You have looked over that exhibit, have you?—A. Yes.

Q. Did you see a paper exactly like this Exhibit 2 after you had been introduced to Mr. Anderson in Senator Schall's office in the summer of 1924?—A. I saw a similar paper to this in the fall of 1924.

Mr. HUGHES. Mr. Chairman, we offer this paper in evidence.

Mr. REES. It is objected to as incompetent, irrelevant, and immaterial, and as having no connection with the contestee. Really, the corpus delicti has not yet been established of any offense.

Mr. HUGHES. Of course the paper comes along with other testimony to be introduced to establish the corpus delicti. Further, the paper would be admissible under the plea under another charge in which we state that Senator Schall caused to be circulated a false and scurrilous article about Senator Johnson in which the name of Mr. Anderson is mentioned in the pleading, and this paper contains that article.

Senator GOFF. Is this introduced in evidence as tending to establish the violation of the statute of Minnesota that relates to slander and libel?

Mr. HUGHES. Yes; and also to connect up Mr. Schall with Mr. Jacobs. There was testimony here yesterday that Mr. Schall was the owner of that paper, and that Mr. Jacobs was running it for him. There was testimony of Mr. Cosgrove that after he was introduced to Mr. Anderson by Mr. Jacobs this paper came out with this article in it pertaining to Mr. Anderson.

Mr. REES. Mr. Chairman, we would like to be heard as to the admissibility of the paper, especially as going to show a violation of the Minnesota statute.

Senator GOFF. We would like to hear you. That is the ground upon which it is offered, as I understand.

Mr. REES. Mr. Hughes, may I ask a question? Is there any question as to the certificate of election being issued to Senator Schall? I think you pleaded it here.

Senator GOFF. You need not prove it, because it is in the Senate. Senator Schall would not be here if it were not for the certificate duly issued by the Governor of Minnesota.

Mr. REES. Then the committee will take judicial notice of that?

Senator GOFF. Certainly.

Mr. REES. If that could be here, just for the purpose of this case——

Senator DENEEN. Oh, there is no question about that.

Mr. HUGHES. There is no question about that.

Mr. REES. But the point that I have in mind is one of time.

Senator DENEEN. Can you not state it?

Mr. REES. I can not remember the date.

Senator DENEEN. There is no question about that, is there, Mr. Hughes?

Mr. HUGHES. I am not raising any question about that.

Mr. REES. Then the point we make is that the corrupt practices act which they claim was violated and for which Senator Schall should be expelled, in itself provides, as I have it here, that any contest looking to the expulsion of a Senator, or even to questioning his seat, must be brought within 30 days after the election certificate is issued. We claim that 60 days or more expired before Senator Johnson filed any petition in the Senate. No claim is made that he attempted to contest in the State of Minnesota. We claim that the 30-day clause in the Minnesota statute is a statute of limitations and that it is beyond the power of anybody to revive it. Even a law that attempted to revive it would be ex post facto, and that is prohibited by the Constitution.

Senator GOFF. Are the provisions of the Minnesota statute mandatory or directory?

Mr. REES. I shall answer that by reading it. Section 601 provides:

> Contest to commence within 10 days after primary or 30 days after a general election.
>
> Any proceeding under this act contesting any nomination or election must be commenced within 10 days after the day of the primary or 30 days after a general election, unless the ground of action is discovered from the statements filed under this act, in which event the action must be commenced within 10 and 30 days after such discovery, respectively. Any proceeding to annul any nomination or election of any person for office mentioned in this act must be filed in the district court of the county in which the person resides whose right to the nomination, position or office is contested.

The committee will note not only the failure to institute the proceedings within the 30 days, but the failure to begin such proceeding as provided in the last lines of the section which states:

> Must be filed in the district court of the county in which the person resides whose right to the nomination, position, or office is contested.

We claim that this statute is mandatory beyond question, and that there has been a total failure—at least there is no evidence of it, and we know as a matter of fact no effort was made in the district court.

Senator DENEEN. What is that section?

Mr. REES. Six hundred and one, page 148, of the election laws of Minnesota. There is another provision which Mr. Smith calls my attention to. This is the provision of the Minnesota law, if you will permit me to call attention to it—section 599.

Senator GOFF. Just read that into the record.

Mr. REES. Section 599 of the Minnesota election laws, 1924 edition, is as follows:

Twenty-five voters may contest the right of nomination on ground of violation of this act.

Any 25 voters of the State, or of any political division thereof, may contest the right of any person to nomination, position, or office for which said voters had the right to vote, on the ground of deliberate, serious, and material violation of the provisions of this act or of any other provisions of law relating to nominations and elections. Any defeated candidate for said nomination, position, or office may make such contest. Such procedure shall be commenced by petition filed in the district court of the county in which the candidate whose election is contested resides, and the contest shall be carried on according to law. In cases of contests over nominations, the court shall pronounce whether the incumbent or contestant was duly nominated and the person so declared nominated shall have his name printed on the official ballots.

Senator DENEEN. Had you not better introduce that portion of the statute that defines the offense?

Mr. SMITH. That is section 604:

SEC. 604. Criminal procedure: (1) If any person shall in a criminal action be judged to have been guilty of any violation of this act while a candidate for any office under the constitution or laws of the State, or under any ordinance of any town or municipality therein, other than the office of state senator or member of the house of representatives, the court shall, after entering the adjudication of guilty, enter a supplemental judgment, declaring such person to have forfeited the office in the conduct of the campaign for the nomination or election to which he was guilty of such violation, and shall transmit to the filing officer of such candidate a transcript of such supplemental judgment, and thereupon such office shall be deemed vacant and shall be filled as provided by law.

(2) If any person shall, in a criminal action, be adjudicated guilty of any violation of this act, committed while he was a candidate for the office of State senator, member of the house of representatives, United States Senator, or Representative in Congress, or while he was a member of the personal campaign committee of any such candidate, the court, after entering such adjudication, shall forthwith transmit to the presiding officer of the legislative body as a member of which such officer was a candidate when such violation occurred a certificate setting forth such adjudication of guilty.

There are quite a number of penal provisions here, and it will take some time to pick them out.

Senator DENEEN. I think you should offer the election laws. Will that be satisfactory?

Mr. HUGHES. Yes.

Senator DENEEN. And then we can refer to them.

Mr. REES. It is understood then that the whole of the election laws of the State have been offered and have become a part of the record?

Senator DENEEN. I think so.

Mr. HUGHES. We do not object to that.

Senator DENEEN. We would take judicial notice of them anyway.

Mr. SMITH. It seems to me that the committee would take judicial notice of the practice.

Mr. REES. Mr. Chairman, just an observation in support of our contention. The people of Minnesota who select the United States Senator by their votes in reality passed this law through their representatives, and they have a right to have this statute observed. That is to say, they have a right, as well as Senator Schall, to have this matter determined in the district court of the county where Senator Schall resides. The people of Minnesota have that right. It is given to them by the law itself, it is not given to any other body, to any other county of that State, to any other court in that State. It does not pretend to give Congress the right to pass upon that question. So, in so far as the violation of this law is concerned, it is barred, first by the 30-day statute of limitation and the certificate, if brought to the presence of this committee, and it is here, and also the fact that that certificate was issued about two months previous to the time that this petition you are now acting upon was filed in the Congress. It is barred, as I say, first, by the statute by reason of time, and, second, this law says that it shall be enforced in the district court of the county where this contestee resides; and in so far as violation of the Minnesota law is concerned, that matter has been completely waived by the contestant, and we feel that the paper should not be received for the purpose of showing any violation of the statutes of Minnesota.

Mr. EDGERTON. May I be heard, Mr. Chairman?

Senator DENEEN. Certainly.

Mr. EDGERTON. Mr. Chairman, this corrupt practices act has been up before the Supreme Court of Minnesota a number of times, and that court has repeatedly passed upon it contrary to the contention of counsel for the contestee.

The first of these cases was that of Saari *v.* Gleason, reported in 126 Minnesota, 378. This was the first important case arising under this statute and the court upheld the constitutionality of the law and also took occasion to explain the remedies open to the defeated candidate. As to the latter the court said:

> These various provisions make very clear the legislative intent to give the right to contest an election on the ground of violation by a successful candidate of the "corrupt practices act," although there may not have been any criminal prosecution or conviction. The act provides two remedies, one by criminal prosecution and conviction and a supplemental judgment of ouster, and the other by the more summary and expeditious means of an election contest.

In as much as contestee violated section 573 General Statutes of Minnesota, 1913, it is well to ascertain what has been the interpretation given this provision in the past. The section reads as follows:

> * * * any person, firm, corporation, or committee who shall knowingly make or publish or cause to be published, any false statement in relation to any candidate or proposition to be voted upon, which statement is intended to or tends to affect any voting at any primary or election, shall be guilty of a misdemeanor.

The above section was attacked by the defendant in the case above referred to as being not sufficient ground for ouster from office. As explained above, the constitutionality of the law was sustained by the highest court of Minnesota and the objection of the defendant was overruled.

In speaking of the right of the legislature to pass a corrupt practices act and preventing a candidate from employing corrupt means to obtain office the court said:

> It simply excludes a candidate, employing unlawful means, from enjoyment of a particular office under an election which his own unlawful acts have rendered of no effect. It prevents his reaping the benefit of his own wrong. It says, not that he is ineligible to his office, but that he must use honest means to obtain it.

In the case of Olson *v.* Billberg (129 Minn., 160), the above section was the sole ground for instituting contest. Eddy E. Billberg defeated Anna C. Olson for the office of county superintendent of schools in the general election of 1914. Miss Olson contested Billberg's election on the ground that the latter had violated section 573, General Statutes of Minnesota, 1913. Billberg had published a circular attacking Miss Olson's qualifications for office and, also, had by innuendo attacked her moral character. The charges made against Miss Olson were obviously untrue. In its decision, the Supreme Court of Minnesota held that Billberg was ineligible to hold the office. The court's decision reads, in part, as follows:

> The statute prohibits any person from knowingly publishing any false statement in relation to any candidate * * * which statement is intended to or tends to affect any voting at any primary or election. A false statement made by plain insinuation is as reprehensible as if made directly, and is equally within the condemnation of the statute. If the language used would naturally tend to induce a belief that the candidate had been guilty of disreputable conduct or practices, and was intended to create such belief, and the fact insinuated be not true, the author can not evade the law by framing his statement so as to avoid a direct assertion.

Another case was that of Hawley *v.* Wallace (137 Minn. 183). This case was decided by the Minnesota Supreme Court on June 8, 1917. In the election of 1916 Alderman Edward W. Hawley was a candidate for reelection to that office from the second ward of the city of Minneapolis. His opponent was one James F. Wallace. During the campaign a pamphlet entitled "An Alderman with Clutch Trouble" had been published and circulated by a Mr. Moody, a nephew of Mr. Wallace. The pamphlet contained a number of charges against Alderman Hawley as to his official conduct as alderman. It was shown at the trial that Wallace was familiar with the contents of the pamphlet, although he denied having had anything directly to do with the circulating of it. The court held that Wallace was not entitled to the office because of having given his sanction to the circulation of this false and defamatory pamphlet. In referring to the statute, the court said:

> The statute prohibits the publication of any false statement in relation to a candidate which is intended to affect voting at any election or tends to do so.

The latest contest filed under the statute referred to was that of Flaten *v.* Kvale (146 Minn. 463). At the primary election held on June 21, 1920, the contestee, O. J. Kvale, was a candidate for the Republican nomination for Congress from the seventh district of Minnesota. His opponent was Congressman Andrew J. Volstead. Kvale was victorious by a substantial margin.

Under the Minnesota statute 25 voters of the State—

> may contest the right of any person to nomination, position, or office, for which said voters have the right to vote, etc.

Twenty-five of Mr. Volstead's supporters contested Kvale's right to the nomination which he had won at the primaries. The trial court after hearing testimony in the proceedings rendered judgment to the effect that the contestee had violated the laws of the State in relation to nomination. Kvale's offense consisted in having published, just prior to the primary election, a criticism of Mr. Volstead. This criticism contained among other things a reference to Mr. Volstead as a "pronounced atheist." The quotation from Mr. Kvale's circular reads as follows:

> Mr. Volstead's sneering allusion to my having preached on the miracle of the five loaves and two small fishes I consider entirely out of place in a statement of political principles. If, as I understand, Mr. Volstead is a pronounced atheist and opposed to the Bible, that is his affair. I have no quarrel with him on that score. Neither do I feel that I owe Mr. Volstead or any living mortal an apology for my faith in God and my adherence to the principles and precepts of the Nazarene.

The supreme court affirmed the judgment of the trial court. The court's interpretation of the statute quoted above reads as follows:

> One purpose of the corrupt practices act is to prevent a candidate from obtaining a nomination or election to office by employing false statements or corrupt means to influence voters during a campaign. The act operates upon those guilty of its violation. Its purpose is to exclude all violators of its provisions.

This was where the opponent of Congressman Volstead circulated or told in his speeches that Mr. Volstead was an atheist, and the supreme court decided that on that ground he was not entitled to his nomination. Uniformly, without taking up the time of the committee, the Supreme Court of Minnesota in passing upon this law, the corrupt practices act, has held as we contend.

Senator GOFF. I want to ask you a question, Mr. Edgerton. You do not contend that any publication such as is covered by the statute which you have read is a violation of the statute unless it is affirmatively shown that the person you charge with being responsible for it knew, in fact, that it was going to be published prior to its appearance in the public press.

Mr. EDGERTON. Oh, certainly, I agree with you on that proposition.

Senator GOFF. Do you contend that the ground has been laid to receive this paper in evidence on the charge that Senator Schall knew that this edition of this paper, even admitting that he is the owner of it, would appear with the publications which I assume it contains?

Mr. EDGERTON. In this way. It seems that a man owning and running a paper ought to be held responsible for the contents as an admission coming from him, unless he shows to the contrary that he did not know anything about it. In other words, it seems to me, in a contest of this kind, when we show that we show prima facie that he is responsible. We bring home notice to him, and it ought to be for him to satisfy the committee in an investigation of this kind that he did not actually know anything about it.

Senator GOFF. You know, as a matter of fact, and this of course goes to the essential basis of evidentiary proof, that the mere ownership of the paper does not carry with it that proof that the owner knows everything that appears in it.

Mr. EDGERTON. That is true.

Senator GOFF. He may be civilly responsible in damages for a libel that is contained therein, but when you invoke the application of a criminal statute, and you merely introduce in evidence a paper and

you say it is owned by the man, that does not, legally speaking, make a prima facie case of a violation of a criminal statute.

Mr. EDGERTON. If he were being prosecuted criminally in the State of Minnesota, I would not contend for that, because I prosecuted criminal cases for many years in that State when I was a younger man.

Senator GOFF. I do not think there is any difference between you and the committee upon questions of law, but I am asking you now, if you are going to request this committee to rely upon the admissibility of this paper that you lay the grounds, that you show that this came to the knowledge of Senator Schall. There is another element that I want to bring to your attention. Senator Schall, as we all know, suffers from a physical infirmity.

Mr. EDGERTON. Yes.

Senator GOFF. As a member of this committee, and speaking for myself, I feel that in the field of discretion, and many of these offers of evidence appeal to the discretion of the committee rather than to their legal judgment, I should want a greater preponderance of proof that Senator Schall knew of these things than I would want in the case of a man who had the full use of his eyesight and who was known to be going in and out of his newspaper office where he could see and would see in the ordinary routine of his life in matters to which you refer.

Mr. EDGERTON. I feel just exactly the same way, but I thought some other questions were going to be asked.

Senator DENEEN. You refer to the Hawley case in which the court said the candidate must give sanction to it.

Mr. EDGERTON. Yes. I am willing to meet the requirements of the law.

Senator DENEEN. I suggest then that we get to the point of whether or not Senator Schall owned the paper and also the matter of knowledge.

Mr. EDGERTON. I thought a question was going to be asked in regard to whether this paper was sent under his frank before it was offered.

Senator DENEEN. They did raise the point that the statute does not apply.

Mr. HUGHES. Let me call the attention of the committee to this. I think we have laid the foundation, because the committee will recall there was testimony back in April that Mr. Anderson, who is referred to in this article—or rather, that Mr. Cosgrove took it and talked with Senator Schall about an article that Mr. Anderson had written in one of the St. Paul papers, the Daily News, pertaining to the same matter referred to in Exhibit 2, and that he brought to Senator Schall this article, got it over in St. Paul. Then in July or August following he was in Senator Schall's office and was there introduced to this same Mr. Anderson by Mr. Jacobs, and that Mr. Schall was there at the time, and he saw Mr. Anderson go into Mr. Schall's office. Then we couple that with the fact that Senator Schall admitted to him that he owned that paper, and let Jake, as he called Mr. Jacobs, run it. A month or so after that, this paper appeared in which the matters concerning the talk between Cosgrove and

Senator Schall are all touched on. It seems to me that would be sufficient foundation to get that paper in. That is all in the testimony.

Senator DENEEN. I do not recall any statement here that Senator Schall owned the Harpoon.

Mr. HUGHES. There was testimony yesterday in which in the talk with Senator Schall he stated that he owned the Harpoon, that since he had gone to Congress he was letting Jacobs run the paper, and there was a talk between Senator Schall and Cosgrove about Anderson, the man whose articles were referred to in the paper.

Senator GOFF. Is it your claim that this conversation took place prior to the appearance of the articles in question or after?

Mr. HUGHES. Before.

Mr. EDGERTON. And we can show hereafter that Mr. Anderson was employed by Senator Schall.

Mr. HUGHES. And Mr. Jacobs.

Mr. SMITH. Mr. Chairman, just a moment. The Minnesota statute which has been read here relating to the circulation of false statements in the campaign expressly excepts newspapers. I shall read it with the permission of the chairman:

SEC. 573. Any person or committee who shall publish, issue, or circulate, or cause to be published, issued, or circulated, otherwise than in a newspaper, as provided in section 2 (568) of this act, any literature or any publication, etc.

It will be seen that newspapers are expressly excepted from the operation of section 573, and properly so.

Mr. EDGERTON. But this is not a newspaper under the law.

Mr. SMITH. You say it is one moment, and the next moment you say that it is not.

Mr. HUGHES. That applies only to civil matters. The corrupt practices act applies in two ways, civilly and criminally. If we protested under the civil arrangement within 30 days after the canvassing board or the State auditor had officially declared Senator Schall elected, we would have had to file a petition with the district court. If we should win in that district court, all that that court could do under our State law would be to disqualify the party elected. They could not seat either one, they would simply have to have another election. That, of course, would be ridiculous in the case of a United States Senator. The criminal statute is different. All these provisions may be crimes in Minnesota, and the offending party can be indicted. If the offending party is an official and he is found guilty by the jury, the judge has the right to remove that official. If he is a Member of either House of Congress, then he sends a certificate to the presiding officer that this man has been found guilty, and it is in the nature of a recommendation. That is the statute.

Senator GOFF. You say that this is not a newspaper. On page 4, the editorial page, I read the following:

Minnesota Harpoon, a paper without party, fear, or favor, published bimonthly by the Harpoon Publishing Co., Minneapolis, Minn. Entered as second-class matter August 15, 1916, at the post office of Minneapolis, Minn., under the act of March 3, 1879. Advertising rates furnished on application. Subscription $1 per year in advance.

The fact that this paper is given up entirely to advancing the candidacy of Senator Schall and opposing the candidacy of Mr. Johnson, does not as a matter of law take it out of the newspaper class, does it?

Mr. HUGHES. Under the statutes of our State, that would not be a legal newspaper.

Mr. EDGERTON. As I understand it, it is only published once in a while to promote somebody for office or attack somebody. It is not a regularly issued newspaper. Is not that right, Mr. Cosgrove?

The WITNESS. I would like to have my testimony read.

Senator GOFF. It is a question of law.

Mr. HUGHES. Under our State law we have a statute that defines what is a newspaper. It must be published regularly, I think once a week.

Mr. EDGERTON. And have so many paid subscribers.

Mr. HUGHES. That is the only kind of newspaper that you can put legal notices or a summons in.

Senator GOFF. Have you any decisions under the law of Minnesota holding that this is not in effect a newspaper?

Mr. HUGHES. We have the statutes of Minnesota themselves, that define what is a legal newspaper, and that does not come within the statutory definition. It must be published at least once a week, it must be of a certain kind, so many columns, and must be continuous, to be a newspaper. You can not have a periodical newspaper.

Senator GOFF. Suppose you have a farm journal that is published twice a month, relating generally to agriculture and farm matter, would not that be a newspaper?

Mr. HUGHES. Not in Minnesota under this law.

Senator DENEEN. May I ask you whether or not the definition of a newspaper there relates only to such a paper as will be permitted under the law to have legal publications in it?

Mr. HUGHES. That is the definition of a legal newspaper in Minnesota.

Senator DENEEN. It is a newspaper for legal notices.

Mr. SMITH. This paper can not qualify under the statute as a publication for legal notices. We understand that. The statute defines what sort of a newspaper may publish legal notices, and that is all it does do.

Senator DENEEN. In our State, for instance, insurance publications must be in an English-language newspaper, but that does not mean that a foreign-language newspaper is not a newspaper. Some of them have as much as 200,000 circulation.

Mr. HUGHES. I think what our legislature had in mind was a legal newspaper.

Senator DENEEN. The statute which you read, Mr. Smith, says "newspaper" does it not?

Mr. SMITH. I shall read it again:

> Any person or committee who shall publish, issue, or circulate, or cause to be published, issued, or circulated, otherwise than in a newspaper—

Every case that they have cited is where statements are privately circulated, and not in a newspaper. The newspaper is responsible under the libel laws of the State. That statute has never been

held to apply to a newspaper. It does not apply to a newspaper. Newspapers would have to go out of business if it did. A newspaper is responsible under the libel laws of the State, and the statute expressly excepts them, as it ought to.

Senator DENEEN. We suggest that you proceed with another phase of the case and submit briefs on Monday morning upon this.

Mr. HUGHES. Then, of course, I also offer this for the other reason, that it has a tendency to connect Mr. Schall and Mr. Jacobs.

Senator DENEEN. I think it would be better for you to take up that phase when the matter comes up on Monday morning next.

Senator GOFF. In order that we may expedite this hearing and to save any misunderstanding, as far as I am concerned, I want to state clearly to the counsel on both sides my position upon the law. First, in doing so, I refer to Underhill on Criminal Evidence, paragraph 474, at page 800, which reads as follows:

> The general rule is that the existence of the conspiracy must be proved, at least prime facie, to the satisfaction of the judge before the declarations or acts are admitted in evidence. Many authorities, however, hold that the order of the proof is discretionary with the court, and that the court may, for the sake of convenience, admit declarations at any time during the trial on the promise to prove the existence of the conspiracy and the connection of the defendant therewith subsequently. This is particularly the case where establishing the conspiracy depends upon proving a large number of facts or a vast amount of circumstantial evidence, and the existence of the conspiracy be inferred from numerous apparently independent facts and circumstances.

We have been in the hearing of this case for two days, and, speaking for myself and not for my associate, Senator Deneen, you have introduced no evidence that in my opinion has connected Senator Schall directly or indirectly with knowledge of the conspiracy charge and set forth with great accuracy in your petition. You have brought in hearsay, you have brought in declarations, you have presented here a witness that you yourself impeached and rendered unworthy of belief. It is, of course, your misfortune that the witness surprised you. It is not, of course, a concern that the committee has any control over at all. We are only concerned with receiving here on this very serious charge evidence that either proves or tends to prove an illegal agreement between parties, including Senator Schall, to violate the corrupt practices act of the Senate of Minnesota. All of this evidence that has been admitted in the nature of hearsay has been admitted by Senator Deneen and myself, and also Senator Neely during the times that he has been here, upon the assumption that you would subsequently affirmatively and directly connect Senator Schall with this illegal agreement by showing that he had knowledge of it—either that he admitted its existence, that he had ratified the acts performed, or that he had consented to or directed their commission. None of that evidence is in. Suppose you rested your case now. This evidence would be excluded by the committee because you have in no way connected Senator Schall with it. If you intend, if you will give your assurance to this committee as a member of the bar, that you have evidence other than the witness that surprised you when he was upon the stand, which will show a connection with this conspiracy upon the part of Senator Schall, then I think the committee is justified in proceeding and in allowing you out of order to introduce, for convenience, facts and circumstances which, when taken together, will be overt acts in a conspiracy, which you will subsequently establish.

If a conspiracy is established, then an overt act in and of itself, immaterial without its conspiracy connection, would clearly be admissible, and I want you to know that this is the view which I entertain of the law applicable to this situation. You made the remark yesterday, I know in perfectly good faith, that you understood that this was not a trial, that it is an investigation. True, it is an investigation, but it is an investigation of a matter wh ch, if it is sustained by this committee, is morally, at least, the sustaining of a charge of the violation of the criminal acts of Minnesota. I do not feel that this committee has the right to let the bars down, to forget the rules of evidence and to permit every bit of curbstone gossip that could be picked up, to come in here and take up the time of this committee as well as encumber the records of the United States Senate. I want you to know that as far as my individual opinion is concerned, you have not yet connected Senator Schall with this conspiracy, and that all of the evidence that you have so far introduced is incompetent, immaterial, because it is not connected with any knowledge on the part of Senator Schall of the violation of the acts. I am not speaking for Senator Deneen, but I am registering my own view in this matter.

Mr. EDGERTON. May I ask a question?

Senator GOFF. Certainly.

Mr. EDGERTON. There is one count in this indictment that charges a conspiracy, and then overt acts following it out.

Senator GOFF. Yes.

Mr. EDGERTON. The Senator has clearly stated the law. There is another count where money it is claimed was improperly collected to aid in this campaign, with the knowledge and consent of Senator Schall. I have viewed it that in regard to proving that charge, all we had to do was simply to show the connection of Senator Schall with it by showing that he knew it was going on, that we did not have to prove any agreement or conspiracy; that that is sufficient. As to that point, is there any difference in the Senator's view in respect to it than in respect to the other one, the conspiracy count? Am I right about that, that it is just as it was in the Wallace case? They simply had to show in that case that he knew of the circulation of the paper. That is all they had to show to oust him. In this case it struck me that all we had to show was by either direct or circumstantial evidence knowledge on the part of Senator Schall.

Senator GOFF. You will appreciate, and I think you will concede, without any disagreement with me, that mere knowledge of the existence of a conspiracy does not make one a member thereof. That is a rule of substantive law, is it not?

Mr. EDGERTON. Yes.

Senator GOFF. Mere knowledge of a conspiracy does not make a person possessing that knowledge a member of the conspiracy. If someone went to Senator Schall and told him that some of his friends were raising some money for him and did not in any way specify that those men were raising such an enormous amount as to violate the corrupt practices act, then the mere fact of his having knowledge that friends were spending money for him would not connect him with any intent, as I say, to violate the corrupt practices act of the State. Suppose he knew that men were using motor cars all over the State in his behalf, the mere fact that if he should stop to compute

the value in time and dollars of the use of those motor cars would not connect him with anything to violate the corrupt practices act of the State. I think you should show more than knowledge. You must show active approval or assent to make one a member of a conspiracy. You agree that that is the law, do you not?

Mr. EDGERTON. Yes; but what I contend for is this, that if his agents, men who are working for him and that he held out as his agents, his campaign managers, handling his finances and all that, did that with simply his knowledge, that that is sufficient.

Senator GOFF. If you show that his men did that with his knowledge, the evidence, in my judgment, is admissible. I do not pass upon the legal effect of it.

Senator DENEEN. It is under section 3 of your charge?

Mr. EDGERTON. Yes.

Senator DENEEN. Mr. Cosgrove has denied all that. That eliminates that.

Mr. HUGHES. We are not through with Mr. Cosgrove.

Senator DENEEN. I do not think you should make so many statements, because you are aware that all of the statements are being taken down, and properly so, and published. Why not let the evidence come out of itself?

Mr. HUGHES. I shall go ahead and examine this witness.

Mr. REES. May we come back to the question where we interrupted before and objected? May we have a ruling at this time?

Senator DENEEN. On what matter?

Mr. REES. On the question of the violation of the corrupt practices act of the State of Minnesota.

Senator DENEEN. That is to be submitted to us on briefs.

Senator GOFF. That was ruled on. That was excluded with the understanding that you gentlemen would brief that up, and submit your briefs on each side Monday morning.

Mr. REES. As I understand, counsel have not given the committee their assurance, as suggested by Senator Goff, that they are going to establish the connection of Senator Schall with this conspiracy to violate the law. They have given no assurance yet.

Senator DENEEN. I think they should ask the questions, and we will rule on the questions as they are asked. I think you should speed up a little, because we shall have to adjourn at 12 o'clock, and Captain Townsend wants to get away at 3 o'clock.

Mr. HUGHES. His son is sick, too.

Senator DENEEN. Just keep that in mind, so that we can release him.

By Mr. HUGHES:

Q. Mr. Cosgrove, when you were in there at Senator Schall's office did you have a talk with him with reference to Mr. Anderson? I am referring now to July or August, when you were introduced to him?—A. I did.

Q. Please state the talk.

Mr. REES. May I have the date as nearly as possible?

Senator DENEEN. Give the date and time and place.

A. I think it was about the 13th of August—the 13th or 14th of August.

By Mr. HUGHES:

Q. What year?—A. 1924.

Q. Whereabouts was the talk—in the office, in the Security Building?—A. Yes; in Mr. Schall's private office in the Security Building, 554 Security Building.

Q. Go ahead and detail the talk.—A. He said: "Mr. Cosgrove, do you remember about getting me the clipping containing Mr. Anderson's article on the equity exchange?" I said: "Yes." He said: "Mr. Anderson is here. He is here now. Have you met him?" I said: "No; I have never met Mr. Anderson." "He is here," he said, "and he is going to write the entire matter up for the Harpoon." When I went out, I met Mr. Anderson and I was introduced to him.

Q. Who introduced you to him?—A. I could not say; Jacobs, I think.

Q. Did you ever see Anderson after that?—A. Yes.

Q. Whereabouts?—A. At the Schall headquarters in the West Hotel.

Q. Did anybody show you a copy of this Exhibit 2 before it was published?—A. Not that one.

Q. They did not?—A. Not that one.

Q. Now going back to the primary time, did you have a talk——A. Mr. Hughes, I can not testify if you do not go on with the meeting of Anderson, in the headquarters.

Q. I beg pardon. Did you have a meeting there with him in the headquarters?—A. I saw him there.

Q. Did you have any talk there with Mr. Jacobs?—A. I did.

Q. With reference to Anderson?—A. Yes, sir; and let me say that I saw Mr. Anderson for several days in there.

Q. In the headquarters?—A. Yes.

Q. Before I ask for the talk with Mr. Jacobs I want to come back to a previous talk with Senator Schall. Did you have a talk with Mr. Schall at any time, either in the month of April or March, 1924, with reference to opening headquarters in the West Hotel?—A. I did.

Q. And can you tell us about when that was?

Mr. REES. Just a moment. We object to that as immaterial on the ground that the primaries were held in June, and that it is not the same organization, not the same headquarters that is complained of here as having violated the law.

Mr. HUGHES. The purpose of this question is to show certain statements by Senator Schall with reference to Mr. Jacobs at that time.

Mr. REES. That was in April or March, 1924?

Mr. HUGHES. Yes, sir.

Mr. REES. We object to it as immaterial as applying to the election that was held in the summer following.

Senator DENEEN. Under what section of the pleadings are you seeking to introduce this testimony?

Mr. HUGHES. We are seeking to show——

Senator DENEEN. Under what section of the pleadings?

Mr. HUGHES. Under the section that Jacobs was his manager. That is alleged throughout.

Senator DENEEN. That would be on page 18, section 10; would it not?

Mr. HUGHES. I think so, sir.

Senator DENEEN. That they conspired together, Corneaby and Jacobs.

Mr. HUGHES. It is under the theory that we go on that Mr. Jacobs was his manager at all times, was his manager in the primaries and also his manager in the general election. The purpose is to show that this man was also in charge of headquarters there at the West Hotel for the purpose of showing the connection between Jacobs and Senator Schall.

(By request, the reporter read the pending question.)

Senator DENEEN. The testimony is offered under section 10 of the petition which relates to a conspiracy in reference to the election, and the charge is that five months before that they did thus and so—Corneaby, Jacobs, and Senator Schall. You may answer.

A. It was shortly after the organization of a volunteer committee, about April 11—shortly after that.

By Mr. HUGHES:

Q. 1924?—A. Yes.

Q. You had a talk, did you, with Senator Schall at that time?—A. Yes.

Q. And what was that talk?

Mr. REES. Will you please state where it was?

The WITNESS. It was in Mr. Schall's private office, and Mrs. Schall was present at the first conversation.

By Mr. HUGHES:

Q. Please give us the first conversation.—A. The first conversation was about this: I told Mr. Schall and Mrs. Schall that in the campaign of 1923 there had been things carried on at the headquarters when Mrs. Schall was not there, Mr. Schall was there alone; I described the condition of affairs to him, and I told him about a thing that A. N. Jacobs had boasted about. First I told him——

Mr. REES. Just a moment. We object to his testifying to some gossip that related to Schall, that happened a year previously to that. What Schall said to him is important.

The WITNESS. I can not tell it without telling what I said to Schall.

Senator DENEEN. The question should be direct as to whether or not Jacobs represented Senator Schall. This witness is a lawyer, and he should answer in a responsive manner. I suggest that you ask him questions.

Mr. HUGHES. Very well.

By Mr. HUGHES:

Q. Will you please state what Senator Schall said to you with reference to headquarters in that talk, if he said anything?—A. Why, he said that Jacobs was arranging then for other headquarters.

Q. Where were the headquarters at that time?—A. What was being done was this: The committee——

Senator DENEEN. You have answered. Please answer responsively.

The WITNESS. No. 554 Security Building.

By Mr. HUGHES:

Q. That was in Mr. Schall's law office?—A. Yes. The committee had just been organized.

Q. Did you have any later talk with Schall about the headquarters?—A. Yes.

Q. At a date later than the one you have just related?—A. Yes.

Q. And about when was that, and where?—A. Just immediately succeeding that. I was talking with him every day.

Q. In your subsequent talk with him what did he say to you about opening up headquarters or conducting the campaign?—A. Well, he said the headquarters had been secured in the West Hotel.

Q. Did he say who secured them?—A. Jacobs.

Q. And did he give you any instructions in reference to the campaign?—A. He did.

Q. Please state what the instructions were.—A. He told me——

Mr. REES. Now, just a moment. I object to testimony as to instructions given to Mr. Cosgrove. There is no claim that Mr. Cosgrove is a part of the conspiracy.

Senator GOFF. The evidence might incorporate him in this conspiracy if he should answer the questions so that he would execute some of these directions; so I do not see any reason why he should not give the testimony.

Senator DENEEN. Answer.

The WITNESS. Mr. Schall said: "Mr. Jacobs has secured quarters in the West Hotel for my campaign, and I want you to assist him until George Magnusson comes. He is going to be my campaign manager. Jacobs will carry it on until he is ready to take it over, and you go over and assist him; and I want you to see that the headquarters is taken care of in a proper manner, and above other things, Mr. Cosgrove, I want you to see that the expenses are kept down and that things are not run wild, like in 1923."

By Mr. HUGHES:

Q. What was Mr. Jacobs doing at that time?—A. Mr. Jacobs at that time had a position with the Veterans' Bureau at the Plaza Hotel.

Q. Did you follow out the instructions with reference to going to the headquarters?

Mr. REES. That is calling for a conclusion. Let him tell what he did.

Mr. HUGHES. I thought we wanted to save time here. I can ask him to state what he did, but it takes so much time; but I will.

Mr. REES. We have had so many conclusions that I think he ought to state what he did.

By Mr. HUGHES:

Q. State what you did with reference to the instructions.—A. The headquarters were opened within a few days thereafter, and I went over to the West Hotel, to the headquarters, and I was there every day from before 9 o'clock in the morning until 11 or 12 o'clock at night, except short times when I would go out to eat.

Q. For how long a time?—A. I was there until a little over a month before the primaries.

By Senator NEELY:

Q. Were you managing or assisting to manage the campaign for Senator Schall?—A. I was helping to run the campaign, helping Mr. Jacobs.

By Mr. HUGHES:

Q. Did Mr. Magnusson become the manager for Senator Schall?—A. He did not. He filed for Congress.

Q. During the election and after the nomination of Senator Schall did you visit the headquarters in the West Hotel?—A. If you will let me go on and tell you about——

Senator DENEEN. I think you may answer the question. We will make better headway that way and we are getting on very well in this way.

The WITNESS. Yes.

By Mr. HUGHES:

Q. Who was in charge of the headquarters?

Mr. REES. That is his conclusion. I object to that as his conclusion.

Senator NEELY. I am in favor of letting that question be asked. It was asked last night. If Jacobs was not in charge, they can show that by cross-examination. It will save a lot of time.

Senator DENEEN. Go ahead.

The WITNESS. Mr. Jacobs.

By Mr. HUGHES:

Q. Arthur N. Jacobs?—A. Yes.

Q. Have you a letter or letters with you from Senator Schall? If so, I would like to see them a this time. [The witness produced a number of letters.] Do you recall, Mr. Cosgrove, about when it was that the headquarters during the primaries were opened in the West Hotel?—A. It was shortly after the 11th day of April.

(At this point, by request, the reporter marked one of the letters produced by the witness "Contestant's Exhibit 3.")

By Mr. HUGHES:

Q. Did you have some correspondence with Senator Schall during the primary election?—A. I did, and just previous thereto.

A. And previous to his filing?—A. Yes.

Q. Showing you contestant's Exhibit 3, I will ask you to look that over.

Mr. REES. What is the date?

Mr. HUGHES. April 5.

By Mr. HUGHES:

Q. I will ask you when you received that, Mr. Cosgrove?—A. I received it shortly after April 5.

Q. And did you receive it through the means of the United States mail?—A. Yes.

Q. And do you know where the envelope is that it came in?—A. I do not.

Senator NEELY. Let him read it. If he got it in the mail, that is sufficient.

Mr. HUGHES. All right. It is offered. I can read it?

Senator NEELY. Just read it. Let us go on.

Mr. HUGHES (reading):

I am just in receipt of yours of March 31, together with Tribune clipping. I think that is a mighty good idea for you to look after the foreign papers. Jake is a good, level-headed boy. Frisch is a kid. He is only staying over in the

office until I can get back. I made arrangements when I left that he should be out of there March 1. Jacobs recognizes your ability, for he has often spoken to me of you, and writes me constantly of the good work you are doing.

Just dictated a letter this morning to you, but this one can follow for what it is worth.

Best wishes.

Your friend,

THOMAS D. SCHALL.
G.

By Mr. HUGHES:

Q. Do you know who the "Jake" is that is referred to in that letter?—A. Mr. Jacobs.

Q. I do not care about the rest of the correspondence now. When you were in Mr. Schall's office either in July or August of 1924, did you see Mr. Corneaby, who was here in the committee room yesterday, there?—A. Yes; every time.

Q. Did you ever see him talking to Senator Schall when you were there?—A. I did.

Q. Just state what took place when you were there.—A. The day that I was in there, when I was introduced to Mr. Anderson, while I was talking to Schall, who was sitting across the table from me, Corneaby came in and straddled Mr. Schall's legs as he was sitting sidewise, and whispered in his ear; and Mr. Schall says to him: "That is a good idea, Frank." He said: "Go on with it; that is a good idea."

Q. That is the same man that was here yesterday, Frank Corneaby?—A. Yes, sir.

By Senator NEELY:

Q. Do you know what Senator Schall referred to when he said that?—A. I did not, because I did not hear what Mr. Corneaby said.

By Mr. HUGHES:

Q. Had you ever seen him in Mr. Schall's law office at any other times during the election of 1924?—A. Oh, yes.

Senator NEELY. Corneaby admitted that he was in constant touch with Senator Schall; did he not, Mr. Hughes?

Mr. HUGHES. No; he did not, Senator. He denied that. That is what we expected to show.

Senator NEELY. My recollection was that he said he frequently saw him there.

Senator DENEEN. He said Senator Schall was out campaigning, and was rarely there. That was the testimony.

Senator NEELY. Yes; I recall that it was. In any event, there was no denial of the fact that Corneaby was assisting Senator Schall in his campaign, and working about the headquarters there.

By Mr. HUGHES:

Q. Did you see him also in the headquarters?—A. Yes.

Q. Did you ever, on any other occasion, see Mr. Corneaby in Mr. Schall's private office during the campaign, other than the one you have related?—A. I went in possibly five or six times.

Q. Let me ask you this question: Did you know a man named Harold in the office?—A. I did.

Q. Do you remember about what time it was in the summer of 1924 that Mr. Harold was there?—A. Oh, he was there for about 8 or 10 weeks after the primaries.

By Mr. REES:

Q. This is in Schall's office?—A. Yes.

By Mr. HUGHES:

Q. What are Mr. Harold's initials?—A. His name is Herman Harold.

Q. Did you ever have occasion to go in there and find Mr. Corneaby in the office while Mr. Harold was there during the campaign?—A. Yes.

Q. What was Mr Corneaby doing when you came in there?—A. The first time I went there——

Senator DENEEN. Was this in the presence of Senator Schall?

Mr. HUGHES. This was in his office.

Senator DENEEN. Was it in the presence of Senator Schall?

Mr. HUGHES. I think we can show that.

Senator GOFF. Why not include that in the question?

Mr. HUGHES. All right.

The WITNESS. It was.

By Mr. HUGHES:

Q. Senator Schall was there in the office?—A. Yes, sir.

Q. All right. Now, will you state what Mr. Corneaby was doing in there?—A. First, he was in the office with Senator Schall when I went in. He came out of Senator Schall's office.

Q. Did you ever see Mr. Corneaby at any time sitting at a desk there in Senator Schall's office during the campaign of 1924, the election campaign?—A. In Senator Schall's office?

Q. Yes.—A. I saw him sitting on the desk there. After Mr. Harold went out, he seemed to have charge.

Q. Mr. Corneaby did?—A. Yes.

Senator DENEEN. I will strike that out. This gentleman is a lawyer, and he should answer responsively. He knows that this is not the proper way to testify. He said he seemed to have charge. That brings in a conclusion and it is utterly improper. I take it for granted that a lawyer as old as he is knows better, and it is interjected purposely.

By Mr. HUGHES:

Q. Go ahead and state what you saw Mr. Corneaby doing there on the different occasions.—A. I went into Mr. Schall's office, and Mr. Corneaby was sitting on the large desk in the outer office, and he came up and shook hands with me. He said: "Mr. Cosgrove, Mr. Schall will see you right away," and he took me in to Senator Schall.

Q. This was Senator Schall's law office?—A. Yes; Senator Schall's private office. The outer room was a reception room, a waiting room of the offices of Rees, Schall & Seaburg.

Q. Were you in Mr. Schall's office at any time during the month of September, 1924, if you recall?—A. I can not say.

Senator DENEEN. We shall have to adjourn at 12 o'clock. Do you care to put Captain Townsend on before we adjourn?

Mr. HUGHES. If the committee feels that the foundation has been laid, then I should like to put him on to bring out his conversations with Mr. Jacobs, and also with reference to matters of Mr. Corneaby, and further talks that he had with Senator Schall. I should like to help the captain.

Senator DENEEN (after a consultation). There is a question in the minds of the committee about whether you have laid a proper foundation, but in view of the illness of Captain Townsend's son we will hear his testimony, subject to striking it out if it is not connected up.

ADDISON C. TOWNSEND, a witness heretofore sworn and examined in this proceeding, was recalled for further direct examination.

By Mr. HUGHES:

Q. Captain, are you acquainted with A. N. Jacobs?—A. Yes, sir.

Q. Did A. N. Jacobs have any talk with you during the summer and fall of 1924 at Minneapolis?—A. Yes, sir.

Q. Do you recall about when it was that he had the first talk with you?—A. In July, or perhaps earlier.

Q. Was this talk in the Federal Building at Minneapolis?—A. Yes, sir.

Q. Did he ever telephone you?—A. Yes, sir.

Q. You were familiar with his voice?—A. Yes, sir.

Q. Have you ever visited the headquarters in the West Hotel?—A. Yes, sir.

Q. Now I will ask you to state what the talks were that Mr. Jacobs had with you.—A. They were generally in regard to someone who had been caught bootlegging, wanting to know what the charges were, and if any of the counts could be dropped.

Q. At any of those talks was Senator Schall's name or Congressman Schall's name mentioned?—A. Yes, sir.

Mr. REES. I think that is objectionable, but he should make it known specially. There is no foundation for it.

Senator DENEEN. This is to go in subject to your right to move to have it stricken out unless there is a connection made.

By Mr. HUGHES:

Q. Will you please state what the talks were that you had with Mr. Jacobs pertaining to Senator Schall and these cases?

Senator DENEEN. Give the time and place and those who were present as you go along.

The WITNESS. That is impossible for me to do, Senator. I was leading a very busy life in charge of prohibition enforcement in five States, and those details would not be clear in my mind. Mr. Jacobs would come to the office and ask in regard to a certain case. Sometimes Mr. Silverman was present, sometimes he was not; sometimes others were present, and sometimes not. I can not remember in detail.

By Mr. HUGHES:

Q. Can you state what he asked you to do in those cases?—A. He would ask whether certain counts—for instance, if he had caught a man for transportation, possession, and sale, whether it would be possible to drop one or two of those counts if the man would plead guilty to something else.

Q. Did he state to you who he was representing?—A. He would sometimes state that Senator Schall wanted to know what the status was, and so on.

Q. Did he make any——

Senator NEELY. I think that is important.

By Senator NEELY:

Q. Was that the way in which he would state Senator Schall's alleged interest—simply a statement to the effect that Senator Schall wanted to know the status of the case?—A. No, sir; he would state: "Tom told me to come and see you and ask about the case of So-and-So."

Q. Then he was inquiring about the status of the case?—A. Yes, sir.

By Mr. HUGHES:

Q. Was any request made of you to continue any cases so that certain defendants might have an opportunity to vote at the election?—A. I do not remember any such instance.

By Senator NEELY:

Q. Captain, did you consider at the time or do you now consider it improper for a Member of Congress or a Member of the Senate to inquire about the status of any case in which one of his constituents is charged with a criminal offense?—A. Senator, I did not at that time consider it improper. I had a great many different people come to me with regard to bootleggers who were caught, and I had a State senator come, for instance, and ask whether the man could plead guilty to one charge and another count be dropped, and so on. It was a very common occurrence.

By Senator GOFF:

Q. Captain, you were not legally in charge of these prosecutions, were you?—A. No, sir.

Q. You were only the chief witness, as it were, for the Government?—A. Yes, sir; and my reply in those cases would be that I had the making of the case, and that the trial of the case was up to the district attorney; that he would have to be consulted in the matter; and there was so much of that sort of thing that went on with various people coming to the office that Judge McGee made a ruling in the matter in which he stated that before cases could be nolle prossed or counts dropped, the district attorney would have to confer with my office and get the consent of my office to the dropping of any particular charge.

By Senator NEELY:

Q. Captain, do you personally know of Senator Schall having violated any law with regard to the prosecution or in regard to preventing the prosecution of any person charged with bootlegging or with infractions of the liquor law?—A. No, sir; I do not.

Q. Do you know personally of his having been responsible for anybody else violating the law or preventing the prosecution for violation of the law?—A. No, sir; I do not.

By Mr. HUGHES:

Q. Did Mr. Jacobs assign any reason to you why "Tom," or Senator Schall, wanted these counts changed or cases altered?—A. I do not remember that he did, sir.

Q. You say you were present at the headquarters?—A. Yes, sir.

Q. On more than one occasion?—A. On two or three occasions.

Q. How did you happen to go to the headquarters, Captain?—A. Mr. Jacobs called me up and requested me to come up there.

Q. And when you went up there did you have a conversation with him?—A. Yes, sir.

Q. What was the conversation?—A. I do not remember. He asked me about some particular case, what the charges were against the man in question.

Q. During the fall of 1924 do you know whether it was a matter of common knowledge in the city of Minneapolis that certain bootlegger cases were being fixed from the Schall headquarters?

Senator NEELY. That will not do. What does this gentleman know about it himself? He could not tell what was common knowledge; he can only express an opinion.

By Mr. HUGHES:

Q. Did you have a meeting with Mr. French and some other officials with reference to these Schall bootlegger cases?

Senator DENEEN. I will overrule that question. You should make it a specific question.

Mr. HUGHES. The Senator was very careful not to be present.

Senator DENEEN. I think those remarks should be stricken out, too. I think we should proceed as a lawyer proceeds with cases.

By Mr. HUGHES:

Q. I will ask you, Captain, if there was a meeting in the Federal building in the month of October, 1924, with reference to certain liquor cases?

Senator DENEEN. Was Senator Schall there?

The WITNESS. No, sir.

Senator DENEEN. Your question is overruled. I am doing this to expedite matters. We must close at 12 o'clock, and it is necessary to save time as much as possible.

By Mr. HUGHES:

Q. Who was present at that meeting, Captain?—A. Mr. Lafayette French, district attorney; Mr. Qvale, State director of prohibition; and Mr. M. L. Harney, of the intelligence office.

Q. That meeting was with reference to what?

Senator DENEEN. I do not think you can pursue that unless you show that Senator Schall was there or participated in it. Upon what theory can he be bound by a meeting of others?

Mr. HUGHES. The theory that the matter became so notorious that the people failed to show up there when their cases were assigned for trial in which they stated——

Senator DENEEN. You may ask another question. That is overruled.

Senator NEELY. Mr. Hughes, is it not apparent to you that no statement that might have been made at this alleged meeting could bind Senator Schall? Any sort of statement might have been made about him by the worst political enemy he had. He might have been accused of any crime imaginable; and it would be manifestly unfair to burden the record with statements—slanderous statements, as they may have been or may not have been—made by persons who were assembled there.

Senator DENEEN. It would be just on a par with this: Suppose these gentlemen, Mr. Rees and Senator Smith, should offer to introduce evidence that some one held a caucus in some headquarters and

discussed whether or not these charges against Magnus Johnson were true, and they determined that they were true. You do not think it would be proper to try the case in that way; do you?

Mr. HUGHES. No, sir. This testimony, however——

Senator DENEEN. I do not think it is necessary to explain it unless you are willing to have Captain Townsend remain until Monday. We have only five minutes left, and then we shall have to close this hearing for the day.

Mr. HUGHES. I can not complete his testimony in five minutes.

Senator DENEEN. You can not?

Mr. HUGHES. I can not.

Senator DENEEN. If you care to keep him over, that is a matter in your discretion. I was trying to help along. That is the reason I ruled so quickly.

Mr. HUGHES. I am sorry, but I can not complete the testimony in five minutes.

Senator DENEEN. Very well. Then you will pursue your own course. I was trying to help out. I can not attend a meeting this afternoon.

Senator NEELY. I can be present until 2.30.

Senator DENEEN. I expect to leave the city at 3 o'clock. You can pursue your course until 12 o'clock.

Mr. HUGHES. I take it we are allowed to go into that meeting?

Senator DENEEN. Ask any question you wish, and we will rule upon it, if objections are made.

By Mr. HUGHES:

Q. At this meeting you say Mr. French was present, and yourself, and who else?

Senator DENEEN. That was overruled.

Mr. HUGHES. When you say "overruled," I take it that means that——

Senator DENEEN. The question is overruled, because you do not state that Senator Schall or anybody for him participated in the meeting, and it would be hearsay.

By Mr. HUGHES:

Q. Was Mr. Jacobs ever present at any meetings which you had with Mr. French, Mr. Qvale, or any other officers there?—A. Mr. French recently stated to me that——

Senator NEELY. No, no; Mr. French will have to come and tell that.

The WITNESS. I do not remember such a meeting.

Senator DENEEN. Very well; that answers it.

Mr. HUGHES. I want to establish that there was a meeting.

Senator DENEEN. I know, but that answers it. Ask another question.

By Mr. HUGHES:

Q. You related a conversation which you had here the other day with Senator Schall. I want to ask you if at that time there was any conversation with Senator Schall with reference to a man named Jennings?

Mr. REES. Just when was that?

The WITNESS. At a conversation I had with Senator Schall in September, 1925, the name of Jennings was mentioned.

Mr. REES. That was a year after.

By Mr. HUGHES:

Q. What Jennings was that?—A. Ed Jennings.

Q. Did you know Ed Jennings?—A. No, sir; not personally.

Q. Will you state what the conversation was with reference to Ed Jennings and Senator Schall?

Mr. REES. I make the same objection that we urged before. This is some 10 or 11 months after the election was over—some conversation about a man named Ed Jennings.

Mr. HUGHES. The purpose of this is to show that Ed Jennings, during the campaign, drove Senator Schall around, and Ed Jennings was a bootlegger; that he had been convicted in the district court of the United States; that he had an appeal pending at that time, and that Senator Schall discussed with Captain Townsend this particular case and expressed an opinion upon it; and it is claimed here that Jennings contributed money to Schall's campaign through the headquarters.

Mr. REES. Do you say that Captain Townsend is going to say that?

Mr. HUGHES. No; I say that Captain Townsend will testify to a conversation he had.

Mr. REES. Well, I know. That happened 11 months afterwards.

Mr. HUGHES. It is an admission that he knew this man Jennings, and knew what his business was.

Senator NEELY. Mr. Chairman, I move that we let it go in, and if it does not incriminate Senator Schall that we strike it out. Senator Schall's term of office manifestly is going to expire before this hearing is concluded, the way we are going; and if there really is any purpose in conducting this investigation, we ought to get through.

Senator DENEEN. The question is admitted subject to a motion to exclude it.

By Mr. HUGHES:

Q. Will you state the conversation?—A. In the course of the conversation, mention of Ed Jennings was made by Senator Schall with the statement that there was some technical charge against him. I had previously, in the conversation, in response to a statement by Senator Schall that Mr. Silverman had not caught Leon Gluckman, one of the big St. Paul bootleggers, stated that I knew he had not; that I myself had not been able to catch Gluckman while I was there, and I had wanted to get him and Jennings and one ot two others whom I named, and I had been unable to do so.

Q. Was this conversation at the time when your reappointment was being discussed?—A. Yes; it was.

Q. Did you see this man Corneaby who was in here yesterday?—A. Where?

Q. Here in the Senate committee room.—A. Yes, sir.

Q. Had you ever seen him before?—A. Yes, sir.

Senator DENEEN. Is this all that you care to ask about Jennings?

Mr. HUGHES. Yes, sir.

By Mr. HUGHES:

Q. Where had you seen Corneaby the last time before you saw him here in the committee room yesterday?—A. At the headquarters in the West Hotel in Minneapolis, if I remember correctly.

Q. Had you seen him there on more than one occasion?—A. Only once that I remember.

Q. I will ask you if you had in your line of duty a permit or case pertaining to a woman by the name of Florence Joswich?—A. I did not have the handling of the permit. I had a case against Florence oswich.

Q. You were familiar with that case, were you?—A. Somewhat.

Q. And did that matter come to your attention during the campaign of Senator Schall?—A. Yes, sir.

Q. Do you remember in what month?—A. About October; I am not sure.

Senator GOFF. What year?

The WITNESS. 1924.

By Mr. HUGHES:

Q. And did Mr. Jacobs ever have any talk with you with reference to Florence Joswich?—A. Yes, sir. Mr. Jacobs was present at her place of business the night that it was raided by my men.

Q. Where was her place of business the night it was raided?—A. In St. Paul. I do not remember the address.

Q. Was it in the loop district or outside?—A. In the loop district.

Q. Was anybody else connected with her there or arrested with her at this place?

Senator DENEEN. Were you present when the raid was made?

The WITNESS. I was present; yes, sir.

By Mr. HUGHES:

Q. Who else was taken into custody there?—A. A man named Sam Taren.

Q. And what was his business?—A. Bootlegger, so far as I know.

Q. And was this man Taren there at the time that this Joswich woman was taken in the raid?—A. No, sir.

Q. Now, you say after this raid you had a talk with Mr. Jacobs about this Joswich woman, or he had a talk with you?—A. Yes. I do not remember anything specific about it. Mr. Jacobs was there when I arrived on the scene, and there was some general talk.

Q. When you arrived on the scene where, Captain?—A. At the place that was raided.

Q. Did you have any talk with him as to how he happened to be there?—A. Yes.

Q. Please state what that talk was.—A. He stated that this woman had telephoned either to him or to Mr. Schall, I do not remember which, and that he had immediately gone to the place.

Q. Do you know what was done with the matter, with her case or her permit, how it was disposed of?—A. It was prosecuted in court, and she was cited for revocation of her permit in the director's office.

Q. That would be Mr. Quale's office?—A. Mr. Quale's office.

Q. You do not know what took place there?—A. No, sir; I do not.

Q. Mr. Quale would be familiar with that?—A. Yes, sir.

Senator DENEEN. When would it be convenient for you to meet—at 10 o'clock Monday, or in the after noon? The Judiciary Committee meets at 10 o'clock. I think we will have to wait until afternoon. [After a consultation:] Mr. Edgerton desires an executive session. We will have an executive session right away.

(Thereupon, at 12.05 o'clock p. m., a brief executive session was held, after which the subcommittee adjourned until Monday, February 1, 1926, at 2 o'clock p. m.)

SENATOR FROM MINNESOTA

MONDAY FEBRUARY 1, 1926

UNITED STATES SENATE,
SUBCOMMITTEE OF THE
COMMITTEE ON PRIVILEGES AND ELECTIONS,
Washington, D. C.

The subcommittee met, pursuant to adjournment, at 2 o'clock p. m., in the room of the Committee on Privileges and Elections, Capitol Building, Senator Charles S. Deneen presiding.

Present: Senators Deneen (chairman), Goff, and Neely.

Present also: Senator Thomas D. Schall, and Messrs. Rees and Smith, counsel for Senator Schall; and Messrs. Hughes and Edgerton, representing the contestant.

Senator DENEEN. The committee will come to order. Call your first witness.

TESTIMONY OF MAURICE SILVERMAN

(The witness had been previously sworn by Senator Deneen.)

By Mr. EDGERTON:

Q. Where do you reside?—A. St. Louis Park, Minn.

Q. How long have you resided there?—A. About 16 years.

Q. Do you know Senator Thomas D. Schall?—A. Yes, sir.

Q. How long have you known him?—A. As far back as I remember; but I did not meet him personally until 1924.

Q. What time in 1924?—A. I believe it was a month or six weeks before election.

Q. You remember when he ran for United States Senator from Minnesota?—A. Yes.

Q. What year was that?—A. I believe that was in 1924.

Q. What official position did you hold, if any, in 1924?—A. In 1924 I was assistant divisional chief, general prohibition agents, in the twelfth division.

Q. How long did you hold that position?—A. Since April 15, 1922.

Q. There?—A. Yes.

Q. Do you hold it still for that?—A. I do not.

Q. When were you changed to other territory?

Mr. REES. We object to this as immaterial; unnecessary in determining the initial question in this case.

Senator NEELY. Is it your intention, Mr. Edgerton, to show that he was removed through the activity or influence of Senator Schall, and improperly removed?

Mr. EDGERTON. Yes, sir.

Senator DENEEN. It is a preliminary question.

Mr. EDGERTON. It is a preliminary question; yes. I will be as quick as I can to get the point.

Senator DENEEN. You may answer the question.

A. October 16, 1925.

By Mr. EDGERTON:

Q. During the time after your appointment and for some time after that, were you on friendly terms with Senator Schall?—A. Yes.

Q. During the campaign for election in Minnesota in 1924 for United States Senator, did you know A. N. Jacobs, who has been referred to here and called his manager?—A. I know A. N. Jacobs; yes, sir.

Q. How long have you known him?—A. Since I was a youngster. I think we were raised together on the north side of Minneapolis.

Q. Was anything said to you by A. N. Jacobs during that campaign about bootleggers?—A. Yes.

Q. Did he make any requests of you; and if so, what were they?

Mr. REES. The same objection. The prerequisite fact has not been established that would make any such testimony admissible.

Senator GOFF. Can you fix the date more definitely, Mr. Edgerton?

By Mr. EDGERTON:

Q. Can you fix the date about when this was during the campaign in 1924?—A. I can not.

Q. Was it during the campaign when he was running for Senator?—A. Yes, sir; he was in during that period.

Q. He was running for office, was he?

Mr. REES. Was this Jacobs, running for office?

Mr. EDGERTON. No; I mean Schall now.

By Mr. EDGERTON:

Q. Was Senator Schall running for office?—A. Yes, sir.

Q. And at that time was there a headquarters in the West Hotel called Schall's headquarters, with placards up there, and signs?—A. I do not know.

Mr. REES. I move to strike out the answer as a conclusion of the witness.

Senator DENEEN. He answered that he did not know. Do not answer hereafter until the objection has been passed on.

Senator GOFF. He said he did not know, or words to that effect.

Mr. REES. All right.

By Mr. EDGERTON:

Q. Did you ever go to what is called the Schall headquarters in the West Hotel?—A. No, sir.

Q. Then all you know about it is hearsay?—A. Yes, sir.

Q. During that campaign when Schall and Magnus Johnson were running for Senator, did you have repeated talks with Jacobs?—A. I had several talks with him, yes, sir.

Q. Did he come to you or did you go to him?—A. He came to the office.

Q. What was the object of his conversations with you? What did he want?

Mr. REES. That is objected to as calling for a conclusion, and the conversation is admissible only, and it is not admissible unless if it was in the presence of Senator Schall.

Senator DENEEN. After you have established that Jacobs was the agent for Senator Schall. It would be hearsay otherwise, would it not?

Mr. EDGERTON. As I understand, there is evidence now before this committee that he was the agent and manager of Schall during that campaign.

Senator DENEEN. What is it? Where is it? Here is the testimony [handing complete transcript to Mr. Hughes].

Mr. HUGHES. We would have to go through and point it out. Senator Deneen, if you will recall, the witness Cosgrove testified that Senator Schall stated to him during the primary that Mr. Jacobs had charge of his campaign, and also that Mr. Cosgrove testified that during the election campaign, about August 13 or 14, he was into Mr. Schall's office, and he there was introduced to Mr. Anderson, and that Mr. Schall at that time told him that Mr. Anderson would be taken care of, to go and see Mr. Jacobs and Mr. Rahn, that they were taking care of the finances of his campaign.

Senator DENEEN. I think not. I notice Mr. Cosgrove shaking his head over there, and I think you do not recollect his testimony. Mr. Cosgrove's testimony is right there, and if you will refer to the transcript you can easily find out what was said.

Senator GOFF. Mr. Edgerton, was there anything in the way of literature, letter headings, and so on, by the Schall campaign committee, to which you referred, showing who the officers of the committee were?

Mr. EDGERTON. Yes, there was; but in the first place, as one of the witnesses I think started to explain, and whether he did fully or not to the satisfaction of the committee it was to this effect, they could not advertise him at first as manager because he was connected with the Veterans' Bureau, and that was the reason that he was not advertised at first as manager.

Senator DENEEN. You can save time by looking at his testimony, because it is very brief on that point. It is in the third volume.

Mr. EDGERTON. While Mr. Cosgrove is looking for that testimony, I will call your attention to this letter from Senator Schall that was introduced in evidence, which is contestant's Exhibit No. 3, which reads as follows:

> I am just in receipt of yours of March 31, together with Tribune clipping. I think that is a mighty good idea for you to look after the foreign papers. Jake is a good, level-headed boy. Frisch is a kid. He is only staying over in the office until I can get back. I made arrangements when I left that he should be out of there March 1. Jacobs recognizes your ability, for he has often spoken to me of you, and writes me constantly of the good work you are doing.
>
> Just dictated a letter this morning to you, but this one can follow for what it is worth.
>
> Best wishes.
>
> Your friend,
>
> THOMAS D. SCHALL.
> G.

Senator DENEEN. First, it relates to the primary, and second, that does not relate to any matter of his agency. When was it written?

Mr. EDGERTON. This was written April 5, 1924.

Senator DENEEN. And the primary was in June, was it not?

Mr. EDGERTON. Yes; I think it was.

Senator DENEEN. And the allegations here relate entirely to the election and not to the primary.

Mr. EDGERTON. That is true; but it followed right on. He was connected with this campaign, and has ever since been connected with Mr. Schall.

Mr. REES. That is an inference.

Senator DENEEN. You gentlemen have a habit of making statements about things rather than putting your witnesses on the stand and having your witnesses make statements. If the witnesses would testify as strongly as you lawyers make statements you would have a case in a minute; but the record is made from the testimony of the witnesses.

Mr. EDGERTON. Mr. Chairman, I am not used to being criticized in the Minnesota courts, or in the United States courts, the way you criticize me in the trial of this matter.

Senator DENEEN. I am not criticizing you.

Mr. EDGERTON. Every time, you make a fling of that kind.

Senator DENEEN. Not at all. The committee has sat here——

Mr. EDGERTON. The chairman has said——

Senator DENEEN. Pardon me a minute. The committee has sat here and heard what you have said about the committee, and the trial of the case, and has not replied to it. The committee has been very considerate of your feelings in those matters. There has been no reply to what you have said. It was assumed that you gentlemen have a good deal of feeling in the case, and we took that into consideration. We have not answered the constant reflections upon the committee.

Mr. EDGERTON. Well, I wish to deny that.

Senator DENEEN. Well, proceed. What is your next question?

By Mr. EDGERTON:

Q. Were you requested by Mr. Jacobs to have cases continued?

Senator DENEEN. That would be subject to the same objection until you have found the statement, if any, of Mr. Cosgrove that would lay the foundation for it, would it not? I assume that he will find what he is looking for in a moment. We might make haste by looking at the testimony. It will take but a moment.

(At this point the stenographer at the request of counsel for contestant marked a paper "Contestant's Exhibit No. 4.")

Mr. HUGHES. At page 201 of this transcript I find this which refers to the conversation that Mr. Cosgrove had upon the 13th of August, 1924, with Senator Schall. [Reading:]

Q. Will you please go ahead and state what the conversation was; what you said and what Senator Schall said?—A. I went to Senator Schall's office to talk with him about one A. A. Bowen, who had been an organizer of the Nonpartisan League. I told him that I had met Mr. James R. Waters that morning, who was going out of the State, and that he had asked me to go and see Mr. Bowen about Mr. Schall's campaign.

Mr. REES. Now, is this the talk you had with Schall?

The WITNESS. Yes; in his office, at 554 Security Building.

By Mr. HUGHES:

Q. Just relate the conversation.—A. I will tell you what I told him.

Q. Go ahead.—A. And Mr Schall said to us, "I know Mr. Bowen. I spoke with him on the same platform in some parts of western Minnesota. I want Mr. Bowen," he said. "Jake"—meaning Mr. Jacobs; that was the name he called

him—"Jake and Andy"—meaning Mr. Rahn—"are looking after my affairs." He said, "Have him go and see them." I said, "He wants an appointment with you;" and he said, "All right."

Then, later on, on page 202 of this same typewritten transcript, he says he later had another conversation with Mr. Schall with reference to this man Bowen. Then I asked him to relate the conversation, and this occurred:

A. I went to—I talked with Mr. Schall again about Mr. Bowen, and I said to him, "Mr. Bowen has gone over with the La Follette people, but he says that most of his crowd want to be for you. He says that he is not working, that he can not work gratis, that he has to support himself." Mr. Schall said, "Mr. Bowen can be for La Follette and he can be for me, too. Let him see Jake or Andy." I said, "Well, how would it be if he would see Andy? Will you square it with Andy?" meaning Mr. Rahn. He said, "I will."

Also on page 203 it appears from the testimony here that he met in Mr. Schall's office, about the 13th of August or the 14th, 1925, Mr. J. M. Anderson. This was the same Mr. J. M. Anderson that he referred to elsewhere in his testimony, if your committee will recall. He testified that during the primary he had a talk with Mr. Schall about an article that Mr. Anderson had written in the St. Paul papers concerning Magnus Johnson, and he promised to get the article for Senator Schall, and he did get the article for Senator Schall, and he testified that he then met this man Anderson later on in August.

Senator DENEEN. What did he say about it on page 203?

Mr. HUGHES. Well, he tells on page 203 about meeting him.

Senator DENEEN. Yes; he met him. I understand; I was just making notes: "Met Anderson."

Mr. HUGHES. On page 204 I said:

Q. Now, will you state to the committee what talk there was with Mr. Schall in April, 1924, with reference to this man Anderson?

That was Anderson that he was referring to a while back. Mr. Cosgrove said:

A. Senator Schall asked me, "Do you know anything about a letter"——,

Mr. REES. Will you give that date?

Mr. HUGHES. That was in April, 1924.

Mr. REES. In April; away back there?

Mr. HUGHES (reading):

A. Senator Schall asked me, "Do you know anything about a letter that was written last year in the campaign by J. M. Anderson, a former president of the Equity Exchange, published in some of the St. Paul papers?" I said, "I think I read it at the time, but I do not know which paper it was in." He said, "Could you find it?" I said, "I think I can"; and then he said, "There was another letter published at the same time by Arthur Lesoeur. Do you know anything about that?" I said, "I read it at the time." "Do you think you can find it?" I said, "I think so"; and I said, "I will go to St. Paul and see Mr. Lesoeur"; and I went there and saw Mr. Lesoeur and got the article. He had a clipping. He could not tell me where I would get the Anderson article. The clipping I got from Mr. Lesoeur, if my memory serves me right, was from the Pioneer Press.

Then he goes on and tells about getting these articles.

Senator DENEEN. I know, but about the authority for Mr. Jacobs to act as agent?

Mr. HUGHES. In the primary?

Senator DENEEN. No; in the election.

Mr. HUGHES. Here he says, "They are looking after my affairs, Mr. Jacobs and Mr. Rahn, in regard to this Bowen matter." They were looking after his affairs. He went to Mr. Schall about Bowen, to see how he could be financed, and so on, and Mr. Schall said that Mr. Jacobs and Rahn were looking after his affairs.

Now, of course, previous to that there was testimony somewhere here of the conversation he had with him on the primary, in which he said that he wanted Mr. Jacobs to handle the campaign for him. It seems to us that the testimony so far as the hearing has progressed would be evidence, at least prima facie evidence, that there was a very close connection between Senator Schall and Mr. Jacobs. and that if he was his manager during the primary, it is fair to assume that relation was being continued, inasmuch as in August when there was an important matter came up about instructions, Mr. Schall said, "Mr. Jacobs is looking after my affairs, and Mr. Rahn"; and of course it can be subject to your interpretation that it was the affairs of this campaign. It seems to me that would be very plain and very strong proof of it, the fact that he had previously conducted the campaign in the primary and would control his later conduct there in August.

I have here a letter, and I do not know that I can lay the foundation to introduce it unless somebody knows the signature. The letter was written to Senator Johnson about the campaign and is signed by Mr. Jacobs.

Senator DENEEN. That would come under the same rule that you must show the authority for it; then make the identification.

Mr. HUGHES. Yes.

Senator DENEEN. Do you want to be heard, gentlemen?

Mr. REES. We make the same objection that we made before, that the prerequisite of showing that there was a conspiracy is entirely wanting here. What they are offering now is something corroborative on the part of third persons. This is subject to the same objection that we made before, and is merely attempting to explain a little further. We object on the ground that they are hearsay; that they are admissions; that the prerequisite is entirely wanting.

Senator DENEEN. Will you let me have that record containing page 201?

Mr. HUGHES. I ought also to call attention to the testimony there where it is said Senator Schall stated that he was the owner of the Harpoon and Mr. Jacobs was running it for him.

Senator DENEEN. If I understand, this witness is not to testify regarding the Harpoon or the Bowen article, is he?

Mr. HUGHES. No, sir; but that is to show the connection between Jacobs and Schall.

Senator DENEEN. What is the point of the testimony? What do you expect to prove by the witness?

Mr. EDGERTON. It is this, very briefly, that Mr. Silverman, in the discharge of his duties as the representative of the Government, was approached many times by Mr. Jacobs with the request for him to let up on prosecutions or to continue cases, or to consent to some counts in the indictment being killed so that the defendant could plead guilty to an offense that meant letting the bootlegger off with a fine; that finally he had trouble with Jacobs because he considered

Jacobs unreasonable in his demands and that thereafter his removal was had out of the district, and that was the occasion for Schall's talk with Townsend.

Senator DENEEN. Do you claim that Silverman in conjunction with Mr. Jacobs did anything wrong? That any wrong was done by Mr. Silverman?

Mr. EDGERTON. Not that Silverman did anything wrong. He granted some favors, but other favors he would not grant because he considered them unreasonable.

Senator DENEEN. Did he do anything wrong? Will you proceed to show that Mr. Silverman went into the conspiracy with Mr. Jacobs to do anything wrong?

Mr. EDGERTON. Not at all.

Senator DENEEN. So that the law was not violated?

Mr. EDGERTON. So far as I know the law was not violated.

Senator DENEEN. Then you do not claim that Senator Schall was present at any of those conversations?

Mr. EDGERTON. No, sir.

Senator DENEEN. Again, the next step; you do not claim that he was released from the service until 1925, do you?

Mr. EDGERTON. No, sir.

Senator DENEEN. What is to the point to the testimony?

Mr. EDGERTON. The point in the testimony, the reason for wanting to introduce the testimony, is to show that because he would not grant these requests of Mr. Schall's manager or Mr. Schall's agent—his manager or associate, or whatever you want to call him—attempts were made by Mr. Schall to remove him, as Captain Townsend testified.

Senator DENEEN. Do you claim that Mr. Schall did remove him?

Mr. EDGERTON. I claim that there was nobody else, so far as we know, had anything to do with it, and he does not know of any other cause why he was removed.

Senator DENEEN. You claim, then, that the testimony will lead to the inference that he would have liked to have had him removed, but you do not claim that he did remove him? Is that the conclusion you reach?

Mr. EDGERTON. That he knows of no other occasion.

Senator DENEEN. That Mr. Silverman knows of no other occasion?

Mr. EDGERTON. No; he knows of no other means that was used to remove him.

Senator DENEEN. Do you propose to show that Senator Schall actually removed him?

Mr. EDGERTON. No; we do not claim that. That would be putting us to where we could not get anywhere.

Senator DENEEN. I am asking you how far you go, with the object of making a ruling.

Mr. EDGERTON. That is as far as I can go on it.

Mr. REES. Will you permit me to make one observation in this connection? Now suppose you draw the inference from the testimony of Cosgrove that Jacobs and Rahn were agents of Schall. That means that they were the agents of Schall, and can mean nothing else, to do the proper, legal, and right thing. There is no implied agency that Jacobs and Rahn had a right to commit crime in Schall's name. They must show a conspiracy to commit a crime on the part of Schall

before there are any agents that can represent him or bind him by their acts. It is the same way as if a traveling man selling goods legitimately on the road, collecting money, should go out to a store and break into the store and rob it. You could not hold his principal. You could not hold the employer to that. That is just the situation here. That is one point.

And then the inference that Mr Silverman was removed with the motives stated. He knows of no other cause; therefore Senator Schall is the guilty party. It seems to me it is the same old story. We are just running around in circles, here, circles of rumor that have not any foundation in fact. And they are destructive; they destroy anybody with a seat in the Senate if they are permitted. Nobody can escape if they are permitted, because everybody has enemies back in his State that would strike him just as these men are striking the Senator from Minnesota. We should have protection against rumor and hearsay and innuendo and inference that is abnormal and unsound. If we can not get it here, where can we get it?

Senator GOFF. Mr. Edgerton, as I understand you, what you intend to show, as you have stated, is this—that during the election campaign Mr. Jacobs went to see this witness, Mr. Silverman; that he asked certain concessions or favors, and they were granted; and he asked certain other concessions or favors and they were refused.

Mr. EDGERTON. Yes, sir.

Senator GOFF. That there was no law violated in the asking of these concessions or in the granting of the favors which were granted?

Mr. EDGERTON. No, sir.

Senator GOFF. That in September, 1925, substantially 10 months after the election, Mr. Silverman as a prohibition agent had his territory changed, and that he does not know, in his own view, in his own opinion, any reason prompting the change, other than the influence of Senator Schall. Is that substantially what you intend to show?

Mr. EDGERTON. Yes.

Senator GOFF. You lead down finally to the opinion, that is to the imagination, of this witness. "Do you know why the Government at Washington in the Treasury Department, having charge of prohibition, consented to the change of your territory? Now, do you know?" And he says, "No; I do not know. I have no knowledge." And then you are forced, according to your suggestion, to go into the field of opinion, and you say to him, "Have you any opinion; that is, can you guess; have you any reason to believe what the motive was"?

Mr. EDGERTON. Can not intelligent testimony—does not that show that if there was no other reason that this man knows of for that hostility when they had been on friendly terms—is not that a natural inference?

Senator GOFF. We can not try a law case, can we; we can not try matters that really relate to crime, by inference? The committee wants to be perfectly fair with you, but I do not see how the committee can destroy the rules of evidence which have been built up by centuries of experience. If you offer admissible evidence the committee is bound to receive it.

Mr. EDGERTON. Does not this man's testimony and Captain Townsend's testimony tend to show——

Senator GOFF. But Captain Townsend does not show that Senator Schall had him removed.

Mr. EDGERTON. Well, but he wanted him removed.

Senator GOFF. He said that Senator Schall said something about some Jewish rabbis, that Schall made some request to him.

Mr. EDGERTON. Oh, that was a request that he made of Captain Townsend; that he requested him to let up on the Jewish rabbis.

Senator GOFF. There is no testimony, as I recall it, by Captain Townsend, that the reason he was requested to remove this man was because of his either granting favors or refusing favors 10 months before. I do not recall that it was based on that, but it is not necessary for me to argue with you that 10 months might make a great change.

Mr. EDGERTON. Yes; but no other reason can be thought of, unless Senator Schall can say some reason.

Senator GOFF. Is not that conjecture? Are we not then trying possibly to establish an offense by conjecture? Now, that will not do, because that comes down to this; the greater the imagination, the greater the proof.

Mr. EDGERTON. Yes.

Senator GOFF. Where would we be in any investigation if we resolved it into the imagination of our people?

Mr. EDGERTON. My thought is this, that with the evidence that is in and with this man's testimony which we ask to be put in, the only reasonable conclusion that you can arrive at as a matter of evidence here is that it was because he did not grant the favors that Jacobs wanted, and that was the reason of the activity of Senator Schall in getting him removed from that territory.

Senator GOFF. Ten months afterwards?

Mr. EDGERTON. Yes; there is no other inference to be drawn from that testimony. Of course the Senator may give some reason.

Mr. HUGHES. If Mr. Silverman would be permitted to testify he would say, as we understand it, that Jacobs always asked to have these cases continued so as to help Schall, and he asked on behalf of Schall to have these cases continued or otherwise favorably disposed of.

Senator GOFF. Is not that hearsay?

Mr. HUGHES. No; because we claim that Jacobs was his manager.

Senator GOFF. Do you understand that as his manager Jacobs had a right to go out and represent him in a matter that might possibly involve either the propriety of the Government's enforcement of the law or the law itself? Are you not there again running right into the question of a conspiracy which you have not established?

Mr. HUGHES. Our position has been right along that here is the manager of Senator Schall making a business of this; even closer than a manager to him; Senator Schall's right hand; a man, to use the common expression, right in his office, who had a key to his office; his newspaper partner; the man who arranges this equity write-up of the Harpoon; a man closer than an ordinary manager to Senator Schall. We have him going down and making himself a nuisance to these prohibition men and asking them to pass these cases so as to accommodate Senator Schall. Now, we have Senator Schall himself trying

the same thing with Mr. Townsend, and then his manager going down. And then, on top of that, it is to be followed by the testimony of men who paid the money into Schall's headquarters where Jacobs received it, when they were told that everything was fixed, and they did not need to show up in court. It would seem to me that in a proceeding of this kind that surely would be admissible to throw light on the whole proposition. I should think Senator Schall would want it, himself, in the face of charges like this.

Senator NEELY. If you were running for an office in Minnesota yourself, and you were to employ some one as manager of your campaign, as you contend Senator Schall employed Jacobs, and that manager that you had employed for one purpose only, namely, the purpose of managing your campaign, became a bootlegger—and that does not seem to be an unlikely supposition in the State of Minnesota in view of the evidence we have heard here—would you personally be responsible for this campaign manager's violation of the liquor law, when you had employed him to do nothing but manage your campaign? Would not the ordinary rule of agency apply, that is, that a principal is bound by his agent's acts only when the agent is acting within the apparent scope of his authority?

Mr. HUGHES. That is true.

Senator NEELY. I suppose that no lawyer would contend that getting bootleggers out of jail was within the apparent scope of the authority of Jacobs as the manager of Senator Schall's campaign, would he?

Mr. HUGHES. As the means of getting the funds; a wholesale business, notoriously carried on; carried on from Schall's headquarters. Some of the men came and gave money, around headquarters. We would bring it home to him in that way. There were Moriarty, Corneaby, who called up the office at election time and told him about the returns; Moriarty's name mentioned. Of course we expect to connect all these things up. We will have to. We are doing the best we can with our limited number of witnesses. We would like to have Jacobs before this committee. I think it is only fair to us and to Senator Schall that he should come in and be interrogated.

Senator NEELY. Well, if you are willing to risk the testimony of Jacobs, and you know him very much better than any member of this committee knows him, why not call Jacobs and put him on the stand and ask him the question, "Did you have Silverman removed at Senator Schall's request?" If Jacobs says that, I think that would be vital testimony, and such testimony as that would be damaging to Senator Schall.

Mr. HUGHES. I only regret that he is not here. If we could have him here it would be a great help. We would rather have him come in and deny certain things. Rather than risk the penalty of perjury, he would have to stand on his constitutional right. One of the two things he would have to do, I would stake my life on it.

Senator GOFF. Did you ever talk with Jacobs?

Mr. HUGHES. Yes.

Senator GOFF. Did he ever tell you Senator Schall authorized him to do these things?

Mr. HUGHES. No; he was very guarded in his talk with me.

Senator NEELY. Mr. Hughes, if you believe now that Jacobs would testify as you desire, and did so believe when the committee summoned these witnesses, why did you not have us bring Jacobs here, instead of bringing these other five or six witnesses, inasmuch as we had given you and Mr. Edgerton the privilege of naming any five witnesses you wanted to name in the State of Minnesota, and bringing them here to make out a case?

Mr. HUGHES. We did mention his name, but it seems they were unable to locate him in Washington.

Senator DENEEN. They wrote to me and told me that Jacobs was in the city of Washington, and asked that we should have him subpœnaed, or have Senator Schall assure the committee that he would be here. I spoke to Senator Schall, and he said that Jacobs had returned to Minneapolis.

Senator NEELY. We were not asked to issue a subpœna for Jacobs were we?

Senator DENEEN. Oh, no; not at all. Here is the situation you have arrived at, it occurs to me. Assuming for the sake of argument that John Smith is charged with having violated the liquor law, and Mr. Jacobs goes down to Mr. Silverman and intercedes for John Smith, and Mr. Silverman has an idea that Smith is guilty, and Mr. Jacobs has an idea that he is not guilty. You would have to try the case of the knowledge at the time, if you connected Senator Schall with the charge against Smith. In order for it to have any probative force, we would have to go into each case and show that Senator Schall and Jacobs knew that the man was guilty, and notwithstanding that he was guilty, they tried to prevent his conviction. You see where it leads.

Mr. HUGHES. This is our idea. We want to bring out the facts.

Senator DENEEN. I do not think that any of you would state that it was an offense to go into such a case with the investigating or prosecuting officer; but here we are not putting it on that ground. The question is whether or not he was authorized, under the testimony you have given here, to go and make any sort of a statement. Suppose, for instance, Jacobs had committed forgery; it certainly would not follow that Schall was responsible for it. Suppose that he had received funds and kept them, and he was later prosecuted on a charge of obtaining money by false pretenses; you would not hold Senator Schall was a party to that, would you?

Mr. HUGHES. Of course, that is different.

Senator DENEEN. In what way is it different?

Mr. HUGHES. This is an election.

Senator DENEEN. No; it is not a bit different.

The only point here is whether the act you charge was done by an agent of Senator Schall. If you establish the agency broad enough anything that is done within the scope of the agency binds the principal, who in this case would be Senator Schall; but if you do not establish the agency you are in an indefinite position in your case, because you have not the testimony. Here is Mr. Corneaby who testified that he received some money and kept it—he and others; and he said that he used his own judgment in managing the campaign and Senator Schall did not receive any of it.

Mr. HUGHES. We have witnesses that will testify that Jacobs received the money.

Senator DENEEN. Corneaby admits that he received money, but he said that not any of it went to Senator Schall. He said that he gave some of it to Jacobs and some of it he kept, and some he spent on incidentals in managing the campaign. That is all the testimony there is on that. That does not make any connection.

Mr. HUGHES. That would not bother us, to show that Jacobs got the money. We have plenty of statements of those who paid him money.

Senator DENEEN. We are discussing the point about the conversation which Jacobs had with Mr. Silverman. Mr. Silverman says there was nothing wrong about the matter. Jacobs did not come in and do anything that was wrong criminally, and no cases were interfered with; but that Mr. Jacobs talked with him. That is the sum and substance of it.

Mr. HUGHES. That is just the theory of our position. We do not claim that anyone did anything wrong in the United States forces. That is just the point; the officials were honest, and they would not go into this offense; but this was a scheme to get the campaign funds from bootleggers, and they made the bootleggers believe that it was so; and when it got notorious the officials complained, and it got to the ears of the district attorney and the judge.

Senator DENEEN. You would have to connect the conspiracy in that instance, and you would have to show that two or more men were engaged in the conspiracy. Of course, you have to show it step by step.

Mr. HUGHES. That is the point.

Senator DENEEN. The only point is whether you have laid the foundation of the agency.

Mr. EDGERTON. Mr. Chairman, I do not think that I have been clearly understood. Perhaps it is my own fault. I wanted this to clearly get before the committee, that the only point I have to make in this testimony is this, that because this man did what he thought was his duty he offended not only Jacobs but Mr. Schall, and hence his activity to get him removed to some other territory; and for that reason, for what it is worth, I contend that it ought to be received. Now, that is my position.

Mr. REES. Will the committee consider that Senator Schall had no power to remove him?

Senator DENEEN. That is true; he had no power.

Mr. EDGERTON. That does not make any difference.

Mr. REES. Some other persons had the power to make the change of this witness, not Senator Schall. If he was removed, it is no evidence that Senator Schall had him removed or had anything to do with it. We are running riot with our imaginations.

Senator DENEEN. The ruling of the committee is that the question asked is overruled. We have decided it among ourselves. Now, you may propound another question.

Mr. EDGERTON. I have not any more questions.

Senator DENEEN. Have you not any more?

Mr. EDGERTON. No.

Senator DENEEN. Have you any, Mr. Hughes?

Mr. HUGHES. I think so.

By Mr. HUGHES:

Q. Were you in September, 1924, in the State of Minnesota, with the Federal prohibition board?—A. I was assistant divisional chief in that division.

Q. What States were under your jurisdiction?—A. Minnesota, North and South Dakota, Iowa, and Nebraska.

Q. How long had you been holding that position?—A. As assistant divisional chief, since April 15, 1922.

Q. How long did you continue to hold the position after that?—A. Until October 16, 1925.

Q. A part of the time you were under Captain Townsend?—A. Yes.

Q. Were you under him during the election of Senator Schall?—A. Yes.

Q. In 1924?—A. Yes.

Q. Did you meet Mr. Schall at any time and have a talk with him during the campaign?—A. Yes.

Q. Do you remember about when it was?—A. During the campaign?

Q. Yes.—A. It was about a month or six weeks before the election.

Q. In the fall?—A. Yes.

Q. And where did this meeting take place?—A. At St. Louis Park.

Q. At your home?—A. No; it was not a meeting; it was the first time that I met him personally.

Q. Were you introduced to him?—A. Yes.

Q. Who introduced you?—A. I believe it was Mr. E. J. Goff.

Q. Mr. Ed Goff?—A. Yes.

Q. Assistant county attorney?—A. Yes; of Hennepin County.

Q. You knew Mr. Jacobs before that?—A. Yes.

Q. Before this introduction had Mr. Jacobs been in to see you?—A. Yes; he had.

Q. About pending cases?—A. Yes.

Q. Did you have a talk there with Mr. Schall at that time?—A. No; only just to meet him and exchange a few words.

Q. As one would when they were introduced?—A. Yes.

Q. Did you subsequently meet him again and have a talk?—A. Yes.

Q. Do you recall when that was?—A. That was some time in the latter part of January or in February of 1925.

Q. 1925?—A. Yes.

Q. What was your position at that time?—A. I was acting divisional chief.

Q. Was there anybody over you at that time?—A. Mr. Yellowly.

Q. That is Mr. Yellowly, the Chicago man, now?—A. Yes; he is in Chicago now.

Q. But so far as Minnesota is concerned, you had charge there?—A. As far as the twelfth division was concerned.

Q. Where did you have this talk with Mr. Schall?—A. At his residence.

Q. How did you happen to go there?

Mr. REES. This occurred in 1925?

The WITNESS. Yes.

Mr. REES. We repeat the objection heretofore made.

Senator NEELY. Let him tell it.

Senator DENEEN. Let him answer. I do not know what it leads to.

By Mr. HUGHES:

Q. How did you happen to go there?

Senator DENEEN. Well, he got there.

By Mr. HUGHES:

Q. I will put it differently. Were you requested to go there by anybody? Do not give the name.—A. I was not requested, but I was advised it would be all right to go there.

Q. Who advised you?—A. That I could not say.

Q. You do not remember who it was?—A. No, sir; it was a friend, though.

Q. It was a friend who advised you?—A. Yes.

Senator GOFF. A friend of yours?

The WITNESS. Yes, sir.

By Mr. HUGHES:

Q. Do you remember who it was?

Senator NEELY. He says he does not remember.

The WITNESS. No, sir; I do not.

Senator DENEEN. It would not make any difference, would it? He got there. He said that he was advised by a friend to go.

By Mr. HUGHES:

Q. Did Senator Schall advise you to go there, or anybody else who you could prove was acting for Senator Schall?

Senator DENEEN. He says that some friend advised him to go. That would mean nothing if the friend was not connected in this case.

The WITNESS. He was not connected with the case.

By Mr. HUGHES:

Q. You had a talk with him there?—A. Yes.

Q. Was that concerning your appointment or your office?—A. Yes; part of it.

Q. Please state what that was.

Mr. REES. That is objected to as incompetent, irrelevant, and immaterial, and it does not bear upon the alleged violation or offenses here. It is permitting inferences here now, at the very most, and it seems to me to be highly unfair to Senator Schall to permit that to be done. This conversation was subsequent, not during the election, but in the year 1925, long after the election was over.

Senator NEELY. Let us see if he can tie it up. Let us give them a chance to see what they can do with it, Mr. Chairman, and get through with this witness.

Senator DENEEN. All right; state what he said.

The WITNESS. If the committee please, I would like to qualify that conversation in a short way.

Senator DENEEN. No; the question is what was said, and do you remember the substance of what was said by you and by him?

The WITNESS. Yes; I do, to some extent. It was largely regarding the possibilities of my getting the permanent appointment as divisional chief in that division.

Senator DENEEN. Can you state what the Senator said and narrate the sum and substance of it?

The WITNESS. The Senator told me he was pleased with my work there and my record, and that I was not to worry about the appointment; that as soon as he came to Washington he would do whatever he could to secure me the permanent appointment. That, boiled down, is the essence of the conversation.

By Mr. HUGHES:

Q. Was there anything said there with reference to political fences being built?—A. Well, only so far as the Senator said that he would like to have friends in the State in office; and I don't know just the exact wording, but something on that order.

Senator NEELY. You would have realized that he and every other man holding public office would have felt that way about it, even if he had not committed himself to that proposition, would you not?

The WITNESS. Yes, sir.

Senator NEELY. In other words, you did not feel that there was any violation of law, or that Senator Schall was violating any law, by wanting his friends instead of his enemies in office, would you?

The WITNESS. No; that was my conclusion.

Mr. HUGHES. I suppose the committee will take judicial notice of that.

Senator DENEEN. The committee may take notice also that sometimes they are mistaken.

By Mr. HUGHES:

Q. That was the substance of your talk, was it?—A. Boiled down, that is what it was.

Senator NEELY. May I ask a question, Mr. Chairman?

Senator DENEEN. Yes.

Senator NEELY. Did Senator Schall at that time or any other time ask you to violate any law that you were supposed to be enforcing in the State of Minnesota?

The WITNESS. He did not.

Senator NEELY. Did he offer you any inducements or make any suggestions to you that you ought to have anybody under you violate the law?

The WITNESS. No, sir; he never did. The only conversation with the Senator along that line was when he said that he would be glad to do what he could to secure my permanent appointment. I assured him that I would be very appreciative of his friendship, and I wanted him to know that I would reciprocate it, and do anything for him so long as it did not call for a violation of my oath of office or duties, and he expressed himself as being very pleased with that attitude, and he would never ask me to.

Q. Did he in fact tell you at that time that his support was based upon the supposition that you would violate or permit his friends to violate, any law?—A. I don't know what the Senator had in his mind, but he did not express himself to me that way.

Q. I am not asking you what he had in his mind, but did he make any statement that would indicate that he was going to support you on the ground that you would permit him or some of his friends to violate the law?—A. No, sir.

Senator NEELY. Do you personally know of Senator Schall having violated the prohibition law?

The WITNESS. No; I do not.

Senator NEELY. Or any other law of the State of Minnesota?

The WITNESS. I do not.

By Mr. HUGHES:

Q. Are you acquainted with Florence Joswich?—A. Yes, sir.

Q. Did you meet her in the scope of your official duties?—A. Yes.

Q. When did you first meet her?—A. It was during the summer of 1925. I do not know what month it was. That is when I first met her directly and personally.

Q. Was she arrested by you?—A. Not by me.

Q. Were you present at the raid that Captain Townsend disclosed here last week?—A. No, sir; I was not.

Q. Did Mr. Jacobs ever talk with you concerning Florence Joswich?

Mr. REES. I make the same objection as last before; Mr. Jacobs talking about somebody. The witness has stated that Mr. Jacobs did not ask him to do anything wrong. This instance happened in 1925, did you say?

The WITNESS. 1925, when I met Florence Joswich, do you mean?

Mr. REES. I did not get the connection of that, there.

The WITNESS. It was in the summer of 1925. Mr. Hughes asked me when I first met Florence Joswich and I said it was in the summer of 1925.

Mr. REES. The gist of the inquiry is, under that, whether Jacobs asked him to do anything wrong at any time for anybody, and he says no; and now the question is, what did he do? Let us take each person and pile it up, here, when it means nothing.

Mr. HUGHES. Miss Florence Joswich means a good deal. We can connect her up directly with Senator Schall, to show that she was in Senator Schall's headquarters, was his stenographer, and that she was also in his own home doing private stenographic work; that Florence Joswich was either the common-law wife or kept woman of Sam Terrin, the most notorious of underworld characters in the city of Minneapolis and in St. Paul, and she was a bootlegger, as Captain Townsend disclosed. She was raided.

Senator NEELY. Who was?

Mr. HUGHES. Her place was raided on St. Peters Street, her's and Terrin's place, in 1924; that she and Jacobs were around with these prohibition agents, around the State director's, trying to get her permit reinstated, and that as a matter of fact when the Government was unable to locate her, they went to Jacobs, Schall's manager, and there she was located, bringing her in to Mr. Kvale's office. As a matter of fact, when she was arrested it was in Schall's office, and she was represented by Mr. Rees, his associate, and she came in asking for Senator Schall. Now, this only goes to the bootlegger side of the case, to the charge with reference to his qualifications to sit as a Senator of the United States.

It seems to me that is admissible. It may be stretching it far as to how a candidate can go, but it seems to me that would be going pretty far, to have a bootlegger in your home and in your headquarters and when she was in trouble out using your efforts to get her permit reinstated.

Senator GOFF. Do you think that an employer is responsible for the moral conduct of his stenographer, if you do not show his connection with it?

Mr. HUGHES. We will show that he is connected with it; that he has been trying to get her a permit; and, as a matter of fact, he did.

Senator GOFF. Will you show that Senator Schall was personally connected with her alleged immoralities?

Mr. HUGHES. Absolutely, Senator, to a mathematical certainty, if I am permitted.

Mr. REES. That is just as truthful as any other statement counsel has made here, and he knows that is false.

Mr. HUGHES. I take exceptions to that remark.

Senator DENEEN. You lawyers will have to be a little more courteous to each other, I think.

(The pending question was read by the stenographer as follows:)

Did Mr. Jacobs ever talk with you concerning Florence Joswich?

The WITNESS. Yes; he did.

By Mr. HUGHES:

Q. What was the conversation? First, as to the time; can you tell me about when it was with reference to the senatorial election of 1924?—A. I can not establish the time, I am sorry to say.

Q. Directing your attention to the fall term of the United States court, the Federal court in Minneapolis, during Judge McGee's lifetime, in 1924, with that in mind, can you fix the time when he talked with you concerning Florence Joswich?—A. No; I can not.

Q. But it was some time in the year 1924?—A. I believe it was.

Q. You believe it was; and at a time when she was under your observation or under your jurisdiction as an officer?—A. Yes.

Q. What was the talk, please?

Mr. REES. The same objection as was made before.

Senator DENEEN. The committee will let that go in subject to your right to strike it out later, with the expectation of expediting matters.

The WITNESS. We had seized a quantity of alcohol from Florence Joswich, which we had stored in our storeroom, and as I recollect it, Mr. Jacobs inquired if there was some legal way of releasing that alcohol so that Florence could use it in connection with her premit, which was still active at that time. I think that was the basis of the conversation I had with him the second time also.

By Mr. HUGHES.

Q. Did he mention Mr. Schall in that conversation?—A. No, sir.

Q. Or refer to him at all?—A. No, sir.

Q. This Florence Joswich, did you know who she was or where she lived there in Minneapolis?—A. Only in a general way, I knew who she was. I knew that she was a permittee.

Q. What is that?—A. I knew that she was a permit holder, but I did not know any more about her than that.

Q. Is Mr. Qvale more familiar with the Joswich matter than you are?—A. I am sure he must be.

Q. Are you acquainted with this Sam Terrin?—A. In about the same way as I am with Florence Joswich.

Q. Do you know what the general reputation of Florence Joswich was there in the fall of 1924?

Mr. REES. That is objected to.

Mr. HUGHES. Just wait until I get through.

Mr. REES. It is objected to as immaterial and as trying to——

Senator DENEEN. The question is overruled.

Mr. HUGHES. The question is overruled?

Senator DENEEN. Yes. In the first place, he just said that Jacobs did not mention Mr. Schall; and in the second place, her reputation, whether good or bad, can not affect Senator Schall. She is not on trial here.

By Mr. HUGHES:

Q. Did you have any talk with Mr. Jacobs during the campaign of 1924, particularly at or about the time of the October term in the United States Federal court, with reference to any bootleggers' cases, so called, that were then pending?—A. Yes.

Mr. REES. We urge the same objection.

Senator DENEEN. It will be admitted subject to your right later to move to exclude it.

By Mr. HUGHES:

Q. Will you please state that conversation—the substance of it? A. Well, usually—I can not just think of any particular conversation. I had a good many of them with Mr. Jacobs. Usually it was in connection with some defendant who was to appear in court to answer to some charges of liquor law violation.

Q. Can you state whether Mr. Schall's name was mentioned or referred to?—A. Occasionally it was.

Q. What would he say with reference to Mr. Schall?—A. Mr. Jacobs's language, of course, was usually about the same.

Q. We want his language. That is what the committee wants?—A. He would come in and say, "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." Things of that kind.

Q. Do you know who he was referring to when he would say "Tom?"—A. I would presume that he was referring to the Senator.

Senator NEELY. I move to strike that out. It would not be fair to Senator Schall.

Senator DENEEN. That answer will be stricken out.

By Mr. HUGHES:

Q. I will ask you, do you know whom he was referring to.

Senator DENEEN. He has answered as to what he knew.

Senator NEELY. Yes; he said that he supposed he meant Senator Schall.

By Mr. HUGHES:

Q. Was anything said in any of these conversations about continuing any cases so that the parties could vote at the election?—A. No, sir; not to me.

Q. You were never at the Schall headquarters, I believe?—A. No, sir.

Q. Did you ever receive any telephone calls during the campaign from Jacobs with reference to cases?—A. No, sir.

Q. Did you make any report to any officer or any person concerning Mr. Jacobs's requests to you concerning cases?

Senator DENEEN. Would that be proper to go into that?

Mr. HUGHES. I think it would be confirmatory and corroborative. We might possibly get the report. We understand that Mr. Harney has a report.

Senator DENEEN. Suppose he had; his report to his superior officer or anybody, do you think that would bind anybody but himself?

Mr. HUGHES. It would be confirmatory. If he made such a report it would show that he was truthful and that what he was stating was so.

Senator DENEEN. Nobody is impeaching him.

Mr. HUGHES. That is true. I thought that it would do no harm, and I offer it for the purpose of confirmation and corroboration.

By Mr. HUGHES:

Q. Mr. Silverman, did you attend the October term of the United States court to any extent?

Senator GOFF. In what year?

Q. (Continuing.) In 1924?—A. Pretty regularly; yes.

Q. Were you there at the calendar call?—A. Some days.

Q. Do you know the name of the judge who was presiding?—A. I think Judge McGee presided over most of the criminal calendar.

Q. He is not living?—A. No.

Q. Were you ever present during any term of court when defendants charged with violations of the liquor law failed to respond?

Mr. REES. That is objected to as immaterial; it is such a field to cover.

Senator DENEEN. That is overruled.

Mr. HUGHES. The question is overruled?

Senator DENEEN. Yes.

Mr. HUGHES. Of course, we could bring records, if the committee wanted them, of that time.

Senator DENEEN. We are not reviewing the attitude of the court.

Mr. HUGHES. My position was this, that many men did not respond when their cases were called, and in many of the instances they were people who had given money into the Schall headquarters and had been told that their cases were fixed and they need not show up, and they did not show up in court, and notwithstanding the assurance of the Schall headquarters the judge and the district attorney and all the prohibition agents were there to proceed with the cases.

Mr. REES. There is no basis for that statement at all.

Mr. HUGHES. There is plenty of basis for it.

Mr. REES. This is one more statement of that same character that counsel has made.

Mr. HUGHES. The court records would show, if I had them here, that there was never such a term known before in Minneapolis, where there was such an enormous amount of bench warrants issued in bootlegger cases. It was a matter of common knowledge and discussion. I can show that by some other witness. Mr. Edgerton, is there anything you want to add?

Mr. EDGERTON. No.

Mr. REES. Just a moment. No cross-examination.

TESTIMONY OF S. B. QVALE

(The witness had heretofore been sworn by Senator Deneen.)

By Mr. HUGHES:

Q. What is your business?—A. I am a banker; in the banking business.

Q. I understand you live at Willmar, Minn.?—A. Yes.

Q. What is your business there?—A. I am in the banking business.

Q. And what is the name of your bank?—A. The Bank of Willmar, Minn.

Q. Do you hold a position in that bank?—A. Yes.

Q. What is your position?—A. President.

Q. You are president of the bank. How many years have you lived in the State of Minnesota?—A. About 43 years.

Q. What political party are you a member of?—A. The Republican Party.

Q. Did you hold any Federal office in the State of Minnesota during the year 1924?—A. Yes.

Q. What was the rank and title of your office?—A. Federal prohibition director of the State of Minnesota.

Q. When did you first take office?—A. The 1st of September, 1921.

Q. How long did you continue in office?—A. Until September 15, 1925.

Q. Were you succeeded by anybody?—A. Yes.

Q. Who succeeded you?—A. General Rhinow. Permit me to explain.

Q. Yes.—A. At the change of administration, there was a reorganization of the prohibition forces at that time.

Q. You had agents under you, of course?—A. Yes.

Q. And you had your offices, as I remember, in the Federal Building?—A. In the Federal Building, Minneapolis, Minn.

Q. You were in the city, were you, during the October term of the Federal court, and a short time prior thereto, in 1924?—A. Yes.

Q. You were acquainted with Judge McGee?—A. Yes.

Q. Do you know a man by the name of A. N. Jacobs?—A. Yes.

Q. How long have you known him?—A. About five years.

Q. Do you recall where or how you first met him?—A. That I can hardly do, because I do not remember just where and how.

Q. Did he visit you at any time in the summer of 1924, or the fall?—A. Yes; he did.

Q. About how often, do you think?—A. Well, that I can hardly say. It was several times. He may have called when I was not in, so that I could not say.

Q. Aside from visiting you, did he ever telephone you?—A. I believe that he did, a few times.

Q. You were familiar at that time with the calendar of the United States court in Minnesota?—A. Yes.

Q. Did you have anything to do, as a part of your duties, with reference to passing on or disposal of cases then pending—in reference to modifying or otherwise disposing of cases then pending?—A. Yes; in conjunction with the United States district attorney's office.

Q. Will you just tell us briefly what that arrangement was?—A. Judge McGee a year or two previous to that made a statement in open court in the city of St. Paul that no one that had been charged with violating the prohibition amendment should plead guilty to any lesser charge than set out in the report or on the complaint, unless such cases had first been taken up with the director of Minnesota, and he agreed to such arrangement in conjunction with the United States district attorney's office.

Q. Referring to the director of Minnesota, that would be yourself?—A. Yes.

Q. So that such a system as that was in force, then, during the fall and summer of 1924?—A. Yes.

Q. In those cases if there were to be any changes, or any leniency was shown, it would have to be taken up in conjunction with you and the district attorney?—A. Yes.

Q. And if I recall, the judge required you to put your recommendations in writing?—A. Yes; he did.

Q. Now I will ask you this. I think you have stated that Mr. Jacobs came to see you several times during that term?—A. Yes, he did. Now, I can not say that he was there often, but he was there a few times.

Q. Did he discuss with you any cases that were then pending before the court?—A. At one particular time only.

Q. Can you fix that time?—A. I can. I can fix the term of court.

Q. You can fix it by the term of court. That would be what term of court?—A. The October term, 1924.

Q. Will you give us that talk, what he said and what you said?

Mr. REES. This is subject to the same objection.

Senator DENEEN. It is subject to the same objection, and to your right to move to strike it out later.

The WITNESS. Shall I answer?

Senator DENEEN. Yes.

The WITNESS. He came in with a list which I believe contained some 14 or 16 names, I am not exactly sure just how many, of those who were defendants before the bar at that time, or who had cases we expected to come up before that term of court, and he asked if I had any objection to have those cases continued until after the election. I answered that that was a matter that he would have to take up with the United States attorney's office, as he was the proper one to make such arrangements with, if he could.

By Mr. HUGHES:

Q. Was there any mention made in that conversation as to why he wanted those cases continued?—A. Yes; I believe he did.

Q. Will you please state what he said?—A. He 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." That is as near as I can remember his conversation.

Q. In these talks was the name of Mr. Schall referred to, either by name or otherwise?—A. That I could not testify to for certain.

Q. Did he tell you who he was representing in these matters, if he said he was representing anybody?—A. He may have stated it, but I can not recall it. I will not say for certain.

Q. Did you know who he referred to?

Mr. REES. This is objected to as calling for a conclusion.

Senator DENEEN. Yes; I think that would be improper. He has said that he can not remember that he made any statement. How can he testify, then, to what he does not know?

Mr. HUGHES. This man was a layman, and I thought Mr. Qvale might know, or explain, how it was that this layman who was not an attorney, was over there asking to have these cases continued.

By Mr. HUGHES:

Q. Did you answer him in regard to his request to have these cases continued? Did you make any reply to that?—A. I replied that he had better see the United States attorney's office about that.

Q. Do you know what the reputation of the late Judge McGee was as to being a fearless and impartial judge?

Mr. REES. I make the same objection.

Senator DENEEN. Yes; that is not proper.

Mr. HUGHES. We set that out in this showing, here.

Senator DENEEN. We take it for granted that all of them are fearless and impartial.

Mr. HUGHES. He was an exceptional one.

Senator DENEEN. I know; but it is not pertinent in this case.

By Mr. HUGHES:

Q. Mr. Qvale, were you acquainted through your official work with a woman by the name of Florence Joswich?—A. Yes; I got to know her.

Q. And when was it that you first got to know her?—A. I believe it was in the summer of 1924.

Q. And how did you come to know her? Will you state that, and explain?—A. The reason I came to know her is because she was cited to appear before me in revocation proceedings at that time, acting upon her permit, as to whether it should be revoked or not.

Q. Did she appear before you?—A. She did.

Q. And prior to her appearance before you, do you know whether her place had been raided by your men in St. Peter Street, in St. Paul?—A. In conjunction with Captain Townsend's men, it was raided.

Q. There was a raid there?—A. Yes.

Q. And when did she appear before you?—A. She appeared before me, I believe, in May, 1924; that is as near as I can recall it.

Q. In May, 1924?—A. Yes; that is the first time.

Q. And did anybody appear there with her at that time?—A. She had attorneys that appeared with her, as all those permittees had when their cases came up. I do not recall who her attorney was.

Q. You say you revoked her permit there in St. Paul?—A. In Minneapolis; yes. Her place of business was in St. Paul, and she appeared at my office; and after deliberation; and we proceeded just as we are proceeding here in matters of that kind; evidence was taken and it was transcribed into longhand.

Q. Do you recall what the facts were, or what her explanation was with reference to her permit?

Senator DENEEN. I do not think that it would be proper to go into that unless there is some connection shown here with the contestee.

Mr. HUGHES. I will strike that question out at this time, and come back to it later.

Senator DENEEN. Yes.

By Mr. HUGHES:

Q. During the month of September, 1924, about the 9th of September, do you recall Mr. Jacobs calling on you about that time with reference to her permit?—A. No; I do not.

Q. Do you recall Mr. Jacobs talking with you about her permit during the year 1924?—A. Yes; he talked about her permit.

Q. What did he say—the substance of it?—A. Well, the substance of it, as near as I can remember, was about along this line: "I hope that you will not be too severe with her. I trust that she will be able to prove that she has not committed any offense that would necessitate your revoking her permit."

Q. In that talk was anything said about Mr. Schall?—A. That I can not recall.

Q. You can not recall?—A. No.

Q. This was during the Schall campaign?—A. It was during the summer and fall of 1924.

Q. Did you see Mr. Jacobs again after that time?—A. I believe that the next time I saw him was when she was cited, or when I issued citation papers for her to appear and show cause why her permit should not be revoked. That is the second revocation proceedings; and I believe I met him on the street.

Q. That is, Mr. Jacobs?—A. Yes; somewheres not so very far from the building. We had tried to get service upon her, but could not locate her. Then I asked him if he knew where Miss Joswich was, and he said that he thought she was living with her brother in Minneapolis, and I then stated to him that we had tried to find her and that we had been unable to locate her, but that she would not be able to evade us very long, so that I said, "If you know where she is, I would like to have you tell her to appear in my office so that we can serve these revocation papers upon her."

Q. Did she appear afterwards?—A. She did.

Q. Did you afterwards receive any communication from Washington with reference to her permit?

Senator DENEEN. What will that lead to, anything pertinent to this case?

Mr. HUGHES. We hope to be able to connect it up and show that through the efforts of Mr. Schall and Andy Rahn this woman secured a permit, and that Mr. Qvale refused even then, on a letter of recommendation, to issue it.

Senator DENEEN. We will let that in, subject to a motion to strike it out later.

The pending question was read by the stenographer as follows:

"Did you afterwards receive any communication from Washington with reference to her permit?"

Mr. REES. Now, we would like to know, by "from Washington," just who he means and how?

Mr. HUGHES. If you will give us a chance to bring it out, we will show you.

Mr. REES. Yes. You said he received information from Washington.

Senator DENEEN. Was the communication in writing?

The WITNESS. Yes, sir.

Senator DENEEN. Would not the writing be the best evidence and only evidence in the matter, unless it is lost?

Mr. HUGHES. I will try to come to that.

By Mr. HUGHES:

Q. What did you do with the communication? Do not state what was in it, but what did you do with it?—A. It was in the files of my office at that time.

Q. In Minneapolis?—A. In Minneapolis.

Q. Do you know whether those files are now in existence?—A. Yes.

Q. Can you in any way identify the communication so that we could find it there in the files or here in Washington, without saying what is in the communication?—A. It is hard to remember just the contents of the communication.

Q. We are not asking for that, Mr. Qvale.—A. No; but I can not——

Q. From whom was it, so that we can get it in that way?—A. It was, I am quite positive, over the signature of the commissioner, R. A. Haines.

Q. R. A. Haines?—A. Yes; the prohibition commissioner at that time.

Q. That is, here in Washington?—A. Here in Washington.

Q. About what was the date of the communication?—A. October or November, I am not sure, but about that time.

Q. What year, 1924?—A. Of the year 1924.

Q. You have not that communication, of course, with you?—A. I have not.

Q. In the absence of the communication would you be able to state what was in it—the substance of it?

Senator DENEEN. I think that that would be improper.

Mr. HUGHES. We will have to have a subpœna duces tecum, then, for some one in Mr. Haines's office.

By Mr. HUGHES:

Q. Did you receive this by United States mail?—A. Yes.

Q. Did you open it yourself?—A. I did not, no.

Q. Did a clerk open it?—A. Yes; the mail clerk opened it.

Q. Did you read the communication?—A. Yes.

Q. After reading the communication, state whether or not you acted upon it, or granted any permit?

Mr. REES. Just a moment. It seems to me that the file will show all of that, completely.

Mr. HUGHES. We would have to ask the committee, then, to subpœna that file from that office.

Senator DENEEN. That matter might be taken up at the close of the testimony to-day.

Mr. HUGHES. That is what I thought.

Senator DENEEN. You can renew that request.

Mr. HUGHES. Of course the witness will not be here, then.

Senator DENEEN. I do not think that it would be necessary for him to be here to identify it. You can do that by the people in the department.

Mr. HUGHES. I presume they would have of course, the orignal or a copy here.

Senator DENEEN. They would have a copy.

Mr. HUGHES. But I wanted to ask what he did after he got the letter.

Senator DENEEN. I do not think that could be pertinent.

Mr. REES. If he did some official act, it seems to me it will be shown by the file.

Senator DENEEN. If he got a letter from some authorities in Washington, what he did regarding that would not affect anybody but himself and the authorities in Washington. That is a matter between them, I suppose.

Mr. HUGHES. Suppose the letter will show that he did not act upon the recommendation?

Senator DENEEN. Suppose they gave him orders to do a thing and he did not do it; what probative force would that have?

Mr. HUGHES. It will show the character of this person, and it will show the influence that secured it, and we expect to follow that up.

Senator DENEEN. That could not bind Senator Schall, it occurs to me, whether or not he followed the orders of a superior officer at Washington. He might have had different views, and he may have been right; but to determine whether his superior officer or he was right would be to go into that case and that is a different matter.

Mr. HUGHES. We propose to show that the influence of Senator Schall was used to have the permit issued in Washington.

Senator DENEEN. That would not show what influence was used, if he did not obey it. He may have acted wisely in sending the question to Washington. He may have acted very wisely, or he may not. That is a difference of opinion. That is not a matter that we have anything to do with. It is not within our province.

Mr. HUGHES. That was the purpose of it.

Senator DENEEN. I think that is so clear that unless the other members of the committee think otherwise, we will go on to the next point.

Mr. HUGHES. May I make the offer?

Senator DENEEN. Yes.

Mr. HUGHES. We offer to show that Mr. Qvale, although Washington recommended that a permit be issued, refused to do so.

The WITNESS. Pardon me a minute.

Senator DENEEN. Also you may let it appear that the document is not here.

Mr. REES. Oh, we will withdraw our objection. It will save time. Let him explain it.

The WITNESS. Mr. Hughes, if you will just pardon me a moment——

Senator DENEEN. Do you withdraw the objection?

Mr. REES. Yes.

Senator DENEEN. Very well; make it short and go right to the point. Now, Mr. Qvale.

The WITNESS. I believe, Mr. Hughes, you are laboring under a little misapprehension as to that. They did not ask me to issue a new permit; they asked me to hold the permit in abeyance, awaiting further investigation. Now, if I am not mistaken, that is the essence of the letter I had from them. And do you wish to know—do you wish me to state about the answer?

By Mr. HUGHES:

Q. What is that?—A. Do you wish me to state to you how I answered that?

Q. Yes.—A. As near as I can remember?

Q. Yes.—A. I answered in this way; that is, as near as I can remember, that "under the existing regulations, Miss Joswich has no legal place of business. For that reason her permit could not be restored; and for the further reason I have been informed that she is unable to get bonds." Now, that is as near as I can remember the answer.

Q. Do you know of a person in St. Paul or Minneapolis by the name of Sam Terrin?—A. I know him; yes.

Q. In your official business, did you learn what his business was?—A. Yes.

Q .What was his business in 1924?

Mr. REES. That is objected to as immaterial; still drawing inferences, and no connection at all. There may be other criminals in the State of Minnesota, but that does not mean that Senator Schall has any connection with them.

Senator DENEEN. What is the point you wish to develop?

Mr. HUGHES. To show that he is a notorious bootlegger, and associated with this woman Joswich in his business; and Miss Joswich was an employee of Senator Schall's, both in his home and in his headquarters.

Senator DENEEN. Well, that is overruled, for the reason that it is not pertinent to the inquiry here.

Mr. HUGHES. I beg your pardon.

Senator DENEEN (continuing). For the reason that it is not pertinent to this inquiry, about the reputation of Mr. Sam Terrin.

Mr. HUGHES. We expect to show that she was in with Terrin in this bootlegging business, and that they raided their place. If the Senators will recall, when she was raided in St. Paul, Mr. Jacobs was there at the time in the place—A. N. Jacobs, Schall's manager—and it is to connect Schall up with the bootleggers. That is the purpose of it; going to the question of his moral fitness to be a Member of this body.

Senator DENEEN. You would not contend that if it should appear that she voted for him, the man is guilty—because a woman under those charges voted for Senator Schall?

Mr. HUGHES. Of course not.

Senator DENEEN. Then, if she chose to go out and make speeches for him, you would not say that that would disqualify Senator Schall, would you?

Mr. HUGHES. Yes; but he is here endeavoring, through this man Jacobs, to get this permit and a recommendation comes from Washington for it; she is at his headquarters; she is in his home; she is there during the campaign and afterwards.

Senator DENEEN. But there is nothing that appears here to show that Mr. Jacobs or she or anybody had anything to do with the letter that came from Washington.

Mr. HUGHES. Not yet.

Senator DENEEN. And there is nothing in the letter from Washington that pertains to the inquiry. There is nothing to show that she was in his home, and it makes no difference—that is, it has no probative force. And it appears that she lost her permit.

Mr. HUGHES. That she was raided in St. Paul as a bootlegger. The evidence shows that.

Senator DENEEN. Well, I say that may be, she was raided; but what probative force has it here? We are not investigating her.

Mr. HUGHES. We go on further. You do not seem to catch the importance of that fact.

Senator DENEEN. Oh, yes.

Mr. HUGHES. Here is a man with a seat in the United States Senate, who is around with this man Jennings and other bootleggers, and we have shown that this Joswich woman ran this alcohol place along with this man Terrin, and we attempt to show what he is, and that she was there, that she was in Schall's headquarters and in his home, and when they could not find her, Schall's manager located her; and that is the purpose of it.

Senator DENEEN. We understand the purpose, and we have ruled that it is not pertinent. You have stated repeatedly that you had some clients of yours who are now in the penitentiary.

Mr. HUGHES. I did.

Senator DENEEN. Now, what fault is there in it, that you associated with a man socially who afterwards turned out to be guilty of something for which he was sent to the penitentiary?

Mr. HUGHES. That is a different thing. I have not any evidence of it, except that in the case of this poor man who was brought up and pleaded guilty. That is not the point.

Senator DENEEN. You do not think that is a proper remark, do you? I think you ought to be sworn if you have any knowledge about this case, and testify. I think that is the proper way to put in evidence.

Mr. HUGHES. I was just replying to what you asked me.

Senator DENEEN. I say I think that is the proper way to put in evidence, is it not?

Mr. HUGHES. I am not offering it as evidence.

Senator DENEEN. All right; proceed.

By Mr. HUGHES:

Q. You heard Captain Townsend relate the facts with reference to this raid there in St. Paul, Mr. Qvale?—A. I may have heard of it, and I may not have heard of it.

Q. Were you present at the raid yourself?—A. No, sir; I was not.

Q. You made some investigation of Florence Joswich?—A. To some extent.

Q. And did you hear any of your agents or others talking about her, as to what her business was?

Mr. REES. I object to that.

Senator DENEEN. You need not answer that. That is not proper.

Mr. HUGHES. It shows her general reputation.

Senator DENEEN. I think it is clearly improper. I have not asked the other members of the committee about it.

Mr. HUGHES. All we want to show by this witness is that her reputation was that of being an underworld character, an associate of this man Samuel Terrin.

Mr. REES. We make the same objection that we made before.

Senator DENEEN. You may proceed.

By Mr. HUGHES:

Q. You stated you knew Judge McGee.—A. Yes.

Q. I will ask you if at any time during the October term of court in 1924 you had occasion to take up the matter of the Schall headquarters bootlegger cases with Judge McGee?—A. Connecting that with the time when Mr. Jacobs called on me with that list, and when I told him to confer with the district attorney's office, the district attorney returned the same day, an hour or two afterwards, with Mr. Jacobs. We had a few minutes' conference in my office at that time, and it was decided——

Mr. REES. Will you please state who was present, so that we will know?

The WITNESS (continuing). The only ones present at that time were Mr. French——

Mr. REES. That is the United States attorney for Minnesota?

The WITNESS (continuing). The United States district attorney for Minnesota, Mr. Jacobs, and myself.

Mr. REES. Yes; all right.

The WITNESS (continuing). It was decided that we should lay the matter before Judge McGee—that request made. It was the first such request ever made of me.

We proceeded to his chambers.

Senator DENEEN. May I inquire at that point, do I understand Jacobs was present at that time?

The WITNESS. He was present in the office. He did not go with us to Judge McGee.

Senator DENEEN. Yes.

The WITNESS. He was present in the office. He was told by Mr. French at that time that he could not do anything for him—that is as near as I can remember—and we proceeded to Judge McGee's; and Mr. French stated the request to him.

Senator DENEEN. Now, would not this all be hearsay?

Mr. HUGHES. I will concede that it is hearsay, but I claim that it is admissible in an investigation of this sort. It would not be justified in any court. I will admit that it is hearsay, but I offer it to show how far the thing had gone. It does go to the matter of knowledge, because we do have a right to show that a thing becomes so notorious that it has become a matter of common knowledge and that they hold conferences over it, and that Senator Schall would be apt to have information and knowledge of it if it was common talk; and that is the purpose of it.

Senator DENEEN. Here is a conversation that you request to lay before the committee that did not occur in the presence of Senator Schall, or Corneaby, or Mr. Jacobs, or anybody mentioned in the case. You can see, obviously, the difficulty that a man would have if he should be confronted with testimony of that kind. He was not there and knew nothing about it.

Mr. HUGHES. I concede all that.

Senator DENEEN. These are third parties. It is hearsay, and it is the second degree of hearsay. How does it apply to Senator Schall?

Mr. HUGHES. It shows how serious and notorious it became. It became so notorious that they had a conference there, and we have tried to show that the late Judge McGee was called in, and we propose to show after the conference what he did. That is the pur-

pose. I will admit that in a court it might not be proper, but it would seem that in this sort of a proceeding it would be. That is the purpose of it.

Senator DENEEN. I do not think that is proper, and you can see the reason for the law If it were pertinent here you would throw upon Senator Schall the necessity of going out and bringing in the district attorney, Mr. French, and talking with him; and matters occurring that way, nobody would be safe, if he had to meet conversations that occurred outside of his presence or the presence of his agents; and the committee bears in mind, too, what he has stated about these cases. A lot of this testimony has been let in subject to being stricken out later. You remember the conversation about that. There was nothing in that conversation except they wanted to pass these cases over until after election so that these people could vote before they went to the penitentiary. That was the way the witness expressed it.

Mr. HUGHES. Yes; they told one set of stories to Mr. Qvale, and another to the others. To the bootleggers and Mr. Townsend and the late Judge McGee they told one set of stories, and when they were getting the money their whole plan was that they would lead them to believe their cases were fixed, which they could not do. Then they went there, and what they were trying to do was to prevent this stampede before election, and they could not do it. It came to the ears of the Federal officers, and bench warrants were issued, and that is what Jacobs was after; if he could only keep this from coming up until after election, he did not care. That is the purpose of showing this conference.

Senator DENEEN. I think that is too remote. If I understand your offer is that you are trying to show that somebody told some falsehoods to some bootleggers, and they told the truth to the Government agents that were to prosecute the cases. I think you would have to make it more direct than that to justify the testimony.

Mr. HUGHES. And also we offer it for the further purpose of showing knowledge, that it became a matter of common talk, that it became notorious and was talked over in the community in Minneapolis; and I think it got into one of the public presses there, and was discussed everywhere, and finally Mr. Qvale asked for this conference with Judge McGee; and to show the following proceedings and to show that Judge McGee took this action.

Senator DENEEN. I understood you to say that nothing was fixed that somebody lied to the bootleggers, and that was all there was to it; and that the people were worked up because the bootleggers had been deceived.

Mr. HUGHES. The people were not worked up, I don't think, because of that. The people were worked up over the methods used and followed at Schall headquarters to obtain funds.

Senator DENEEN. I do not understand that it was discussed as to the bootleggers in the presence of Senator Schall or Mr. Jacobs, as to whether or not they were deceived?

The WITNESS. No, sir.

Senator DENEEN. It is clear in my mind. We will overrule it. You need not answer the question. The conversation with Mr. French and Judge McGee is overruled.

Excuse me a moment. Mr. Silverman wants to know whether he can go; whether he can be excused.

Mr. HUGHES. Yes. We would like Mr. Corneaby to remain.

By Mr. HUGHES:

Q. Prior to this interview which we are not permitted to have you disclose, I understand you to say that Mr. Jacobs was there?—A. He was there. He came alone first, and afterwards Jacobs came in.

Q. Mr. French came with Jacobs?—A. Yes; Mr. French came with Jacobs.

Q. Did you have any talk there with French in front of Jacobs about the matter we were discussing?—A. Not except a very few words. He came with this list, and he simply stated, "I understand that Mr. Jacobs has shown you this list;" and I said, "Yes; he did; and I sent him to you."

Q. What did Mr. French reply, in front of Jacobs?—A. Mr. French's reply at that time was along this line: "Some of these are second offenders," and I do not know whether I made that statement or he did, I will not say; but he also said, I know, that Judge McGee would not consider continuing any cases of second offenders, even if he should of others.

Q. Do you know about how long this was before election?—A. Perhaps about three weeks before election.

Q. Three weeks before?—A. Yes; it was during the October term of court, and I think that opened the second Tuesday in October.

Q. Do you remember the day of the week this conference was? Do you remember that now, or is it too far back?—A. No; I do not recall that. In my mind, it was on a Friday, but I am not sure.

Q. Do you recall what Judge McGee did with reference to the calendar after this conference?

Mr. REES. That is objected to as not the best evidence.

Mr. HUGHES. I will concede your objection would be good on that; that would be the best evidence, the calendar; but if he was present, it seems to me in an investigation of this kind he could tell what took place.

Senator DENEEN. I do not see how it could be pertinent what Judge McGee did, or what followed later.

Mr. HUGHES. He did what he always did.

Senator DENEEN. Yes; but how does that relate to this case?

Mr. HUGHES. It would, because some cases had been continued. I was in court myself when Judge McGee called the calendar, and then it was that the rain of bench warrants followed on this bootlegger calendar; which is confirmatory of the fact of this conspiracy or this plan under which Jacobs and others went out and got this money from bootleggers. That is the theory of it.

Senator DENEEN. I think it is entirely improper to go into the records of the court. How can what the court did affect anybody here?

By Mr. HUGHES:

Q. Did you yourself personally ever have a talk with Judge McGee concerning the fixing of the so-called bootlegger cases in the Schall headquarters? Answer that yes or no.

Mr. REES. Even that is objected to as clearly hearsay—what he may have talked with somebody else. It is double hearsay, indeed.

Mr. HUGHES. I will concede that it is hearsay.

Senator DENEEN. And also it assumes things that are not proved by the evidence. The very thing that is in controversy is assumed. You need not answer the question. It is clearly hearsay, and it is assuming things of which there is no evidence at all.

By Mr. HUGHES:

Q. Did you ever personally visit the Schall headquarters in the West Hotel?—A. Never.

Mr. HUGHES. Mr. Edgerton, is there anything that you want to ask?

Mr. EDGERTON. No.

Senator DENEEN. You may cross-examine.

Mr. REES. I would like to have this letter marked.

(The letter referred to was here marked by the stenographer, "Contestee's Exhibit No. 1.")

By Mr. REES:

Q. Mr. Qvale, I show you contestee's Exhibit No. 1.—A. (After examination.) Yes, sir.

Q. Have you seen that document before?—A. I have.

Q. Was that a letter written by you to Senator E. E. Smith, one of the counsel for the contestee, relating to this matter?—A. Yes, sir.

Q. And it was written on January——A. January 10, according to this date.

Q. Nineteen——A. 1926.

Q. Have you read it far enough to know that there is nothing there except what you yourself wrote in regard to this matter?—A. This is my own letter.

Q. That letter states the truth with respect to the matter under inquiry here?—A. As near as I remember it; yes, sir.

Q. And you still adhere to the fact that that letter is true?—A. Yes, to the best of my knowledge.

Mr. REES. The letter is offered in evidence.

(The letter was here examined by counsel for the contestant.)

Mr. HUGHES. I do not see where that is pertinent to his testimony.

Mr. REES. It goes to a lack of good faith in this contestant in making this statement to this committee as to what this witness would swear to. It is a complete refutation, we claim, of good faith in stating to the committee what this witness would swear to. I ask to read it in the record.

Mr. HUGHES. I object to it as incompetent, no proper foundation having been laid. It is not claimed at all that they are surprised by Mr. Qvale's testimony. If I introduced it, that letter might be admissible; but as it stands now, I do not see where it is admissible as impeaching Mr. Kvale in any way here as a witness, and if the letter is admitted, I then want to have Senator Johnson present here. He was present when this conversation took place.

Mr. EDGERTON. May I ask this witness one question?

Senator DENEEN. Yes.

By Mr. EDGERTON:

Q. Mr. Qvale, did I ever see you about your testimony in any way, shape, or manner?—A. No, sir.

Mr. EDGERTON. So that when you say "counsel," do you refer to me, Mr. Rees?

Mr. REES. I suppose—I do not want to refer to anything except the fact that somebody under your name, with your name behind it, has laid before this committee statements that are false as to what this witness would swear to.

Mr. HUGHES. I deny that.

Mr. EDGERTON. Do you not know, Mr. Rees, that I stated in the letter to the committee, and a copy of which you got, that I had never seen Mr. Qvale?

Senator DENEEN. Yes; that is right.

Mr. EDGERTON. Now, be fair.

Mr. REES. I say I am only speaking to the fact that deception has been used here and falsehood has been used here at the very root of this investigation.

Mr. EDGERTON. I take exception to that.

Mr. REES. I wish to read this letter.

Mr. HUGHES. I will take the responsibility of that statement to the committee with reference to Mr. Qvale, and I do not see where it is material here. They do not claim that they are surprised.

Senator DENEEN. What is the letter?

Mr. REES. It bears entirely upon the question of what counsel has stated that this witness would swear to, that tended to sustain their case and to charge heinous crimes to Senator Schall; and this letter is a complete refutation, I claim, of the statement made in the affidavit.

Senator DENEEN. Why not read the letter and offer it?

Mr. REES. I wish to.

Senator DENEEN. Then they may object to it.

Mr. HUGHES. If it is going to be read and you put it in the press, I will withdraw my objection, but I want to reserve the right to bring Senator Johnson here if it becomes pertinent. He was present. And then, further, I wish to reserve the right to further examine Mr. Qvale.

Mr. REES. The letter is as follows:

CONTESTEE'S EXHIBIT NO. 1

[Bank of Willmar, resources $1,600,000]

WILLMAR, MINN., *January 10, 1926.*

Hon. E. E. SMITH,
625 N. T. Life Building, Minneapolis, Minn.

MY DEAR MR. SMITH: Your letter, together with copy of statement of Mr. Magnus Johnson's counsel giving an outline of purported testimony that I will give in the Johnson case, just received, and it being Sunday I am acting as my own stenographer and machine operator, so for that reason you will have to excuse the many mistakes that you find. It is rather an astounding document, and only a small portion of its contents is in line with the conversation had with me, or statements made by me. Am generally quite guarded in making statements pertaining to matters of this nature, knowing very well how easy it is for some to misconstrue and distort facts.

A couple of days or so before Christmas I was called up by Mr. Johnson over the long-distance telephone and asked by him if it was not possible for me to come to Minneapolis the following Saturday (December 26, 1925). I told him that I had appointments at home and could not get away until after January 4, 1926. He called me again week before last and asked me if I would be home in the afternoon of that day, as he would like to come up and see me. He and his counsel, Mr. Hughes, came. During the conversation I repeatedly told them that my testimony would not help their case any, as I had had no conversation or talk whatever with Senator Schall in regard to any of the matters that they

brought up. In case I should be called to testify, which I hope not, my testimony will be along the line of conversation had between Mr. Johnson, Mr. Hughes, and myself, and about as follows:

About the second week in October, 1924, Mr. Jacobs appeared at my office in the Federal Building, Minneapolis, Minn., stating that he had a list containing names of some of the defendants whose cases would come up for trial at that term of court, and he wondered if it was not possible to get their cases continued until after election, for the reason that most of them would plead guilty, but that they desired to vote before they went to jail. I told him that that was a matter for the United States attorney's office to settle, and that he better see Mr. French about it. Sometime thereafter on the same day Mr. French and Mr. Jacobs came into the office, and we had a few minutes' talk about the same matter. Mr. Jacobs was told that no promise of continuing the cases could be made, but that same would be brought to the attention of Judge McGee. Mr. French and I proceeded immediately to Judge McGee's chamber, where the request made for continuing the cases was called to his attention. Judge McGee stated that he did not want the election or politics to interfere with court matters; that he did not care in what order the cases came on the calendar, but that when the cases were called the defendants would have to be present in court.

I will not testify that he asked me to use my influence to nolle or modify the cases. I will not testify that I recalled a dozen such cases; will not testify that Mr. Jacobs stated that he represented Senator Schall; will not testify that Mr. Jacobs called and stated that Senator Schall wanted Miss Josowitsch's permit restored; will not testify that Sam Terrin was located in the same building and a dealer in barbers' supplies; will not testify that I received letter from Washington recommending that Miss Josowitsch be granted a permit after same had been revoked by me. Will state that Washington recommended that the permit be restored pending further investigation, and that it could not be restored owing to the fact that she had no legal place of business, such as required by the regulations.

Mr. Harney's name was not mentioned by me, nor was there anything said about a copy of the investigation proceedings being turned over to the Hon. Lafayette French, jr.

The matter pertaining to Judge McGee's attempted impersonation was brought up by Messrs. Johnson and Hughes, and I simply stated that I had heard such rumors before.

All matters contained in the statement submitted by Mr. Hughes was brought up by Messrs. Hughes and Johnson, and I made casual answers only.

Will be in Minneapolis next Wednesday forenoon at about 10.30 o'clock.

Yours truly,

S. B. QVALE.

Senator DENEEN. Do you want to be heard on the admissibility of that letter?

Mr. HUGHES. Yes; and I want to examine him after they get through.

Senator DENEEN. What I meant was whether you wanted to argue on the admissibility of it.

Mr. HUGHES. Oh, they have read it now, and it has gone to the press. Let it go now. I do not care about it.

Senator DENEEN. Of course, you will have a right to examine on the redirect examination.

By Mr. REES:

Q. Do you wish to modify this letter in any particular at this time, Mr. Qvale?—A. I think that letter agrees with the evidence that I have given. I do not think that it differs materially from the evidence I have given here.

Q. We think so; but it goes just a little further. That is all.

Senator DENEEN. Do you wish to ask anything further?

Mr. REES. No, sir.

Senator DENEEN. All right; proceed, Mr. Hughes.

By Mr. HUGHES:

Q. Have you the letter that Ed Smith sent you?

Mr. EDGERTON. While he is examining that letter, let this go into the record, what I said to the committee about the witnesses that I personally saw.

Senator DENEEN. Yes.

Mr. HUGHES. I will take the responsibility of the interview with Mr. Qvale.

Mr. EDGERTON. In view of what Mr. Rees said, I want this to go into the record.

Mr. REES. Might I state that we understand from the letter that Mr. Edgerton was not present at the interview with this witness, and that all was stated to the committee.

Senator DENEEN Yes; I think your letter so states, Mr. Edgerton.

Mr. EDGERTON. That I had no personal interview with Mr. Qvale.

Senator DENEEN. Will you read that letter?

Mr. EDGERTON. Very well; it reads as follows:

JANUARY 2, 1926.

Hon. CHARLES S. DENEEN,
United States Senate, Washington, D. C.

DEAR SENATOR: We inclose you herewith statement of what we expect the six witnesses to testify to. We realize our duty to the committee and as members of the legal profession, and we state to the committee we have personally interviewed Captain Townsend, Morris Silvermann, P. A. Cosgrove, and Mr. Hughes, has personally interviewed Mr. Qvale. As to the other two witnesses, our understanding of their testimony is gathered from sources we consider reliable, and we therefore believe that they will testify as outlined in the statements herewith inclosed.

Now, you received a copy of that letter, did you not, Mr. Rees?

Mr. REES. Yes.

Mr. EDGERTON. And receipted for it?

Mr. SMITH. Oh, yes; we do not question that at all.

By Mr. HUGHES:

Q. Have you a copy of the letter that Ed Smith sent you?—A. I have not kept a copy of it, but it was a very short letter.

Mr. SMITH. I have a copy of it, Mr. Hughes [handing letter to Mr. Hughes].

By Mr. HUGHES:

Q. How long had you known Mr. Smith before receiving this letter?—A. Mr. Smith perhaps I have not seen for 10 years. I am not very well acquainted with Mr. Smith. I do not believe that I have seen him for 10 years.

Q. When were you in Washington last before you came here?—A. Last August.

Q. We were there about how long, Senator Johnson and I?—A. A couple of hours.

Q. Two hours?—A. Yes.

Q. We talked along, there?—A. Yes; I think it must have been a couple of hours or an hour and a half.

Q. No records were taken?—A. No.

Q. Just general talk?—A. General talk.

Q. Senator Johnson talked quite a little, too?—A. Yes; he talked more than you did.

Q. Yes; he talked more than I did.—A. Yes.

Q. And we had quite a long talk, and some of it was quite confidential, you recall?—A. Perhaps not necessarily.

Q. You would not care to go into it here, nor I would not. That is true, is it not?—A. Yes.

Q. It was a gentleman's agreement, and there were some things in that talk you would not care to go into?—A. Yes.

Q. And you desire to respect that, and I do.—A. Yes.

Q. Were you a supporter of Mr. Schall in the campaign?

Mr. REES. I object to that as immaterial.

Mr. HUGHES. I will withdraw it.

By Mr. HUGHES:

Q. There was some talk there about somebody impersonating Judge McGee?—A. Yes; that was referred to.

Q. And I believe you said some person had claimed that they called up some bootleggers and stated that this was Judge McGee. Just what was that talk, do you remember, about that?—A. I believe that you first made the statement that you understood they had called up, and I told you yes; that I had heard all about that.

Q. Where he said that he had come to the phone in pajamas, to answer the phone?—A. Yes.

Q. And you said that when Judge McGee was told about that, he laughed, and said that he never wore pajamas.—A. Yes; that was mentioned.

Q. We were talking about that.—A. Yes.

Q. You know, as a matter of fact, that Sam Terrin was located in the same building with Miss Joswich?—A. No; I have never known that.

Q. You knew that he was a bootlegger?—A. I knew that he was a bootlegger, but I never heard that he was in the same building.

Q. You knew that he had some connection with Miss Joswich?—A. Yes.

Q. That is true?—A. Yes.

Q. And that he claimed to deal in barbers' supplies?—A. That he——

Q. Yes.—A. No, sir.

Q. What did he claim to deal in?—A. Miss Joswich claimed to deal in barbers' supplies, and not Terrin. She had a permit to manufacture barbers' supplies, ointments and hair tonics, and so on.

Q. And there was some connection between her and Terrin?—A. Yes; that was spoken of.

Q. And you knew that?

Senator DENEEN. That is hearsay.

Mr. HUGHES. I know, but Senator, here is a letter——

Senator DENEEN. I do not see that that letter reflects upon you.

Mr. HUGHES. I do not think it does.

The WITNESS. No; that does not reflect upon you in any manner. That was not the purpose of it.

Senator DENEEN. It simply states what he will not testify to.

By Mr. HUGHES:

Q. You are satisfied that Terrin and Miss Joswich had some connection? You heard it in your business?—A. From hearsay, yes.

Mr. REES. I object. I object to any gossip between these men about some outside parties as wholly immaterial.

Mr. HUGHES. Here you are bringing in this letter about Miss Joswich.

Mr. REES. Not at all. We brought in the letter——

Mr. HUGHES. To have it printed in the Tribune. That is one thing I know George Caswell will print, this letter.

Mr. REES. It would be very strange if he would not.

Mr. HUGHES. There was some talk about Miss Joswich in that talk?

The WITNESS. She was mentioned in that talk the same as I have testified to.

Q. If you recall, in that talk the matter of her permit was discussed?—A. Yes.

Q. And the matter of your not recommending the permit for her was discussed. You told us about that. Will you just try to tell us what that talk was?—A. I believe you are getting the wrong instance. In the first place, her permit was revoked twice by me. That has not been brought out here. It was in the summer of 1924 and in the fall of 1924, and that refers to the matter that you state, that I refused to grant her a permit. I could not grant her a permit. Her permit was a collector's permit, that is a special permit to use alcohol and that is not a director's permit.

Q. I perhaps have misunderstood you as to the conversation, but what you did say to me was that you refused to recommend or act upon the recommendation.—A. From Washington.

Q. Or the suggestion from Washington.—A. Yes; I could not do it. She did not have a legal place of business, and I could not act upon the suggestion.

Q. As explained in your direct testimony?—A. Yes.

Mr. HUGHES. This is as a matter of personal privilege.

By Mr. HUGHES:

Q. Do you recall, was not Mr. Harney's name mentioned in this matter?—A. No; I do not believe it was mentioned. The intelligence office was mentioned.

Q. The intelligence office. Just what was said with reference to the intelligence office?—A. I made this statement, I believe. Now, you can correct me if I am not correct, here.

Q. No; I know that is all right.—A. When I heard there was quite a commotion with reference to that term of court, I wanted to find out whether my office in any way was connected or used in connection with these rumors which were brought out, so I went down to Mr. J. F. Cruze, who had charge of the field force and the agents who are doing the enforcement work, and I stated to him—that was Mr. Cruze—"I wish that you would call up or try to get in connection with the intelligence office in St. Paul, or some of the men near, and find out whether we are in any way connected with this rumor that you hear in connection with this term of court; and he came and told me afterwards that he had found one of the men and had reported to them, and that they were investigating.

Q. That is, we did talk about the investigation of the intelligence office?—A. Yes.

Q. Apparently I was confused, and used Mr. Harney's name instead of the intelligence office. May I ask you what was Mr. Harney's position at that time?—A. He was in that department.

Q. In the intelligence department?—A. Yes; he was.

Q. So that if I had used the words "intelligence department" instead of using Mr. Harney's name, that would have been all right?—A. That is correct.

Q. I want to understand this matter, and to clear my own name. You do not recollect whether there was anything said about that report being given to Mr. French?—A. No, sir; I would not know that. They would not tell me whether they had or not. They had no right to state that to me.

Q. Did you ever see the report?—A. No; I did not.

Q. We have already discussed about the impersonation of Judge McGee. You will recall that in our talk with you about Mr. Jacobs, there was some mention made of Senator Schall's name.—A. You asked me this, "Was Schall's name mentioned by Jacobs to you when he talked about Miss Joswich?" I did state I did not remember. It might have been, but I could not recall it. Now, that is the way; and I think, Mr. Hughes, that if you will recall it, that is the way it was.

Q. That is your remembrance?—A. That is my remembrance.

Q. And you are not sure whether the name was mentioned or not?—A. No; I could not say.

Q. But I think you did state to me in the conversation that you were satisfied that he was acting there for Senator Schall?—A. No; I did not say that.

Q. What did you say? I want to clear that up.—A. You asked me several times, "Did he not use the name 'Tom'?" and I did say that he might have used the name. I am quite confident of that. But both you and Mr. Johnson talked quite a bit. Mr. Johnson most, and it would not be surprising that you would not remember everything, because you know you did not take it down until you got away.

Q. No. Do you recall whether you expressed the number of cases that he talked to you about; if you stop and think now, we were talking that day about the number of cases that he spoke to you about?—A. At no time did he state more than 14 or 16.

Q. Fourteen or sixteen?—A. Yes; at that time.

Q. That would be more than a dozen. They have criticized me for saying a dozen. That would be 14 or 16 cases?—A. Yes; that is on that list.

Q. Fourteen or sixteen cases that were discussed. I think that is all, Mr. Qvale.

Senator DENEEN. Call your next witness.

Mr. REES. You have asked for this letter, now, and you have looked it over [indicating letter]?

Mr. HUGHES. Yes.

By Mr. REES:

Q. Will you look at that letter, Mr. Qvale [handing letter to the witness]? Is that your letter?—A. Yes, sir; that is a copy of a letter I received.

(The letter referred to was here marked "Contestee's Exhibit No. 2," and is here printed in full in the record, as follows:)

CONTESTEE'S EXHIBIT NO. 2

MINNEAPOLIS, MINN., *January 8, 1926.*

Hon. S. B. QVALE,
Willmar, Minn.

DEAR MR. QVALE: I herewith inclose copy of statement of the testimony which Magnus Johnson's counsel say you will give and which they have filed with the committee and served on me. It is Mr. Hughes's version of his conversation with you.

I will be greatly obliged if you will examine the statement and let me know if it is true.

Very truly yours,

E. E. SMITH.

Senator DENEEN. Is there anything further with this witness?

Mr. REES. No, sir.

Mr. EDGERTON. I will be glad now to discuss the admissibility of that evidence.

Senator DENEEN. If you have another witness we could hear him. How long would it take?

(At this point, by agreement of counsel for both sides, the witness S. B. Qvale was excused from further attendance by the committee.)

TESTIMONY OF ANDREW SZYSKO—Resumed

By Mr. HUGHES:

Q. I believe you testified the other day, Mr. Szysko, about going to the Schall headquarters sometime in September of 1924?—A. Yes.

Q. State whether you met a man there by the name of Jacobs.—A. Yes.

Q. Did you have any talk there with Mr. Jacobs?—A. Yes.

Q. Do you remember about when that was?—A. On September 27, 1924.

Q. That was in the West Hotel that you have described previously?—A. Yes.

Q. Will you please relate the talk, what you said and what Mr. Jacobs said?

Mr. REES. I make the same objection as I made last before to this man's conversation with Jacobs when it was excluded. There have been no additional facts.

Senator DENEEN. Was Mr. Schall there?

Mr. HUGHES. No; we do not claim that he was there. This is along the same line as the other testimony where he paid the money, that took place.

Senator DENEEN. Do you connect Mr. Schall with this?

Mr. HUGHES. We claim this money was paid to Mr. Jacobs while he was the manager for Mr. Schall.

Senator DENEEN. Will you show by any testimony that Senator Schall received any money from Mr. Jacobs?

Mr. HUGHES. Only by circumstantial evidence.

Senator DENEEN. Do you claim that you will be able to show by any kind of evidence, circumstantial or direct, that Senator Schall received any of this money?

Mr. HUGHES. No; we will show so far as we can that it was used for this campaign; that this Harpoon paper was paid for by Jacobs.

Senator DENEEN. Can you show that this man's money went into the publication of the Harpoon?

Mr. HUGHES. Yes.

Senator DENEEN. This specific money?

Mr. HUGHES. Jacobs paid for it.

Senator DENEEN. I know; Jacobs may have paid for it, but if this gentleman paid in money for some purpose and the money was used for certain purposes, such as are charged here, that is one thing; but if you mean to show that he paid Mr. Jacobs some money, and then stop there, and then that Jacobs afterwards paid certain expenses, do you not think you should reverse it and show the connection?

Mr. HUGHES. It was for campaign expenses, and it is already shown that Mr. Schall said to Mr. Cosgrove, "See Jacobs on the finances."

Senator DENEEN. Is it proposed to show that Jacobs paid any campaign expenses, by this witness?

Mr. HUGHES. No; all this witness will testify to is that he paid his money in.

Senator DENEEN. You would have to show the connection of Jacobs, and also either the authority or the knowledge or the approval by Senator Schall, would you not?

Mr. HUGHES. We have shown that Senator Schall told Mr. Cosgrove that Jacobs and Rahn had charge of financing the campaign.

Senator DENEEN. No; you have not offered any testimony on that.

Mr. HUGHES. Why, yes, Senator; the testimony, as I recall, shows that.

Senator DENEEN. All the testimony that you read is that at page 201. The quotation was, "Jake and Andy are looking after my affairs."

Mr. HUGHES. I think it either has been shown or——

Senator DENEEN. I say that is the substance of it. As it came in I made a mental note of it, and that is why I asked you to read it in that connection; and then we have all read it this afternoon. I suggest that you show the connection of Mr. Jacobs with these things, first. Have you not any testimony on that at all?

Mr. HUGHES. We have testimony on that. We will show——

Senator DENEEN. The connection between Jacobs and Senator Schall. Have you any witness who will testify to that, first? You can hold this witness here, and do that first

Mr. HUGHES. Yes; I can do that. We have a witness here.

Senator DENEEN. I think you should do that, and then we will have the legal evidence.

(At this point the witness Szysko was temporarily withdrawn from the stand.)

TESTIMONY OF W. F. CORNEABY—Resumed

By Mr. HUGHES:

Q. I want to ask Mr. Corneaby just one question. You spoke of a Mr. Williamson that you stopped with?—A. Yes.

Q. Do you remember his first name?—A. William J. Williamson.

Q. William J. Williamson?—A. Yes.

Q. You said he was in the Arlington Building?—A. Yes; he works for the Alien Property Custodian.

Q. He is not in the Veterans' Bureau?—A. No, sir.

Q. Did you know him back in Minnesota?—A. For 15 years.

Q. Where did he live down there?—A. Northeast Minneapolis, with me.

Q. Did you have any communication with him before coming here?—A. Almost constantly, through a friend of mine, Mr. George Riley. He knew where he was located at.

Q. And did Mr. Riley accompany you here to Washington?—A. No sir; he did not.

Q. Have you ever been to Washington before?—A. Yes, sir.

Q. And been to Mr. Williamson's office?—A. He was not here at the time I was here before.

Q. When did he come?—A. I think it is only six or seven months ago. Mr. Williamson has always been my friend, in Minneapolis, Mr. Hughes.

Mr. HUGHES. That is all, for the present.

Senator DENEEN. Now, shall we go ahead, or adjourn, in this matter? Do you think you will really make much headway by going ahead for 20 minutes?

Mr. Cosgrove has just said to me while you were talking, there, that he has briefed up his testimony so that he will get through sooner.

Mr. HUGHES. I am glad he has done that.

Senator DENEEN. We will adjourn,then, until 2 o'clock to-morrow.

(Thereupon, at 5.20 o'clock p. m., the subcommittee adjourned until to-morrow, Tuesday, February 2, 1926, at 2 o'clock p. m.)

SENATOR FROM MINNESOTA

TUESDAY, FEBRUARY 2, 1926

UNITED STATES SENATE,
SUBCOMMITTEE OF THE
COMMITTEE ON PRIVILEGES AND ELECTIONS,
Washington, D. C.

The subcommittee met, pursuant to adjournment, at 2 o'clock p. m., in the room of the Committee on Privileges and Elections, Capitol Building, Senator Charles S. Deneen presiding.

Present: Senators Deneen (chairman) and Goff.

Present also: Senator Thomas D. Schall, and Messrs. Rees and Smith, counsel for Senator Schall; and Messrs. Hughes and Edgerton, representing the contestant.

Senator DENEEN. The committee will come to order.

Mr. HUGHES. Does the committee desire to hear any more testimony, or just argument?

Senator DENEEN. If you are prepared to make the argument now on that branch of the case, we will hear you. It is just as well to do it now, I suppose, as later. If you have another man here who wants to leave the city this afternoon, you might put him on. We would meet your convenience in that.

Mr. HUGHES. I am not aware of any witness who wants to go away.

Senator DENEEN. I supposed that you had reached that stage in your case where you wanted to offer a statement made by Senator Schall.

Mr. HUGHES.We have no witness on that.

Senator DENEEN. Then we ought to hear the argument on that statute. Who will take the affirmative on that?

Mr. EDGERTON. Mr. Rees objected to the testimony.

Senator DENEEN. Very well, Mr. Rees.

Mr. REES. The committee, of course, fixes the order as they choose. If they call upon us we will state our objections to receiving the testimony with respect to violations of the State law of Minnesota.

So that I may not spend too much time on any one phase of it, we have always contended and still urge that if this is not a contest there is nothing before this committee; nothing before the Senate. Senator Johnson states the scope of this proceeding, and he states it as a contest.

Now, it has transpired that Senator Johnson is a mere protestant. That there is no contest. We feel, then, that there is nothing before the Senate to be considered.

Another thought; the statute of Minnesota, section 601, which was read here, provides that a contest—any contest—for violation of the Minnesota statute must be begun within 30 days after the

certificate of election has been issued. Now, if there is any question about when that certificate of election was issued, we wish this committee at this time to get it before you, as it is a matter of record here. I do not want to state evidence here, but the fact is that if it was here it would show that it was issued about two months before this proceeding was started in the United States Senate. We claim that the 30-day provision in the statute is, in effect, a statute of limitations. We claim that the 30-day period mentioned in the statute within which contest proceedings, or any proceedings, as to the validity of the election of Senator Schall applies; if it were not begun within 30 days from the date of the certificate of election it is barred in effect, the same as the statute of limitations would bar it. That is, the law says that Senator Johnson must begin such a proceeding within 30 days. The legislature that made that law, that had the right to make the law, so made it, and that is the law so far as Minnesota is concerned, and so far as the violation of the law of Minnesota is concerned—that it must be begun within the period of 30 days, so that there can be no question about it; and if the chairman of this committee would now have some one bring that certificate of election here it would save referring to it later.

Mr. HUGHES. We do not make any point on that.

Senator DENEEN. It will be shown. We will have a certified copy of it here.

Mr. REES. You will see that if it is before you.

Senator DENEEN. Yes.

Mr. REES. Now, another point. The Legislature of Minnesota provided that for any violation of the statute, if a contest or a proceeding to unseat Senator Schall or to invalidate his election is begun, that law prescribes just how it shall be begun; and unfortunately for the contestant, the law did not provide and does not provide that any proceedings at all can be begun in the United States Senate, but on the other hand it specifically provides that such a proceeding must be brought in the district court of the State of Minnesota in the district where the contestee resides. Those provisions are just as mandatory as language can make them. They are not directory in any sense.

There is no claim that any such proceeding was begun, and I suppose it will be admitted by counsel, for the sake of this argument, in testing the validity of the law, that no such proceeding was begun.

Mr. HUGHES. That is admitted.

Mr. REES. That is admitted. Now, then, we get around to a question that we have mentioned before, and just briefly, that the corpus delicti of no offense or none of the offenses alleged in the petition, has been shown.

Senator DENEEN. Mr. Rees, we wanted the briefs purely on that statute of Minnesota and its application here.

Mr. REES. Very well; then I shall pass from that.

This is another provision in the brief that I prepared the Minnesota corrupt practices act having been passed before the constitutional amendment requiring United States Senators to be elected by the people, it does not and can not apply to a United States Senator I suppose counsel will admit that this corrupt practices act was passed in 1912. Have you examined it, gentlemen, and do you so admit?

Mr. EDGERTON. That is correct; yes.

Mr. REES. 1912?

Mr. EDGERTON. But it specifically refers to Senators.

Mr. REES. The time is the only thing here. It was passed in 1912. At the time that law was passed United States Senators were elected under the Constitution of the United States, by the legislatures of the several States; and of course, in Minnesota. The constitutional amendment passed authorizing provisions to be made for elections in the States, was passed in 1913. When the law was passed in Minnesota, it referred to State officials. Of course, they had no reference—could have no reference—except possibly prospectively, to United States Senators. It could have no reference to a prospective amendment to the Constitution of the United States being passed and ratified in the several States. It was farthest from their minds when this law was passed.

The question is whether the language is of such a character that under these circumstances it would and does prospectively govern the office of United States Senator. We claim that it does not and can not apply, could not apply, to the United States Senator for the reason that United States Senators were created by the Constitution of the United States, which provides in Article 1, in section 3, that each State shall have two United States Senators. Then the Constitution—that is to say, the Federal Government—created United States Senators. Is it possible that the State of Minnesota can control the United States? It certainly can by analogy, if it can control a United States Senator. Can the Legislature of Minnesota control a presidential election? Not at all. Neither can it control a United States Senator, in any essential that belongs to him. He is not their agent. He is the agent of the United States Government.

To test that point, just a moment—and I am not going to talk long—one Senator, say, in the State of New York, if our opponents' position is sound, might be limited in his expenses, in the amount of money that he might expend in his election, to $500, we will say, and in the State of Wyoming, we will say, the legislature might not place any limit upon his expenses. An inequality between these two agents of the Government that stand upon precisely the same footing would be effected. The inequality of governmental operation on those two Senators is perfectly apparent. It needs no argument or elucidation. So we think the law of Minnesota never intended to control the Government of the United States in this particular, and that it does not control it.

Another point. The Minnesota corrupt practices act is in conflict with the provisions of the Federal corrupt practices act, which specifically determined what Senators may expend and what they do. The Minnesota corrupt practices act determines something else, if it applies to United States Senators, and the Federal act provides that this act shall be in effect all over the United States.

On statutory limitation law of this case I read from Leading Cases:

> The act of Congress limits the operation of State statutes on the subject by superseding all inconsistent State legislation.

We claim that the Federal corrupt practices act supersedes a previous corrupt practices act in Minnestoa; if it ever had any application that it has been superseded by the Federal corrupt practices act.

This same principle, we think, has been before Congress frequently, in bankruptcy matters, for instance; the Federal bankruptcy statute supersedes all State laws, insolvency laws, or bankruptcy laws.

The Federal employers' liability act supersedes all State employers' liability acts.

Congress having attempted to define the metes and bounds of the rights of Senators in running for the office, and their expenditures, that is final and conclusive, and it superseded all State acts.

Again:

> The acts of Congress passed in the exercise of the enumerative powers are the supreme law of the land.

We hold that that principle applies here; that the authority of Congress to pass such a law and to apply it to Senators in Minnesota means that the Senators of Minnesota are not controlled by the State laws. If this is not true in principle, the Federal corrupt practices act is of no force or effect whenever a legislature of any State chooses to say so.

The Federal corrupt practices act limits Senators to $10,000 in an election, but provides that many expenditures in addition to the $10,000 may be made, such as personal expenses of the candidate, stationery, postage, writing or printing, distributing letters, posters, etc.

One of the largest expenditures made by some candidates for the Senate is in the printing of posters—the printing and putting out of posters. It is conceivable that a Senator might spend a large sum of money in printing posters alone. All of that, and all of those different items, are in addition to the $10,000.

Again, what does this section really mean, this section of the Constitution of the United States, when it says:

> Each House shall be the judge of the election returns and qualifications of its Members.

Note the language:

> Each House shall be the judge of the election returns and qualifications of its own Members.

Does that mean that each House shall be the judge of elections according to the laws of Minnesota; that the Legislature of Minnesota can control this House in the exercise of this constitutional prerogative? Surely reason means little if that construction could be made.

In this connection I ask the committee in determining this matter to bear in mind that there is not one bit of evidence before this committee——

Senator DENEEN. We understand that. I do not think that applies on this particular statute. On the case it might, later.

Mr. REES. The only point is just to call attention. Perhaps it does not, but there is not a word of evidence that any law at all has been violated.

Senator DENEEN. That would be in the closing argument, rather than upon this statute.

Mr. REES. Now, of course, we insist that we must be tried within the issues made in this petition. We think that is only logical and that it is fair. After many amendments, after many helps and

suggestions, they have finally fixed the issue, and the issue is a conspiracy, and we think that there is no evidence of that.

Senator DENEEN. Which of you gentlemen will speak, or will both of you reply?

Mr. HUGHES. Mr. Edgerton will address the committee.

Senator DENEEN. Very well, Mr. Edgerton.

Mr. EDGERTON. I am just as prepared as I ever will be to present our side of these questions; but, as I understood it, we objected to the receiving in evidence of this copy of the Harpoon, and——

Senator DENEEN. And the statement recited in your petition about what he said on the platform. That is all you need to address yourself to.

Mr. EDGERTON. Yes; then as I understand it, both questions are incorporated in this.

Senator DENEEN. I think so. We can have it discussed now. This is merely arguing now on the admissibility of the evidence.

Mr. EDGERTON. Yes; but what I briefed up a little on was upon the admissibility here of the matter in the Harpoon, but I will touch on the other question also.

Senator DENEEN. Very well.

Mr. EDGERTON. In paragraph 6 on page 14 of the petition it reads as follows:

> That the said Thomas D. Schall a few days before the said general election held on the 4th day of November, 1924, did at an expense and cost of $5,000, procure the publication of 451,000 copies of a paper called The Minnesota Harpoon—

It says "paper;" it does not say "newspaper"—

> and said Thomas D. Schall shortly before said election fraudulently and unlawfully caused said Harpoon to be unlawfully mailed as second-class matter in the United States post office at Minneapolis, Minn., to many thousands of voters all over the State of Minnesota. On the front page of said Harpoon—

and you have seen it here in large letters.

Senator DENEEN. Yes; it is here.

Mr. EDGERTON (reading):

> On the front page of said Harpoon the said Schall in large headlines used the following language:
> "How Magnus farmed the farmers, a true story of the equity scandal. A résumé of Senator Johnson's connection with the cooperative exchange, its graft and corruption substantiated by court records and documentary proof. The amazing story of Senator Johnson's defense of the grafters who successfully fleeced the farmers of the Northwest—the secret dummy sales scheme and Magnus's open defiance of the law in publicly legalizing the crime of 'bucket shopping.'"

Now, there is a matter that is published broadcast, published and circulated. The evidence shows here that Mr. Schall was a party to causing that to be done. It does not seem to me that under the statute there is any defense. He violated the law of Minnesota. But whether he did or not, the very act itself is wrong, for any man to seek to obtain the office in that way or to defeat another candidate for office in that way.

This question has been up before the Supreme Court of Minnesota a number of times, and the Minnesota Supreme Court have said time and time again that where statements are published in that way that are deliberate, serious, and material, it comes within the statute.

The only excuse that they have got for that, as I understand it from the objection made, is that it was published in a newspaper. Anyone can see from looking at that paper that it is only a political pamphlet issued for the purpose of extolling Schall. There is his picture, big and small; and in that paper it says that he favors free speech for America; and if you would go on and look at the other articles in his paper, you would think that he was the greatest and biggest man that ever lived since the world began. The other part of the paper, or pamphlet, is directed to detracting from Magnus Johnson in every way, belittling him, accusing him of grafting and of framing the farmers of Minnesota, and of defending men charged with crime, and those things are considered by the Supreme Court of Minnesota as serious, as deliberate, as material, and as disqualifying a man from office.

It seems to me that it is no answer to say that because this is a contest or dispute over the office of United States Senator, is not answering the question, because the very acts that we complain as having been violated are the acts or things that are not passed upon by the act of Congress, and the State of Minnesota has passed upon them, has enacted statutes, and there is no statute in conflict with these statutes upon the Federal statute book.

This very act was up before the attorney general of Minnesota, as to whether it applied to Federal offices, such as Senators and Congressmen, and he gave his opinion in construing the law and he claimed that those Minnesota statutes were not in conflict with the Federal statute, and therefore were applicable to United States Senators and to Members of Congress, and more than that, in answer to what the counsel has suggested, it was true that during the contemplation of the Federal amendment to the Constitution electing Senators by direct vote of the people instead of by the legislature, the law was passed, but the statutes of Minnesota, the revised statutes of Minnesota for the next year, 1913, incorporated this as one of the statutes of Minnesota, and it becomes a law of Minnesota.

We are not trying in any way to claim that any Federal statute that has been passed upon this question is not in full force or effect. Of course we can not look for precedents in the contests that have been had in the United States Senate until the last few years, but in the House of Representatives there was a contest, in the case of Lynch *v.* Chambers, Forty-seventh Congress, and in that contest they held as follows:

> It may be stated generally that the House of Representatives will, as a general rule, follow the interpretation given under the statute law regulating a congressional election by the Supreme Court of the State, where decisions have been continued and uniform—

as I claim they are in Minnesota—

> in such a way and for such time as to become the final fixed and settled law of the State.

In the Federal corrupt practices act (see Barnes Federal Code, 1919, p. 61) it is provided as follows:

> This act shall not be construed to annul or vitiate the laws of any State not directly in conflict herewith, relating to the nomination or election of candidates for the offices herein named, or to exempt any such candidates from complying with such State laws.

Senator GOFF. Your position is merely, then, as I gather it from what you have said, that there is a law in the State of Minnesota which says that in a political contest no candidate shall resort to either ridicule or slander?

Mr. EDGERTON. Yes.

Senator GOFF. Or vituperation.

Mr. EDGERTON. Yes.

Senator GOFF. Or libel if it is printed; and that that applies to anyone who is running for office under the laws of Minnesota, and that that is a statute of Minnesota separate and distinct from the statutes of the United States?

Mr. EDGERTON. Yes.

Senator GOFF. The same as the statute of assault and battery would be distinct and separate from any law of the United States?

Mr. EDGERTON. Yes.

Senator GOFF. And you are, therefore, charging that that law was violated?

Mr. EDGERTON. Yes.

Senator GOFF. It was violated in sending this written paper through the mails?

Mr. EDGERTON. Yes.

Senator GOFF. If what was in the paper had been said upon the platform, you would have considered it an oral and not a written violation of the statute to which you refer?

Mr. EDGERTON. Yes.

Senator GOFF. As I understand, Mr. Rees contends that if this law was violated there was a limitation of 30 days in which a prosecution under the law could be commenced; is that correct?

Mr. EDGERTON. That is correct; a criminal action.

Mr. HUGHES. No; a civil action, if they wanted to contest.

Mr. EDGERTON. Oh, yes; if they wanted to contest. I do not mean to admit that they had to prosecute criminally within 30 days; but if they inaugurated a contest in a State or county office, they had to do it within that number of days.

Senator GOFF. That is in order to prohibit the candidate having the greater number of votes from receiving the certificate and taking his seat?

Mr. EDGERTON. Yes.

Senator GOFF. Admittedly, that was not done?

Mr. EDGERTON. No.

Senator GOFF. Your argument, then, is directed to the fact that while the contestant waived the right to restrict or prohibit the issuing of the certificate, nevertheless the person who received the certificate is morally affected by the violation of that statute; is that your attitude?

Mr. EDGERTON. Yes, sir.

Senator GOFF. I just wanted to see if I understood it.

Mr. EDGERTON. Yes, sir; now that makes it clear.

Senator GOFF. I just wanted to see that I got the line of demarcation.

Mr. EDGERTON. Yes; there is no question that we could not decide in Minnesota, the courts in Minnesota could not decide at any time, whether Mr. Schall was entitled to a seat in the United States Senate

or not. The United States Senate is the sole judge of the qualification of its Members. It is the only body that can oust a man from its body. No court can interfere with the authority of the United States Senate. There is no need of taking up time on that, I take it; with that saving clause in the Federal statute, that I called the attention of the committee to, that it shall not interfere with a State statute where the Federal statute does not pass upon the question. The attorney general of Minnesota, as I said, has held——

Senator DENEEN. What page is that on in the opinion of the attorney general?

Mr. EDGERTON. It is on page 136 of the laws of Minnesota. He bases that on a clause in the Federal statute.

(At this point the subcommittee stood in recess for 30 minutes, the members going upon the floor of the Senate to vote.)

Mr. EDGERTON. Let me emphasize, again, when the corrupt practices act was first passed by Congress it stated as follows; and let me repeat, so that I may make myself clear. [Reading:]

> This act shall not be construed to annul or vitiate the laws of any State not directly in conflict herewith relating to the nomination or election of candidates for the offices herein named or to exempt any such candidates from complying with such State laws.

That was passed in 1919; or, anyway, it is in Barnes's Code of that year, and I think that was the year when there was an amendment to the act, which had the same saving clause in the statute. My position is that for the purposes of this contest the laws of Minnesota relating to the corrupt practices act are the laws of Congress so far as the offices of Senator and Representative are concerned, because there is no conflict with the laws of Minnesota that we have under consideration by the laws of Congress; and so we claim we are in the rule, and the opinion of the attorney general of Minnesota.

If there was a violation of the corrupt practices act of Minnesota, then we claim that we are clearly within the rule as laid down by the Supreme Court of Minnesota in numerous cases, and those decisions are uniform.

Senator DENEEN. You have those citations in your brief, have you not? You can submit them later, if you have not.

Mr. EDGERTON. I was going to say that statute and the decision were in the Congressional Record. That was incorporated in a letter that I sent you. I can give you that again.

Senator DENEEN. I will look it up.

Mr. EDGERTON. Coming now to the act of the Legislature of Minnesota that I first want to call you attention to section 573 found on page 138 of the compilation which you have, it reads as follows:

> SEC. 573. Campaign literature must bear name of author. Any person or committee who shall publish, issue, or circulate, or cause to be published, issued, or circulated, otherwise than in a newspaper, as provided in section 2 (568) of this act, any literature or any publication tending to influence voting at any primary or election which fails to bear on the face thereof the name and address of the author, the name and address of the candidate in whose behalf the same is published, issued, or circulated, and the name and address of any other person or committee causing the same to be published, issued, or circulated, and any person, firm, corporation, or committee who shall knowingly make or publish or cause to be published, any false statement in relation to any candidate or proposition to be voted upon, which statement is intended to or tends to affect any voting at any

primary or election, shall be guilty of a misdemeanor; provided nothing herein contained shall be construed as modifying or repealing any of the provisions of section 370, Revised Laws, 1905 (621). (′ 12 c. 3 par. 7.)

Coming now to the section of the law referred to, 568, it reads as follows:

SEC. 568. Designation of political advertisements in newspapers—Publisher to file statement with secretary of state.—No publisher of a newspaper, periodical, or magazine shall insert either in the advertising columns of such newspaper, magazine, or periodical, or elsewhere therein any matter paid or to be paid for which is intended or tends to influence directly or indirectly any voting at any primary or general election unless at the head of said matter is printed in pica capital letters the words "Paid advertisement," and unless there is also a statement at the head of said matter of the amount paid or to be paid therefor, the name and address of the candidate in whose behalf the matter is inserted, and of any other person, if any, authorizing the publication and the name of the author thereof. No publisher of any newspaper, periodical, or magazine published within this State shall insert therein either in the advertising column of such newspaper, magazine, periodical, or elsewhere therein, any matter whatsoever of a political nature, or any political editorial relative to a candidate for any public office, unless the publisher thereof shall file in the office of the secretary of state of this State within six months before the holding of any primary or general election, or within 10 days after the calling of and before the holding of any special election, a sworn statement which shall contain the names of the owners of such paper, and if such paper be a corporation, the names and addresses of the owners of the shares of stock of such corporation. (′ 12 c. 3, par. 2.)

Then it goes on and provides in the next section for a statement to be filed with the county auditor, and it says:

SEC. 569. Publisher's statement to be filed with county auditor.—Every candidate and every member of any personal campaign or party committee, who shall enter in his own name or in the name of any other person, own any financial interest in any newspaper or periodical, circulating in part or in whole in Minnesota, shall, before such newspaper or periodical shall print any matter otherwise than as is provided in section 2 (568), which is intended or tends to influence, directly or indirectly, any voting at any election or primary in this State, file in the office of the auditor of the county in which he resides a verified declaration, stating definitely the newspaper or periodical in which or over which he has such financial interest or control, and the exact nature and extent of such interest or control. The editor, manager, or other person controlling the publication of any such newspaper or article, who shall print or cause to be printed any such matter contrary to the provisions of this act, prior to the filing of such verified declaration from any person required by this section to file such declaration, shall be deemed guilty of a violation hereof. (′ 12 c. 3, par. 3.)

I claim that right on the face of it this exhibit which we have offered in evidence shows that it does not comply with the Minnesota statute to exempt it from the provisions of the law which I contend for. It does not state that the article is paid; it does not state the amount paid or who is the author of it; and that is deliberately, on the eve of election, sent by thousands all over the State of Minnesota. No candidate running for office can meet a thing of that kind. It is not possible. Any of you gentlemen, if you were attacked in that way would find it impossible to meet it on the eve of election. And so I claim that in the first place it is a violation of the statutes of Minnesota, sending that out, and because it is a violation of the statute, by the saving clause in the Federal law, and no Federal law to the contrary, it is law of the United States, and prohibitive.

Judge Cooley, in his work on constitutional limitations, has said that a law of this kind should be rigidly enforced; that it was a good law; that it protected the purity of elections, and going practically to this effect, that it gave a man a right to assume that he would not

be attacked in this way without a chance to defend himself, at least. Now, so much for that.

The Supreme Court of Minnesota believes in this law and believes in the rigid enforcement of it. The first case construing the act is that of Saari *v.* Gleason (126 Minn. 370), and the court there said:

> These provisions made very clear the legislative intent to give the right to contest an election on the ground of violation by a successful candidate of the corrupt practices act, although there may not have been any criminal prosecution or conviction. The act provides two remedies—one by criminal prosecution and conviction and a supplemental judgment of ouster, and the other by more summary and expeditious means of an election contest.

I do not think that in Minnesota there has been any criminal prosecution. I think the question has arisen right along on civil contests of elections.

The next case was the case of Olson *v.* Billberg (129 Minn. 160). Miss Olson contested Billberg's election on the ground that the latter had violated section 573, because he had published a circular attacking Miss Olson's qualifications for office and had by inuendo attacked her moral character. The court held as follows:

> The statute prohibits any person from knowingly publishing any false statement in relation to any candidate * * * which statement is intended to or tends to affect any voting at any primary or election. A false statement made by plain insinuation is as reprehensible as if made directly and is equally within the condemnation of the statue. If the language used would naturally tend to induce a belief that the candidate had been guilty of disreputable conduct or practices and was intended to create such belief and the fact insinuated be not true the author can not evade the law by framing his statement so as to avoid a direct assertion.

In the case of Hawley *v.* Wallace (137 Minn. 183), where the facts were as follows:

In the election of 1916 Alderman Hawley was a candidate for reelection, his opponent was James F. Wallace. During the campaign a pamphlet entitled "An Alderman with Clutch Trouble" had been published and circulated by a Mr. Moody, a nephew of Mr. Wallace. The pamphlet contained a number of changes against Alderman Hawley as to his official conduct as alderman. It was shown at the time that Wallace was familiar with the contents of the pamphlet, although he denied having anything to do with the circulation of it. The court held that Wallace was not entitled to the office because of having given his sanction to the circulation of this false and defamatory pamphlet. The court said:

> The statute prohibits the publication of any false statement in relation to a candidate which is intended to affect voting at any election or tends to do so.

In the case of Flaten *v.* Kvale (146 Minn. 463), in a primary contest between Kvale and Volstead, Mr. Kvale was charged with sending a circular which reads as follows:

> Mr. Volstead's sneering allusion to my having preached on "The miracle of the five loaves and two small fishes," I consider entirely out of place in a statement of political principles. If, as I understand, Mr. Volstead is a pronounced atheist and opposed to the Bible, that is his affair, I have no quarrel with him on that score. Neither do I feel that I owe Mr. Volstead or any living mortal an apology for my faith in God and my adherence to the principles and precepts of the Nazarene.

The court held in the above case:

One purpose of the corrupt practices act is to prevent a candidate from obtaining nomination or election to office by employing false statements or any corrupt means to influence voters during a campaign. The act operates upon those guilty of its violation. Its purpose is to exclude all violation of its provisions.

Therefore, we say that the Supreme Curt of Minnesota has made it plain that the language employed in the Harpoon is deliberate, serious, and material, and it is apparent from the examinaton of the Harpoon that it is simply devoted in extolling the greatness of Thomas D. Schall, by language and by pictures, and in belittling Magnus Johnson by characters and reprehensible statements, and we submit, based upon the facts, the statutes and the decisions cited that there is no valid objection to receiving the copy of the Harpoon in evidence; and that would apply to the testimony of the various witnesses upon the statements made upon the stump.

If there is any question the committee would like to ask me, I would be glad to have them ask.

Senator DENEEN. Have you any questions, Senator?

Senator GOFF. No; I have not.

Senator DENEEN. I was running through the election laws as to the application of this matter to Senators. What section is that in? I wanted to mark it in my copy.

Mr. EDGERTON. I have not looked at that lately, but I thought we were both agreed on that.

Senator DENEEN. Counsel can mark it later.

Now the next point is, What is your position on this statute? Assuming that it applies to Senators, assuming that proceedings are not started within the time specified in the statute.

Mr. EDGERTON. I do not think that would make any more difference here than in the State courts. The State courts do not say that is necessary. The law says you have your choice of remedies. You can proceed criminally or you can proceed by contest, and in the first case in Minnesota that was ruled. It does not insist upon your proceeding criminally. It says you have your choice.

Senator DENEEN. In civil proceedings can you declare an office vacant after election?

Mr. EDGERTON. Oh, yes.

Senator DENEEN. That is, a State office?

Mr. EDGERTON. Yes.

Senator DENEEN. And you contend that it applies likewise to a Federal office?

Mr. EDGERTON. Yes; I do. If there was any statute either in the United States or in Minnesota to the contrary, of course I would not contend for it.

Senator GOFF. Can the judgment in the civil action which you would commence subsequent to the election, declare the office vacant if the certificate of election had been issued?

Mr. EDGERTON. Yes; it was announced in one of these decisions here—supplemental judgment.

Senator GOFF. Then this statute is a combination of libel and quo warranto, all in one?

Mr. EDGERTON. Yes; it is, and it has been upheld right along, so that it is uniformly held so by the decisions in Minnesota. If it was just one case I would not contend for it here; but all the decisions of Minnesota have made it a uniform rule.

Senator DENEEN. Do you contend, then, that the Senate is limited by the statute of Minnesota, and that if an issue were created here purely as to whether or not a false statement was made and established, the Senate would follow the statute of Minnesota and declare the office vacant?

Mr. EDGERTON. I would say this, that the Senate would have to follow the State law, where the Federal statute makes the law of Minnesota its law, if the fact was proven, and oust a man, or——

Senator DENEEN. But do you contend that the Senate should be bound by the law of Minnesota and the procedure, and try the issue as if it were a court in Minnesota trying the issue under the statute of Minnesota?

Mr. EDGERTON. No; you are the sole judge. You have not got to follow any court. But what I do contend for is this, that it should influence you as any other decision should.

Mr. EDGERTON. My idea is that you should give it the same force that you would if there was a Federal statute of like import. You would not give it any force if it was in conflict with the Federal statute; but I take it from this saving clause in the law, that you should give it the same force that you would if it was a Federal statute. That is my interpretation of it.

Senator DENEEN. Then will you go to the extent of saying that if a majority here was 100,000, let us say for argument, and you could establish by proper evidence that a misstatement was made or that a false statement was made, that majority of 100,000 should be wiped out and the office should be declared vacant?

Mr. EDGERTON. Of course in this case outside of Hennepin County in the State of Minnesota, Magnus Johnson had a number of thousand majority; but it was wiped out where these people were.

Senator DENEEN. That would not make any difference in the supposititious case.

Mr. EDGERTON. Yes.

Senator DENEEN. Would you say that the majority by which a candidate was elected who received the certificate, would be eliminated in the minds of the Senators, and that they would confine their inquiry solely to whether if this statement was made by the successful candidate?

Mr. EDGERTON. Of course we know what the purpose of these statements was. We know in our own minds that they were issued for a purpose; that they would not have been used except that they thought that by doing that they would accomplish the purpose. It seems to me it is a question of conscience with the Senators. If they feel that under all the circumstances when this evidence, whatever it is, is in, that Senator Schall should retain his seat, that he was really entitled to it, and there is no legal or moral objection to it, we have got to submit, that is all there is to it.

Senator DENEEN. I was asking whether you were placing it on legal or moral grounds?

Mr. EDGERTON. On both.

Senator DENEEN. I think we have heard both sides. Let us go to the question, unless you desire to answer.

Mr. REES. Just one word, if I may be permitted. It seems to me that an examination of the Federal statutes will show that upon the issues that we are trying to settle now, there is a direct conflict, and

that the Federal statute is in force. The conflict is just as I have pointed out, that eventually a Senator may spend so much money in his election, and in addition to that, he may have printed matter, lithography and posting and all that, in addition, and that that is the law that really controls, and that that part of the law is in strict conflict with the law that counsel thinks is in force in Minnesota. That nationally the Federal statutes must govern here, and that there is a conflict. I have not the Federal statute here, but an examination of the two statutes, the sections governing expenses and things of that character, will show that they are in direct conflict.

Mr. EDGERTON. May I just make one observation?

Senator DENEEN. Yes.

Mr. EDGERTON. The only thing that there might be any conflict about would be the amount of money that should be expended, and for that very reason Minnesota did not say anything about that for Senators and Representatives. Congress fixes that.

Mr. REES. You make no claim, then, that Senator Schall exceeded the amount provided by the Minnesota statute?

Mr. EDGERTON. No; by Federal statute. That is what we claim.

Mr. REES. That he exceeded the amount by Federal statute?

Mr. EDGERTON. Yes.

Mr. REES. All right; I see.

Mr. EDGERTON. We claim that there is no Federal statute in conflict with this Minnesota statute. We have not been able to find it.

Mr. REES. If you will permit me to make just one observation——

Senator DENEEN. Yes.

Mr. REES. We insist that as long as the State of Minnesota could not now entertain this contest because it is barred, if the law is to be observed by the Senate in one particular it ought to be observed in the particular that it is barred at this time.

Senator DENEEN. Is there anything further on this matter?

Mr. EDGERTON. Nothing further.

Senator DENEEN. Who is the witness who was on the stand?

Mr. EDGERTON. Do I understand that the Harpoon has been admitted in evidence?

Senator DENEEN. We have had a consultation while you have been arguing in the last few minutes. Senator Neely will not be here until Thursday or Friday. We do not care to have you delay matters until he comes back. We thought that the more expeditious way would be to let it go in to-day subject to the right of counsel to move that it be stricken out, and for the committee to rule on it later after consulting with Senator Neely.

TESTIMONY OF PETER A. COSGROVE—Resumed

Senator DENEEN. As I understand, Mr. Cosgrove briefed his testimony the other day, and he can go right to the point, now.

Mr. HUGHES. Yes; I understand so.

By Mr. HUGHES:

Q. Did you have any talks with Mr. Schall concerning Jacobs, or Jacobs's connection with the campaign, other than you have related?—A. I did.

Q. Where and when?—A. I had one about five weeks before the primary, which I have not testified to before.

Q. And whereabouts was this conversation?—A. In Mr. Schall's office.

Q. Anybody present?—A. I think Mr. Schall and I were there. We usually discussed this matter, the two of us.

Q. Go ahead and relate what the conversation was.

Mr. REES. Is this five weeks before the primary?

Senator DENEEN. Five weeks before the primary.

Mr. REES. We object to that as immaterial.

Senator DENEEN. What is the purpose of offering that item of evidence?

Mr. HUGHES. It is proposed to establish his connection with Mr. Jacobs.

Senator DENEEN. Under the pleadings here the matter relating to the election is the only matter in issue, is it not? What was done in the election is the issue.

Mr. HUGHES. It goes to the probative force of showing Mr. Schall's relation and that Mr. Jacobs was his agent; that way back at this time there was a close connection between them.

Senator DENEEN. Assuming for the sake of argument that Jacobs managed his campaign at the primary, do you think that can be proven here to show that he managed his campaign also at the election?

Mr. HUGHES. It might be a pretty strong assumption, along with the fact that Mr. Jacobs was there at the headquarters in the campaign. That is the reason it is offered.

Senator GOFF. You would not assert, would you, that conversations which had taken place between Senator Schall and his campaign manager in the primary would have any probative value in the election? I can not see what relevancy the conversations that they had had in the primary would have as bearing upon the question in the election contest.

Mr. HUGHES. This is showing the close connection between Mr. Schall and Jacobs, who we claim was a collector for Schall.

Senator GOFF. You could not show any closer connection than to show that he had managed his campaign in the primary. That is all you are trying to do.

Senator DENEEN. It might be just like one chosen to solicit funds for the campaign. Under the primary law there is no limitation. Under the election law there is a limitation of $10,000. Assuming you could show that some one collected more than $10,000 for the primary, would that bear on the election?

Mr. HUGHES. No, except to show the close connection, showing that he held him out and spoke of him as managing his finances. It is also to be followed by a subsequent conversation with Mr. Cosgrove in the election. This is to be corroborative of what is to be told later.

Senator DENEEN. I overrule that, and limit the conversations to those relating to the election.

By Mr. HUGHES:

Q. Did you have any talk other than you have related with Mr. Schall after he was nominated in the campaign of 1924?—A. Yes.

Q. Where did you have this talk with him?—A. At Mr. Schall's house.

Q. At his house?—A. Yes.

Q. In Minneapolis?—A. Yes; 2828 Portland Avenue, Minneapolis, Minn.

Q. Can you fix the time—as near as you can?—A. It would be sometime along toward the 20th of September.

Q. Of what year?—A. 1924.

Q. Please go ahead and relate the conversation.—A. I went to Mr. Schall's house——

Mr. REES. We object to it as incompetent, irrelevant, immaterial, and also upon the grounds heretofore urged, that the corpus delicti or that no evidence of any kind of conspiracy or otherwise has been offered, no evidence of it, and that this is corroboration.

Senator DENEEN. This testimony is all being admitted subject to the right to strike out after we consult with Senator Neely.

Mr. HUGHES. Is the question sustained, and may he answer?

Senator DENEEN. Yes.

A. I called at Mr. Schall's house and told him that I was looking after the country newspapers, write-ups for him and against him, as we talked about earlier, and that Mr. Herman Rowe—that Mr. Jacobs had written a letter to Mr. Herman Rowe asking him to reimburse me for my expenses, and that Mr. Herman Rowe had refused to do so.

Mr. Schall said, "Pete, I am busted wide open so far as money is concerned. Can't Jacobs pay you?"

Mr. REES. We can not hear the witness very well.

The WITNESS. I have a severe cold.

Mr. REES. I do not want to annoy you, but I just wanted you to know that we do not hear you.

The WITNESS (continuing). Mr. Schall said, "I am busted wide open so far as money is concerned. Can't Jake do anything for you?" I said, "No." He says, "He is out of money, too. Well, go and see Andy. Jake and Andy have charge of my campaign."

By Mr. HUGHES:

Q. You fixed that time as about when?—A. Oh, it was some time the last part of September or the first part of October. The last time, I rather think, it was somewhere, I should say, between the 15th and the 25th of September. It was not later than the 25th of September.

Q. Did you have any other talks with Mr. Schall during the campaign; that is to say, after his nomination?—A. I have related all the talks.

Q. You have related all the talks?—A. I say you have got all of it.

Q. That is what I wanted to find out. Were you associated in this campaign in any way?—A. It was in a very modest way. 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 he did, after several weeks, contrive to pay me $28—Mr. Jacobs.

Q. You identified this exhibit, contestant's Exhibit No. 2, last week, whatever it is [indicating copy of the Harpoon]. I will ask you if you had any talk with Mr. Arthur Jacobs about that exhibit or the contents of it, say?—A. I did.

Q. Was that before or after the exhibit was published?—A. I had one before and one after.

Q. Where did you have the talk with Mr. Jacobs before the exhibit was issued?—A. In the headquarters at 572 and 574—the Schall headquarters, 572 and 574, West Hotel.

Q. What was the talk?

Mr. REES. The same objection.

Senator DENEEN. And the same ruling; admitted subject to striking out.

By Mr. HUGHES:

Q. You may relate the talk.—A. I had been in and out quite frequently during the first part of September.

Senator DENEEN. Get to the conversation.

The WITNESS (continuing). Well, I had seen Mr. J. M. Anderson there, and I said to Mr. Jacobs, "What is Mr. J. M. Anderson doing here?" I said, "He is writing it." He said—I quote him—"Well, he is not 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."

Q. Jacobs said that?—A. Yes; Anderson giving him the facts. That is the subject of the conversation.

Another day he was in there, and we were passing out through the outer room.

Mr. REES. About what time, if you could recall?

The WITNESS. Just about the time the paper had come off the press.

By Mr. HUGHES:

Q. When you say "the paper," what do you mean?—A. I mean that sheet.

Q. Exhibit 2?—A. Exhibit 2, the Harpoon, had come off the press.

Q. Can you fix the date by referring to the exhibit?—A. I can not in any other way, because I was not interested.

Q. Was this during the election of 1924?—A. Yes; and the first edition of the fall Harpoon. And Mr. Jacobs said to me, "Have you seen the Harpoon?" I said, "No." He 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." That is all.

Q. Where was this conversation?—A. That conversation was in 572 in the West Hotel.

Q. You were familiar, were you, with those headquarters there?—A. Very familiar; yes.

Q. And did you see any copies of the Harpoon there at that time?—A. Oh, yes; there was a great big pile that high [indicating] from the floor up.

Q. As high as this table?—A. Yes; just about that high.

Q. Would you estimate how many that was?—A. I would not estimate it at all. I was not interested in the Harpoon at that time.

Q. Do you know what was in that Harpoon?—A. I do not. I took one home but I did not even read it.

Q. With reference to the headquarters, can you in a very brief way describe that headquarters as to whether there were pictures there of Mr. Schall?—A. There were pictures of Mr. Schall, in red ink, and they were principally Schall pictures; one or two others, possibly; pictures all over the room.

Q. Did you see any Schall literature there other than this Harpoon?—A. I will not say during the fall. I did not pay any attention. I probably saw it, but I could not say now.

Q. Did you ever see this man Andy Rahn that we are talking about here?—A. Yes; I saw him several times.

Q. Where did you see him the first time?—A. The first time that I remember of seeing him was in Mr. Schall's headquarters after he came back from Washington, in the spring.

Q. Of what year?—A. 1924; February, I mean.

Q. February?—A. Yes.

Q. Who was present when you saw him there?—A. I saw him there a great many times going in to see Mr. Schall.

Q. With Schall?—A. Yes.

Q. Whereabouts?—A. At 554 Security Building.

Q. You saw Mr. Rahn go in to see Mr. Schall?—A. Yes.

Q. And was this during the campaign of 1924?—A. That is what you asked me first. First I saw him in there in February, before the campaign opened; and then I saw him during the campaign.

Senator DENEEN. Was this the primary or the campaign for election?

The WITNESS. He asked about the primary. That was in the primary.

Senator DENEEN. Why not confine yourself to the campaign?

Mr. HUGHES. Of course, I want to show the connection. It was the purpose to show that he was around there during that primary. There is the testimony that Mr. Schall said after he was nominated that Mr. Rahn and Mr. Jacobs were looking after his affairs; and this would be corroboration of that fact, that he was visiting his office prior to the election and during the primary, and at a time when Schall was a candidate. It would all be corroborative and confirmatory of this position.

Senator DENEEN. We have ruled on that a number of times, that the testimony should relate to the election.

Mr. HUGHES. It would seem to me that even if you were to follow the rules of a court, and this was a conspiracy trial, that would be admissible.

Senator GOFF. Then would it not be subject to the objection that it was cumulative testimony, and the court would very likely sustain it on that ground?

Senator DENEEN. It is subject to another matter. It is not charged in the pleadings, as a conspirator or one who had anything to do with the offenses; but I assume that he intends to testify about other matters. Why not take this up first? I do not suppose it will be disputed, about this man being around the headquarters there.

Mr. HUGHES. It is disputed.

Senator DENEEN. But the fact of these men being there is not.

Mr. HUGHES. But this was in Mr. Schall's office. Mr. Rahn was seen in his office.

Senator DENEEN. Very well.

By Mr. HUGHES:

Q. Did you see Mr. Rahn in Mr. Schall's office during the year 1924?—A. Yes; very many times.

Q. Can you tell us on what dates, to your best knowledge?—A. Well, he would come in almost every day, and he always had the right of way. I have let him into Mr. Schall's room, right there.

Q. Would he go in the room where Mr. Schall was?—A. Oh, yes.

Q. Over what period did you observe that?—A. I observed that during all the time that Mr. Schall was home, from the time he came home in February. He was home a good part of February and possibly into March; the latter part of February, from the 8th or 10th up, and he was home nearly all of April after the 11th, or a day or two, maybe, before the 11th of April.

Q. I will ask you if you were ever present in the headquarters and heard a discussion regarding the Harpoon between Mr. Andy Rahn and Mr. Arthur Jacobs? Answer yes or no.—A. Yes, sir.

Q. Can you tell us about when that was? Can you fix the time?—A. It would be, I think, about the first Sunday in June, 1924.

Q. What was that conversation?

Mr. REES. That is objected to. They do not claim that it was in the presence of Mr. Schall.

Mr. HUGHES. No.

The WITNESS. No.

Senator DENEEN. When did your primary occur?

The WITNESS. About the 16th of June.

By Mr. HUGHES.

Q. Was it before or after the primary?—A. Before.

Q. Before our primary?—A. Before.

Q. Before the primary did you——

Senator DENEEN. The question is overruled.

Mr. HUGHES. I want to explain this. There are two purposes in this question, to show that Mr. Jacobs and Mr. Rahn were then interested in this Harpoon, and that at that time Mr. Jacobs was representing Mr. Schall; Mr. Rahn had been in his office a good many times; to show the general connection as confirmatory to subsequent acts of Mr. Jacobs and Mr. Rahn.

Senator DENEEN. The ruling is based on two reasons: First, the alleged conversation occurred before the primary; second, it is hearsay.

Mr. HUGHES. Very well, sir.

By Mr. HUGHES:

Q. Did you see Frank Corneaby at any time at the Schall headquarters in the fall campaign of 1924?—A. Yes.

Mr. REES. Now, wait a minute. You say "the Schall headquarters."

Mr. HUGHES. At the West Hotel.

Mr. REES. All right; I understand it.

By Mr. HUGHES:

Q. Do you recall when the headquarters were first opened there with reference to the campaign for the election in 1924?—A. Some time in the latter part of August or the first part of September—the fore part of September.

Q. Were you around the headquarters about that time?—A. I was around there. I was in Schall's office when they moved the stuff around to the headquarters, the same day.

Q. In Schall's office?—A. Yes; in his office.

Q. Was Schall there at the time?—A. I don't know whether he was at that time or not.

Q. What did they move from Schall's office?—A. A lot of literature that came in mail sacks.

Q. You say "literature." What do you mean?—A. Campaign literature. Speeches, I presume. I did not open the mail sacks and I don't know what was in them.

Q. Who moved the mail sacks?—A. There were a lot of boys that were helping Mr. Schall. There was Rhodes and Frisch.

Q. Who was Mr. Frisch?—A. Mr. Frisch was a man formerly associated with—well, he was a lawyer that was formerly officing with Mr. Schall and Mr. Rees. He is the first referred to in the letter which has been filed.

Q. We will come back to that later. Mr. Cosgrove, who else assisted in moving these things from Schall's office to the headquarters?—A. Mr. Corneaby was there.

Q. He was?—A. I would not say that he was at the office there, but Mr. Rhodes, Orril Lean, a man named McArt.

Q. Talbot—did you know him?—A. I did.

Q. Was he there at that time?—A. I would not say that he was there at that time.

Q. Have you ever seen him there in Mr. Schall's law office?—A. Yes; I did. You say did I see him where?

Q. In Schall's law office?—A. Yes; frequently.

Q. In the campaign?—A. Yes.

Q. During the election. And what was his first name?—A. Boone.

Q. You say you saw them moving stuff from Schall's office to the headquarters; and after the headquarters were opened or about that time, did you see Corneaby in the headquarters?—A. Yes.

Q. Can you state to the committee what you saw him doing?—A. I went over to the headquarters and he was the man in charge. He was directing the placing of the furniture, and everything. He was in the outer room; and I went in, and he says, "Hello, Peter; are you going to be with us?" I said "I suppose so." He says, "Well, good."

Q. Did he say anything else?—A. I rather think he said, "We will have plenty of money this fall," but I will not swear to that.

Mr. REES. I can not hear the witness.

The WITNESS. I say that I rather think he said, "We will have plenty of money in the campaign this fall," or "for this campaign."

By Mr. HUGHES:

Q. Did you ever see Mr. Corneaby there later on?—A. Yes, sir.

Q. At the headquarters?—A. Yes; many times.

Q. Many times?—A. Yes.

Q. Did you see him after the headquarters was moved to the West Hotel, at any time, in Mr. Schall's office?—A. I did not go to Mr. Schall's office after that, I don't think.

Q. I will ask you if you recall being in the headquarters known as the Schall headquarters at the West Hotel during the 13th or 14th of September, and observing Mr. Corneaby there at that time?—A. I do.

Q. And I will ask you if you can remember whether the telephone rang at that time?—A. I do.

Q. Do you remember whether there was more than one room in those headquarters?—A. Three.

Q. Was there an arrangement so that they emptied into or opened into a reception room?—A. Yes.

Q. I will ask you if you saw Mr. Corneaby or heard Mr. Corneaby say anything at that time?—A. I did.

Q. State what you heard him say.

Mr. REES. In so far as it binds Senator Schall, we object to it upon all the grounds stated.

Senator DENEEN. Mr. Corneaby has testified that he was participating in the management of a voluntary headquarters, and that he was not acting under the direction of Senator Schall, has he not?

Mr. HUGHES. Of course we now have testimony that this furniture and this literature was moved from Senator Schall's law office, and that Corneaby assisted in moving it there, and that he was seen around the headquarters apparently taking charge.

Senator DENEEN. Yes.

Mr. REES. And the fact that Mr. Schall admitted during the campaign to Cosgrove that Jacobs and Rahn were managing his affairs, and testimony that when he went in Corneaby whispered something into his ear; we do not know what that was.

Senator DENEEN. Yes; of course that was all denied by Corneaby. Now you are trying to introduce this in evidence on the theory that Senator Schall should be bound by any conversations that Mr. Cosgrove had with Mr. Corneaby, relating to the charges referred to.

Mr. HUGHES. Yes.

Senator DENEEN. And that he was authorized as an agent to speak for Senator Schall, and that Senator Schall approved of everything he did. That is the theory, is it?

Mr. HUGHES. That is the theory.

Senator DENEEN. I think you would have to lay the foundation that Senator Schall knew of any conversation that related to any wrongdoing.

Mr. HUGHES. Of course we have to depend to date on the circumstances as they have been related.

Senator DENEEN. The testimony is direct that he had nothing to do with it; that he spent no money and received no money for that purpose.

Mr. HUGHES. We claim we were taken by surprise. There is no doubt about that, and he is a hostile witness. I do not mean to say that we were taken so much by surprise by him. We figured from the type of man that he is that he would either be a hostile witness or a witness of such a character, from his previous associations and probably his present associations, that he would be more or less a witness that you could not depend upon.

Mr. CORNEABY. Just a minute. I would like to have permission to answer Mr. Hughes as to the character part that he brought in, before I am dismissed.

Senator DENEEN. In due time you may, if you choose to testify.

So that that is the only testimony that connects anybody with Mr. Schall—that is, Mr. Corneaby—and he has denied it. It is not a question whether he is a friendly witness or a hostile witness. It is the testimony, and that is the only testimony there is.

Mr. HUGHES. Of course I say there is testimony here of his close connection; that Corneaby was sitting at a desk in Schall's office, that he was moving over this literature, and Schall was seen talking with him, and that he seemed to be in charge of his headquarters.

Senator DENEEN. Yes; how much further do you go? Do you claim because he was active in Senator Schall's campaign, that Senator Schall would be bound by everything he did, lawful or unlawful?

The WITNESS. Pardon me——

Mr. HUGHES. Owing to the close relationship subsisting between them. Of course we are unable to show what he said, but it appears that he had been to see Mr. Schall, that they had a secret whisper, whatever it was; that he had moved over the literature out of Mr. Schall's own law office, and moved it over there into these headquarters; and that he seemed to be in charge over there; that all these circumstances will show that he was very close to Mr. Schall at the time. You can hardly say it was a case where somebody said "I am going to open up headquarters, a voluntary association." Here is a man that has been right in his office, has been in consultation with him.

Senator DENEEN. There is no question about that. I suppose Mr. Rees was, too. He had offices opposite to him. You would not say that because Mr. Rees occupied law offices with Senator Schall, Senator Schall would be bound by everything Mr. Rees said?

Mr. HUGHES. That is different. Mr. Corneaby was not a lawyer. He was apparently around the office in regard to this campaign. You can not draw any other deduction from it. He was there, and he helped to move these things over out of Schall's law office.

Senator DENEEN. Are you trying to impeach Mr. Corneaby?

Mr. HUGHES. Trying to impeach him? No; I want to get out what he stated there with reference to Cosgrove, with this telephone, when this alarm came in.

Senator DENEEN. I am not very clear as to the purpose. You put Mr. Corneaby on the stand and he said he had no relation except in the voluntary headquarters, and had nothing to do with collecting money for Senator Schall; that none was turned over to Senator Schall; that he did collect some money and that he and Mr. Jacobs shared it and spent it as they chose, a small amount, very small compared with the charges made; and that is about the sum and substance of it. Now you want to bind Senator Schall by an alleged talk by Mr. Corneaby outside of Senator Schall's presence, simply because Corneaby was afterwards seen managing Senator Schall's campaign, and I do not think that is proper.

Mr. HUGHES. We can reach it in another way that would bind Schall.

Senator DENEEN. If you can reach it in another way, do so, but not this way.

Mr. HUGHES. On the cross examination of Mr. Corneaby; we will probably come to that later.

Senator DENEEN. Yes.

Mr. HUGHES. Are we allowed to indicate what we would show by this conversation?

Senator DENEEN. I think so.

Mr. HUGHES. We would show by this conversation if permitted, that on or about the 13th of September, when Mr. Cosgrove was there the telephone rang and Corneaby came out of a room in the headquarters and called to several persons there in the headquarters that some persons whose names Mr. Cosgrove did not get had been arrested or were about to be arrested, and Corneaby said in the presence of Mr. Cosgrove, "Let us get hold of him and get him to kick in $1,200 or $1,500 to Schall's campaign." That is all we offer to show by it.

Senator DENEEN. It is overruled, for the reasons stated.

Mr. HUGHES. Could we say what we will offer to show in his talk with Mr. Schall during the primary with reference to Mr. Jacobs, for the record?

Senator DENEEN. I think that the issue is confined to what was done at the election. You have made the issue, and you have not made any charge about the primary. The laws are entirely different relating to the primary and the election, as you know.

Mr. HUGHES. In Minnesota? No; they are the same.

The WITNESS. May I say a word?

Senator DENEEN. Yes; if you have anything to say.

The WITNESS. I will say this, that I do not desire to sit and testify to the acts of Mr. Corneaby and another character that seems to be in this room unless he is searched, or unless I am protected.

Mr. HUGHES. You need not trouble about that. This is a Government building here, where you are as safe as you can be.

Senator DENEEN. You need not worry about that.

The WITNESS. He has shown his attitude.

By Mr. HUGHES:

Q. Do you know Miss Florence Joswich?—A. I do.

Q. Where did you first meet her?—A. In Mr. Schall's office.

Q. Was that in the primary or in the election?—A. It was before the primary, when Schall came there, after Mr. Schall came back from Washington.

Q. Did you see her in the office after the nomination, when he was running for election?—A. I did.

Q. That is at the headquarters in the West Hotel?—A. I did.

Q. Did you ever see her in the headquarters when Mr. Jacobs was present?—A. I did.

Q. When was that with reference to the fall of 1924?—A. Along some time between the 1st and the 15th of September.

Q. Did you hear any conversation there between her and Mr. Jacobs in that headquarters?—A. I did.

Q. What was that conversation?

Mr. REES. Just a moment. That is objected to as immaterial, as hearsay, and we renew the other objections mentioned. A conversation between these peolpe would not bind Senator Schall unless he was present.

Senator DENEEN. What do you offer to prove?

Mr. HUGHES. We offer to show that about the time mentioned here Miss Joswich came to the Schall headquarters and asked for "Tom"—Senator Schall—and at that time she had been arrested

or involved in some liquor trouble, and she had come over from Mr. Schall's office and had been inquiring for Mr. Schall there, and she asked for him by his first name, "Tom," in the headquarters; and Mr. Jacobs advised her to go to see Mr. Townsend at that time. That is what we propose to show in that conversation.

Mr. REES. The same objection.

Senator DENEEN. The committee overrules the question. It is hearsay; not in the presence of Mr. Schall.

By Mr. HUGHES:

Q. At the time she was in there do you recall what Mr. Jacobs was doing?—A. He was telephoning.

Q. Who was he telephoning to?

Mr. REES. That is objected to. Mr. Schall is not bound by the telephoning of Mr. Jacobs. He was not present. It is an endless pyramid of inference that is most difficult to meet.

Mr. HUGHES. Just a moment. I will withdraw that question and ask another question.

By Mr. HUGHES:

Q. Did you see Miss Joswich again after that?—A. When did I see her again?

Q. Yes.—A. I saw her in Mr. Schall's house.

Q. About when was that?—A. About the same—oh, after the 20th of November.

Q. Of November?—A. Yes.

Q. 1924?—A. Yes.

Q. Was there anybody with you?—A. My wife and son.

Q. You called at his house, the three of you?—A. Yes.

Q. Did you see Senator Schall there at that time?—A. Yes.

Q. And you say you also saw Miss Joswich?—A. Yes, and Mrs. Schall.

Q. What?—A. And also Mrs. Schall; the people that were there.

Q. How long were you there at Mr. Schall's house at that time?—A. We were there only a few minutes. We drove out to the house, and after dinner we were there a few minutes, and then Mr. and Mrs. Meehan came in and we left.

Mr. REES. Mister Who came in?

The WITNESS. Mr. and Mrs. Meehan.

Mr. REES. Oh, yes.

By Mr. HUGHES:

Q. Are you familiar or were you familiar with Miss Joswich's voice so that you could identify it on the telephone?—A. Yes.

Q. Prior to your visit to Senator Schall, had you had occasion to call up his house?—A. I did.

Q. On more than one occasion?—A. Yes.

Q. Do you know who answered the telephone?—A. Well, sometimes, or usually, Mrs. Schall answered, but sometimes Miss Joswich.

Q. Did you make any inquiry as to Senator Schall?—A. I did. I asked for Senator Schall.

Mr. REES. Just a minute. You were not asked about that.

The WITNESS. I wanted to try to expedite it.

By Mr. HUGHES:

Q. During the times that you called did you talk with Senator Schall?—A. Yes.

Q. After Miss Joswich had answered the phone?—A. Yes.

Q. You talked with him?—A. Yes.

Q. What was that talk about?—A. It was about his health.

Q. His health?—A. Yes; it was an inquiry about his health.

Q. This is the same Florence Joswich that you saw there in the headquarters, is it?—A. Yes.

Mr. HUGHES. I offer the same testimony that was offered to-day with reference to what she said there in the headquarters to Mr. Jacobs.

Mr. REES. Of course, we object to it, and we understand that all of this is going in under objection.

Senator DENEEN. What is the question that you are asking?

Mr. HUGHES. I am asking for——

Senator DENEEN. For her conversation in the headquarters with Mr. Jacobs in the absence of Senator Schall?

Mr. HUGHES. Yes; in the absence of Senator Schall.

Senator DENEEN. It is overruled.

Mr. HUGHES. May we state in the record what we would offer to show by that?

Senator DENEEN. You may make an offer of proof.

Mr. HUGHES. We offer to show that on or about the 10th of September, 1924, Mr. Cosgrove will testify that while in the Schall headquarters Florence Joswich being there, she came to the headquarters at the West Hotel, and that she was in an excited condition. Mr. Jacobs endeavored to quiet her. He advised her to go and see Mr. Townsend, saying that he had fixed everything up so that she would not be arrested. It is admitted he would testify that she refused to go to Mr. Townsend, saying, "Where is Tom? I want to talk with Tom." We offer to show that by "Tom" she meant Senator Schall. We also offer to show in this connection that prior to her entrance into the headquarters Mr. Jacobs was telephoning and talking to Captain Townsend with reference to her; and, further, we propose to show by Mr. Cosgrove that she came directly over there from Senator Schall's law office to the headquarters. Of course, this goes not only to the liquor charge, but as to his connection with underworld characters. We have evidence here that she was a bootlegger; that her permit had been taken away and her place raided in St. Paul; that at the time of the raid in St. Paul she was there, and Jacobs was there at the time, and she was in business there with this man Terrin. That is the purpose of it.

Senator DENEEN. It is overruled. That would be purely hearsay, unless you were to show first that Jacobs had authority from Senator Schall to do the act that you charge. You would have to show that as a preliminary matter. It is obvious, as I recollect what Mr. Townsend said about this matter in his testimony.

By Mr. HUGHES:

Q. Did you ever have any talk with Mr. Jacobs with reference to his relations with Florence Joswich as to gathering and collecting funds for the campaign? You can answer that yes or no.—A. Yes.

Q. Do you recall when it was that you first had such a talk with Mr. Jacobs?—A. Which campaign do you refer to?

Q. I am asking you if you can recall. Did you have any talk with him after the nomination of Senator Schall?—A. No.

Q. Did you have any talk with him before the nomination?—A. I did.

Q. Where was the talk?

Mr. REES. That is immaterial under the rulings, and we object to going into it. It relates only, it seems, to the primary.

Mr. HUGHES. It is to show the connection, the close relation, between Jacobs and this woman and Schall. Now, here is the woman in Schall's house. She is there before the election. The woman was in his office. I propose to show a talk between her and Jacobs during the primary with reference to this matter. I will concede that if he was on trial here probably it might not be admissible, but as I have said so many times, and I do not want to irritate the committee by repeating it, it seems to me that in an investigation where we are trying to arrive at what the facts are it would be admissible under that interpretation.

Senator DENEEN. The question is overruled.

Mr. HUGHES. May I state what we would show if allowed?

Senator DENEEN. As to the primary? I do not see how you could.

Mr. HUGHES. To show anything relating to the primary that would affect the election; as I said, to show the inception of this connection between Schall and Jacobs and this woman; that back of the primary they were closely connected. [Addressing the witness:] Now, just a minute. You are on the stand, Mr. Cosgrove. This is to show the connection and the relation, and how long it had existed. It is a part of their relation and connection; that they were not strangers. It would be a very strong matter in the proof if it could be shown that she knew him for some time, and that this had been going on prior to the primary and during the election. It would be a part of the proof to show their relation. That is the purpose of it.

Senator GOFF. Did you not show that she had been a stenographer in his office?

Mr. HUGHES. Yes; we have shown that.

Senator GOFF. And you said she was a stenographer in his law office?

Mr. HUGHES. No, sir; in his headquarters.

Senator GOFF. In his office before he moved; did you not?

Mr. HUGHES. No; I do not think there was any testimony of that kind. The testimony with regard to her was that she was seen in the headquarters, and as to the fact whether she did stenographic work I could not say. I would have to find out from the witnesses. The testimony is that she was also there in his own home. This was along the 11th of April or about that time.

Senator GOFF. Then your purpose would be to affect him by the character of the women that were employed around his headquarters by those who were running the office?

Mr. HUGHES. Yes; and the fact that he had her there in his house.

Senator GOFF. Are you able to show, or will you show, that when she came to his house she came to him with full knowledge on his part of all these things that you claim about her?

Mr. HUGHES. Yes. Not perhaps by any witness here, but we could show that he knew it.

Senator GOFF. Of course, you know that around political headquarters in all States there are frequently a great many men as well as women, and women as well as men, who are employed there for political purposes, who may not always have the very best of characters, as you have used that term, according to purely moral standards.

Mr. HUGHES. Yes; and we can show that he knew what her character was, and knew what her trouble was. We will show that this man Jacobs endeavored to get this man Terrin out. She was either Terrin's wife or Terrin's sweetheart, and we will show that they had been raided in a bootlegging raid. Senator Schall knew what she was doing. She claimed that she was in the perfume business and she was having trouble with her permit all the time. Apparently, from the testimony of Townsend and Qvale, they did not take much stock in her good faith, and her permit was revoked.

Senator GOFF. But she had such a business?

Mr. HUGHES. She claimed that she had.

Senator GOFF. She must have had some sort of business, before the United States Government took away her permit.

Mr. HUGHES. Yes; they deceived the authorities in getting the permit. They claimed they were in the perfume business. It was a fact that they claimed that the place was raided, and they were short several barrels of denatured alcohol, and they lost their permit. We offered to show yesterday, but the question was overruled, what her general reputation was; so that it is not only on the bootlegger charge, but to show the kind of people she was keeping company with. We can show by Mr. Cosgrove what the character of Terrin was. Jacobs got around the workers under Judge Dickinson, the judge of the district court, and prevailed upon him to let this man Terrin out, and Jacobs, of course, knew that Miss Joswich was there in the headquarters.

Senator GOFF. I do not see how that connects Senator Schall. If you want to besmirch him with the acts of all the people that worked around him, all the people that were gathered around him in a political campaign, I do not see how you can do that unless——

Senator DENEEN. What is the pending question?

(The question was read by the stenographer, as follows:)

Q. Where was the talk?

Senator DENEEN. You see where this would lead. You are trying to offer testimony of a conversation with Jacobs in the absence of Senator Schall, and then you want to show that Miss Joswich had a conversation with somebody else, and that this woman was a person not of good character. It is just like "The House that Jack Built"; you keep getting farther and farther away from the case. Supposing testimony of that kind were permitted; then they would have a right to come in and offer testimony to rebut this. Do you expect the committee in that case to refuse to allow them to present their case?

Mr. HUGHES. No; not at all.

Senator DENEEN. We would have a thousand issues before we would get through. It is obviously not permisible under the issues we have here.

Mr. HUGHES. Would there be any objection if Mr. Edgerton examined Mr. Llewellyn? He wants to put Mr. Llewellyn on.

Senator DENEEN. Very well.

Mr. HUGHES. We will withdraw Mr. Cosgrove and put Mr. Llewellyn on, then.

TESTIMONY OF CHARLES E. LLEWELLYN

(The witness was sworn by Senator Deneen.)

By Mr. EDGERTON:

Q. Where do you reside?—A. No. 44 St. Cloud Avenue, St. Paul.

Q. Do you hold any official position in St. Paul, Minn.?—A. I am in the fire marshal's office.

Q. What position do you hold there?—A. Deputy fire marshal.

Q. Have you held any other public positions or offices?—A. Not in Minnesota.

Q. Elsewhere?—A. Yes; I was superintendent of the rural free delivery at Omaha, and post-office inspector out in the St. Louis, Kansas City, and Chicago division, and I was in the revenue service in northwestern Iowa.

Q. Do you know Senator Schall?—A. I do when I see him.

Q. Coming directly to the pont, did you see him in October—on or about the 18th day of October—at St. Cloud, Minn.?—A. I did. I saw him at some hall there; I don't know the name of the hall.

Q. Was it at a political meeting?—A. It was.

Q. Did you hear the Senator talk that night at that meeting?—A. I did.

Q. Were there many people there?—A. Yes; a pretty good house.

Q. Of men and women both?—A. Men and women.

Q. Did you hear him say anything about the World Court and Magnus Johnson?—A. I did.

Q. Will you please state to the committee what it was?

Mr. REES. That is objected to upon the grounds stated before, without now enumerating them.

Senator DENEEN. It is admitted, subject to a motion later to strike out. That is one of those we have taken up.

By Mr. EDGERTON:

Q. Go ahead, Mr. Llewellyn, and answer the question.

The WITNESS. Shall I answer this?

Senator DENEEN. Yes; answer it.

The WITNESS. I heard Mr. Schall make this statement: "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.'" He said that a few days after that he met Magnus Johnson and Magnus Johnson told him he was against the World Court; that about a week after that his wife brought him a paper reading that Magnus Johnson was for the World Court. He said, "Did Magnus see the man with the highly perfumed cigar and the $25,000?"

By Mr. EDGERTON:

Q. Do you remember the year before, during the election for United States Senator, when Governor Price was running on the Republican ticket and Magnus Johnson on the Farmer-Labor ticket?—A. Yes.

Q. Having any conversation with Senator Schall? Just answer that by yes or no.—A. I did, but I don't know as I would say I had a conversation.

Q. Well, you were present at a conversation?—A. Yes; I was present at the conversation.

Q. What was it?

Mr. REES. We object to that as immaterial, having been a year before.

Senator DENEEN. It is a preliminary question. What is the purpose of the question, Mr. Edgerton?

Mr. EDGERTON. The purpose of the question is to show by this witness that he was present when several men were in conference with Senator Schall, and that Senator Schall, who was a Republican representing a congressional district in the lower House of Congress, offered to support Magnus Johnson against the Republican nomination and Governor Price for $4,000, and that he changed his mind and refused to go out in the campaign and support him for $4,000, unless Magnus Johnson would sign a writing that he would not be a candidate at the next general election——

Mr. REES. We make the objections that we have urged before, and we call the attention of the committee to the fact that whatever they claim here happened at a previous election, not the general election of 1924.

Mr. EDGERTON. It goes to the moral qualifications of Mr. Schall to receive the high office of Senator of the United States.

Mr. REES. We object that this does not relate to any issue set forth in the petition at all, and that we ought not to be expected to meet any such dastardly assault as that when not set up even in the pleadings.

Senator DENEEN. You may prepare a brief on that, if you wish to be heard further. The committee does not think it is proper.

Mr. EDGERTON. I would like to take exception to the remark of counsel there that he made then.

Senator DENEEN. You mean to Mr. Rees's remark?

Mr. EDGERTON. Yes.

Senator DENEEN. Well, we have no power to prevent statements, but I think the attorneys should be careful to observe what is proper in a court. I realize that there is some temper in this case, but we should try it on the facts and the law.

Mr. EDGERTON. Mr. Chairman, will you please remember that in the letter sending the statement of which I sent a copy to Mr. Rees, there was the statement that ex-Governor Frankston would swear to that same thing. He was one of the gentlemen Mr. Llewellyn refers to. Therefore Mr. Rees is not taken by surprise.

Mr. SMITH. Is that in the statement?

Mr. EDGERTON. Yes, it is in the letter.

Mr. SMITH. It is not in the statement of the testimony that you proposed to give.

Mr. EDGERTON. No; relating to the five men.

Senator DENEEN. You may submit a brief on that, later, if you wish. The committee feels that it is not proper in this case under the pleadings and under the issues created by the pleadings.

Mr. EDGERTON. May we make the further suggestion, in view of what the Senator wishes——

Senator DENEEN. Yes.

Mr. EDGERTON (continuing). That Mr. Llewellyn would also testify that Mr. Rees was present and made the objection about the agreement, unless the paper was signed by Magnus Johnson?

Mr. SMITH. Will you show me where that is? I can not find it.

Mr. EDGERTON. It is not in that [indicating paper]. It is in the letter in which we forwarded the statement. That refers to the five witnesses that were subpœnaed.

Mr. REES. Maybe he refers to a letter that came here to the committee.

Mr. SMITH. Now, let us settle it. The record is here. There is no use talking about it; here is your statement: "This is the name of Charles E. Llewellyn, residing at corner of Grand and St. Cloud Avenues, St. Paul, Minn., who will testify that he heard the statement claimed to have been made by Senator Schall at St. Cloud in 1921 as stated in subdivision 5, paragraph 5, of said last amended petition."

You certainly do not claim that that is this testimony?

Mr. EDGERTON. No; I refer to the testimony of ex-Governor Frankford, which is in the letter.

Mr. SMITH. That is not Mr. Llewellyn.

Mr. EDGERTON. I did not say that. I never said that it was Mr. Llewellyn.

Mr. SMITH. That is what I am figuring on.

Mr. EDGERTON. Oh, well, you are mistaken.

Senator DENEEN. The same statement I made previous applies here. You may prepare a brief on that, if you feel that it ought to be submitted. At present we feel that it is inadmissible.

Mr. EDGERTON. All right; I submit. Mr. Llewellyn told me that he was there present, and that he was willing to swear to it. If the committee does not feel that it is proper under the circumstances, at least, that it ought to go in——

Senator DENEEN. We are ruling on the point as to whether it is too remote from the issue created by the pleadings.

Mr. EDGERTON. If you rule that way, I submit.

Mr. HUGHES. Could this be received subject to this proof?

Senator DENEEN. I do not think so. This goes away beyond the primary. It goes back a year.

Mr. HUGHES. Of course, it would go as to his moral fitness.

Mr. SMITH. This statement does not contain any intimation that Mr. Llewellyn will so testify.

Mr. EDGERTON. No; it was in the letter. I said Governor Frankford would so testify.

Mr. SMITH. Well, then, why did you not say that Mr. Frankford would give the testimony and not Mr. Llewellyn?

Mr. EDGERTON. I did say so.

Mr. SMITH. What is he going to testify about?

Mr. EDGERTON. He is going to testify about that conversation that Mr. ——— would testify to.

Mr. SMITH. Then you ought to have informed us he was going to testify to it. It is not in the statement.

Mr. EDGERTON. You know the standing and reputation of Mr. Llewellyn.

Mr. SMITH. Yes; I do.

Mr. EDGERTON. It is not necessary for me to state as to all the witnesses.

Mr. SMITH. You gave us the substance of the testimony Mr. Llewellyn was going to give.

Senator DENEEN. Are there any other questions to be asked Mr. Llewellyn?

Mr. EDGERTON. No; I submit to what the committee has said. If they do not think it is proper I am not going to push it.

Senator DENEEN. Do you care to examine him, Mr. Hughes?

Mr. HUGHES. Oh, no.

Senator DENEEN. Do you care to cross-examine?

Mr. REES. No.

Mr. SMITH. No.

Senator DENEEN. Call the next witness.

Mr. HUGHES. We will call Mr. Cosgrove back again.

TESTIMONY OF PETER A. COSGROVE—Resumed

By Mr. HUGHES:

Q. I will ask you if you ever saw Boone Talbot in the headquarters at the West Hotel?—A. Yes.

Q. With reference to the headquarters on the fifth floor?—A. Yes.

Q. You saw him there?—A. Yes.

Q. What was he doing?

Mr. REES. That is subject to the same objection we have made before.

Mr. HUGHES. We claim this is a preliminary question, showing Boone Talbot's connection.

Senator DENEEN. It is purely a preliminary question. He will get to the point in a moment. Let him answer.

By Mr. HUGHES:

Q. What was he doing there?—A. He was at a table alongside of Mr. Jacobs's desk, right across from the desk. You could enter between the corner and the small table.

Q. What was his work there? Did you notice what he did besides sitting at this table?—A. He traveled very much with Mr. Jacobs.

Q. Do you know where they went? Do you know that?—A. No; I don't know where they went, but they were in and out continually, and about town, going around, going in and out of the headquarters, and he took Mr. Jacobs's place when Mr. Jacobs was away. He took care of that room there.

Q. What would you say his conduct was as to being active in the affairs there?

Senator DENEEN. I do not think that would be proper. What is the purpose of the question?

Mr. HUGHES. We intend to call Mr. Talbot as a witness if this hearing is allowed to go on.

Senator DENEEN. I know that you will call him, but what is the purpose of this?

Mr. HUGHES. To show his activities around the headquarters. Suppose that Mr. Talbot came to testify and Mr. Cosgrove was gone, then I could not show that. We claim that Mr. Talbot also was associated in this money arrangement for the campaign.

Senator DENEEN. Are you going to offer Mr. Talbot and do you expect him then to deny what Mr. Cosgrove says?

Mr. HUGHES. I do not think he will.

Senator GOFF. Is he a bad character?

Mr. HUGHES. I would say that he is not. I would say, from what I know of Talbot, that he is a man of good standing and reputation. I never heard anything against him.

Senator DENEEN. I do not think that would be proper under anything that appears so far. We have limited that.

Mr. HUGHES. That is true, Senator. The reason that I have gone into more detail than ordinary with this witness is that I understand we were asked to make a prima facie case. We propose to show that Talbot was one of those who was promised a position, and as a matter of fact after the election he got a position in the Federal Government, and we expect to show that he was there in these headquarters.

Senator DENEEN. The gist of that would be the promise, and the only testimony of that would be the testimony of persons who heard the promise.

Mr. HUGHES. We will ask, at the proper time, to have Mr. Talbot subpœnaed.

Senator GOFF. I want to ask you a question, not to embarrass you, but for my own information. Is it your contention that if a candidate for office, through his friends, goes into that section of the city or the community that is often denominated the underworld and organizes a ward in his behalf, and these people vote for him, the habitues of that section, that because he has done that, he has rendered himself morally unqualified to hold the office if he should be successful in being elected to it?

Mr. HUGHES. Not at all, Senator. Of course not; but I would answer your question in this way. If it was shown that he would have such people around, associated with him, through his agents endeavoring to get favors for them, and when they were in trouble; connected with his campaign, he using his influence or trying to use his influence for that purpose; then we think it would be different, and I think you would so consider it. In other words, if a man was campaigning for the Senate or any other office and he would go into the underworld, I think it would be perfectly proper.

Senator Schall, I understand went into the underworld in Minneapolis and wore a woolen shirt and suspenders, and talked to the people there. That would be perfectly proper. But to get their support by using the influence of your office in favor of them to get their cases continued when they were prosecuted for crimes, and to capitalize it, we think would be much different.

Senator DENEEN. Are there any further questions?

Mr. HUGHES. Yes; I have a few more questions.

By Mr. HUGHES:

Q. Do you know Oscar Johnson? Did you meet him during the campaign?—A. I did.

Q. Where did you meet him?—A. I met him in Mr. Schall's office.

Q. That is, Schall's law office?—A. Yes.

Q. Can you fix any time with reference to the fall election?—A. I have already testified that there were a number of times when I was in his law office, and I can safely say that Oscar Johnson was there all the time.

Q. What did he appear to be doing?—A. There was one day when I was there shortly after the primary, and while I was speaking to Mr. Schall, Johnson came and told Mr. Schall that he ought to have one——

Mr. REES. Just a moment. That question did not call for what he said.

Mr. HUGHES. We will ask for that. I never knew that before.

By Mr. HUGHES:

Q. You were proceeding when objection was made to relate some conversation between Mr. Schall and Oscar Johnson?—A. Yes.

Q. About when was this; do you remember?—A. It was shortly after the primary.

Q. After the primary?—A. Yes.

Q. While Mr. Schall was a candidate; after the primary?—A. After the primary.

Q. After he had been nominated?—A. Yes.

Q. This was in the city of Minneapolis?—A. At 554 Security Building, city of Minneapolis.

Q. I will ask you for that conversation.—A. Well, he said that he had secured Gale Pflagman employment.

Q. Did he say anything else in regard to Gale Pflagman to him?—A. No. Tom said, "Good."

Q. Tom said, "Good." You mean by "Tom," Senator Schall?—A. Yes.

Q. Did you ever see Gale Pflagman around the headquarters?—A. Yes.

Q. Did you see Oscar Johnson around the headquarters after that?—A. Why, yes.

Q. What was he doing around the headquarters?—A. First they secured him—this is in the headquarters?

Q. Yes.—A. He was in and out, he and a man named Tom Beatty were in and out.

Q. They were doing what?—A. They were sort of advance agents, billing Mr. Schall's meetings. They were advance agents.

Q. By "billing" you mean putting up posters?—A. Posters; and arranging meetings and announcing meetings.

Q. Arranging meetings?—A. Yes.

Q. Do you know what Oscar Johnson is doing now?—A. I know what he has been doing. He was on the prohibition enforcement squad.

Q. In what State or Territory?—A. In Minneapolis.

Q. In Minneapolis.—A. And I presume that he is working out of St. Paul now, as he is still with them.

Q. What was he doing at the time you saw him talking to Schall?—A. He had been taking vocational training as a disabled veteran.

Q. He was not in the prohibition department at that time?—A. No.

Q. Do you know when it was that he went with them? Was it after the election?—A. Shortly after the election.

Q. This man Beatty, as you call him——A. If I may be allowed to state, I saw him make his application in Mr. Schall's office.

Q. Oh; I did not know about that. Please tell us about that.—A. He simply made his application, and Miss Bresman, the stenographer for Senator Schall, had him sign the application while I was in there.

Q. When was that?—A. It was some time after election; between the election and Christmas time, I think. It might be afterwards, but it was after election.

Q. This man that you call Beatty, do you know what he is doing now?—A. I do not. I saw him in Minneapolis the other day, but I do not know.

Q. Do you know what he was doing at the time of the election?—A. As far as I knew, he had been a disabled soldier drawing a pension; but I do not know whether he was drawing it up to that time or not.

Q. Was he in the employ of the Federal Government as a prohibition agent at that time during the campaign when you saw him there?—A. No; not that I know of.

Q. Did you ever see this man Pflagman in headquarters?—A. Yes; I did.

Q. On more than one occasion?—A. Yes.

Q. Do you know whether he is the man referred to who impersonated Judge McGee in the headquarters?—A. I do not.

Q. At any time during the campaign did Jacobs have any talk with you concerning printing any libelous articles concerning and pertaining to Senator Johnson? Answer that yes or no.

Senator GOFF. Do you not think that is rather involved?

Mr. HUGHES. No, sir.

The WITNESS. I can not answer that question.

Senator GOFF. How would he know whether it was libelous or not?

The WITNESS. I could not answer that question. I am not an expert. You will have to get an expert here on libel. If I was in the law, I could tell you whether it was libelous or not.

By Mr. HUGHES:

Q. Did Jacobs have any talk with you after the nomination in regard to getting out any article pertaining to Magnus Johnson?—A. Not after the election. Wait a minute.

Q. Not pertaining to the Harpoon. Not pertaining to the Anderson matter.—A. Not pertaining to the Anderson matter? Do you mean after the nomination?

Q. Yes.—A. No, sir.

Q. Prior to the nomination did Jacobs have any talk with you concerning getting out an article concerning Magnus Johnson, in which it was claimed that Magnus Johnson had been arrested for being drunk?

Mr. REES. We make the same objection as before. It relates to the primary and before the primary election. I understand that the committee has decided not to hear that testimony.

Senator DENEEN. The same ruling.

Mr. HUGHES. All right.

By Mr. HUGHES:

Q. Do you recall being in Mr. Schall's law office along about December, 1924?—A. I do.

Q. Did you see Mr. Jacobs in there at that time?—A. Yes.

Q. Do you remember whether the Hennepin County grand jury was in session at that time?—A. It was.

Q. Do you recall whether at that time there had been a so-called investigation of the so-called Schall bootlegger matter?

Senator DENEEN. You are doing the testifying and he is saying yes and no. That is not proper.

Mr. EDGERTON. Ask him the questions.

Mr. HUGHES. All right.

By Mr. HUGHES:

Q. Do you know whether the grand jury was investigating this matter, the Schall matter, at that time?—A. Yes.

Q. Did you have any talk there with Jacobs about the grand jury?—A. I did.

Q. What was that talk?

Mr. REES. That is objected to as having occurred after the election, and being with reference to some matter that is not involved in this election in any way.

Senator DENEEN. What do you expect to prove?

Mr. HUGHES. We propose to show by Mr. Cosgrove that Jacobs stated to him there in the law office of Mr. Schall in December, 1924, "I have got to go to the courthouse and help Andy"—meaning Andy Rahn—"and the other boys hold down the lid of the grand jury"; and that Jacobs further said, "We are having a hell of a time doing it." It shows the connection——

Senator GOFF. Let me just address you as a lawyer. You know that when a conspiracy is executed, even when you have established it, that each coconspirator ceases to be the agent of the others?

Mr. HUGHES. That is absolutely true.

Senator GOFF. Why should we admit something like that here in a case of this kind?

Mr. HUGHES. I concede that in court it would be hearsay in character, because after conspiracy ceases one coconspirator can not bind another.

Senator GOFF. In a matter of this kind we should follow the rules of evidence. We have been very liberal to you.

Mr. HUGHES. I concede that.

Senator GOFF. This conspiracy is all over. That would involve the collateral question whether or not Mr. Jacobs was a man of loose phraseology, whether he was talking in a serious way or whether he was talking in a descriptive way; and you see where it will all lead us afield.

Senator DENEEN. It would lead us to bringing in the grand jury and bringing in what was said before the grand jury, which, I presume, in Minnesota is secret. It is elsewhere. It leads afield from the issue, in addition to what Senator Goff said—I mean, on the legal phases.

Mr. HUGHES. I want to see the testimony of Mr. Corneaby in relation to his conversation with Mr. Cosgrove.

Senator DENEEN. I have no that right at hand. I told my clerk to bring the volumes of the testimony over.

The WITNESS (addressing the chairman). I was not present when that testimony was given——

Mr. REES. I would like to hear what the witness is saying.

The WITNESS. I am not giving any evidence. I am just giving some advice. I say that I was not present when that testimony was given, and Mr. Edgerton called me in from outside. I was talking to a man from my State at the time. I have not heard what that testimony was. I would ask the chairman if there was any way that I could get to see that testimony. That is what I asked. I am asking a question and asking for information.

Senator DENEEN. I have not that here now. We have four volumes of testimony, and I have but two of them here. I thought I had them all.

Mr. HUGHES. With that my examination is concluded, except to ask what came out.

The WITNESS. I am not willing to give any testimony in regard to it. I want to see that testimony of Corneaby.

Senator DENEEN. We could not get that over here for at least 15 minutes, and we will have to adjourn shortly. Is there anything else you can offer now?

Mr. HUGHES. We have Mr. Szysko here. I could put him on.

(At this point the witness Cosgrove was temporarily withdrawn from the stand.)

TESTIMONY OF ANDREW SZYSKO—Resumed

By Mr. HUGHES:

Q. I believe you testified to going to the West Hotel and having a talk there with Mr. Jacobs.—A. Yes, sir.

Q. You have fixed the time since the previous examination?—A. Yes, sir.

Q. What was that date?—A. September 27, 1924.

Q. Will you please state what you said and what he said?

Mr. REES. We renew the objection made before, that there is no evidence here of the conspiracy that is alleged which would make the testimony of Jacobs, or the actions of Jacobs, or any other member of the conspiracy, binding upon Senator Schall. There is a complete absence of evidence.

The danger of taking this testimony is extremely great, from the statements made by counsel as to what he would testify to. It ought not to be made a matter of public record unless it is really admissible. If improperly received, it might cause irreparable injury to Senator Schall.

Senator DENEEN. The committee permitted the testimony to go in subject to objection relating to the publication of the Harpoon, and to the alleged statements of the Senator at public meetings. Senator Neely is not here. He was here, however, when we ruled upon this matter.

But you would have to lay the foundation on a charge like this to show that Mr. Jacobs was authorized to speak for Senator Schall, or, having spoken, that he did it with the Senator's approval and consent.

Mr. HUGHES. Mr. Cosgrove has testified on that.

Senator DENEEN. I do not care to comment on Mr. Cosgrove's testimony, but my recollection of the matter is that it does not give any foundation for the statement that I understood you to say you would show here.

Mr. HUGHES. Of course, the question, as I recall, yesterday——

Senator GOFF. Mr. Hughes, let me again state my position in the matter, beginning from the time that I read you what I understood to be a succinct statement of the legal proposition from the work on evidence—Undergill on Criminal Evidence—that conversations with this coconspirator, so charged, would be admissible after a prima facie case had been made out, and that the court in receiving the evidence could take testimony of such conversations, subject to objection and in the exercise of a sound discretion, upon the assurance reasonably given that either the conspiracy would be shown or that a prima facie case of it would be made out. Now, we have taken all of this evidence subject to objection, upon that theory, and as the case has proceeded along, I have seen nothing, to speak for myself, that would show or would tend to show from the circumstances adduced, that Senator Schall had created any organization, or recognized any agency, charged or authorized by him to do an illegal act; to put it in a word, to violate the laws of his State; to do a thing which would directly or indirectly violate the corrupt practices laws or acts of the State of Minnesota.

It is true that you introduced evidence that upon certain matters Senator Schall had said "See Mr. Jacobs. Mr. Jacobs is looking after this for me;" but that does not show that Senator Schall had authorized Mr. Jacobs to do any illegal thing or to carry on anything that was illegal.

Now, you are attempting by this witness, I assume, or by other witnesses, to drag in a lot of acts that would be possibly void legally, and violations of some law, and it does not seem to me that we should continue to take this evidence under this impartial view which we wanted to assume for the purposes of giving you a fair opportunity merely because you think that there is an atmosphere created here of illegality surrounding these headquarters. None of that has yet been shown to have met with the approval of Senator Schall. There has been no evidence that anybody at any time ever brought to his attention that these things were going on in these headquarters. Nobody has testified here or has offered to testify here that anything was brought to the attention of Senator Schall that should have put him, or would have put him upon his guard as to these matters, and I do not see how we can justify permitting these men to testify to what they did with Mr. Jacobs without the knowledge of Senator Schall, or without your making some assurance here to the committee that you will by evidence different from the evidence that the

committee has been receiving here, connect Senator Schall directly, or so indirectly as to remove from the premise every reasonable hypothesis to the contrary, that we should continue receiving this testimony.

I think that you are entitled to have my view on that. It is no discourtesy to you. I am performing purely a function here as an official of the Senate because it has been delegated to me, with my associates, to do this, and I do not think that I should sit here and allow you gentlemen, because of my possible silence, to infer that I approve that this testimony is connecting Senator Schall in any way with these things which you say happened in and about his headquarters and during the time that he was a candidate for election.

I shall not refer to the position that was taken by Mr. Edgerton on this matter, which of course you know. I have only spoken for myself, and that does not bind Senator Deneen in the least.

Senator DENEEN. My position on that is that under the rules of law it is usual to show the illegal act charged and the conspiracy to do it before the circumstances are permitted to go into evidence. I realize, of course, you can show a conspiracy by circumstantial evidence or by direct evidence if you choose; but the usual method is to have what the lawyers call the corpus delicti established first; but in a proceeding of this kind, of wide publicity, I think the committee should exercise its discretion of insisting that the connection be made before the charges are published. Otherwise you can see the obvious injury that would happen. We have it right in this case, if we do not go beyond it. Here certain statements were made regarding Mr. Corneaby, and if we had permitted a number of witnesses, 20 or 30, to come in and testify about their dealings with Mr. Corneaby, and later we had had Mr. Corneaby testify, legally that would all have been thrown out, but you could not have withdrawn the publication, and you see the injury that would happen. Any man could suffer in that way.

In addition to that, we have had the testimony here of Captain Townsend as to these matters, and others, that affected the exercise of our discretion.

But more than all are the statements of consel here in executive session, and I can not feel justified in ruling, so far as I am concerned, that we can permit all of these statements to be made and then, after they are not connected, rule them out. There is no possible way of withdrawing the statements, and the publication, or of withdrawing the injury; and we are here as a committee to guard the rights of all parties, the contestant and the contestee. The contestant can not single out the contestee for attack here, and say that anybody who cares to make any statement about him or his friends or associates and their friends or associates should be brought to testify, and then later have the committee rule upon them. I think the law is clear in the matter. The usual practice we have followed; and in addition to that we know now about the situation, and we have discretion in this matter and it should be exercised any way to have the issues proved in the regular order. I think we should establish the connection of Mr. Jacobs, his authority to speak for Senator Schall, before we should permit witnesses to come in and relate conversations outside of the presence of Senator Schall.

Mr. HUGHES. The Senators realize that we are many miles away from many of the personal characters of this conspiracy. This witness has come a long way to testify.

I make this offer. If the testimony of this witness can be received in executive session, subject to our right later to have an examination in which we would like to have Jacobs and Boone Talbot examined, either here in Washington or before some proper tribunal that your committee may select in Minnesota, we would have that. As to Jacobs, I have nothing to say. As to Boone Talbot, he is a man who has always borne a very high reputation in the city of Minneapolis. He was the manager of the Campbell campaign, a man whom I never heard anything against until this matter of the Schall headquarters came out; a man who, I believe, would have regard to his oath. He has made a statement which I have just learned about, to a certain man in Minneapolis, who is also a man of good standing and a member of his own lodge, and I doubt very much if he would come here and go back on that statement. Boone Talbot would tell the truth about this matter and his transactions in this Schall matter, and there would be no question in anybody's mind as to Senator Schall's knowledge and consent and approval. If we could have this witness here and we would be permitted to take his testimony in executive session, that would protect Senator Schall from any adverse publicity concerning the same. If it was rejected, then it would not get it in the papers.

I have given no interviews to the papers here in Washington. I have been very careful to say nothing, and I have not given any statements at the time as to what was in this prospect.

Senator GOFF. Outside of the testimony, there has been but little left for interviews. If you could make your offer regardless of the witnesses, there would be no disposition on my part to question your statement; if you told me that a witness would testify, I mean, at any other time.

Mr. HUGHES. I have a copy of his testimony before the county attorney.

Mr. REES. We might reply to what counsel has said. The committee has given the greatest latitude, the greatest opportunity for these gentlemen to make out a case; and they were told by at least one member of this committee that the five witnesses should relate, in the opinion of the committee, to the corpus delicti. Another member said, "Bring your own witnesses in your own way. We do not want to limit you by something arbitrary on our part." That is as I understood the Senator.

Here we are, after a year's time, with all this coddling and all this effort, and after a year's time they are still asking more assistance; more help. We feel that what counsel is asking is unreasonable; that the legal question here, the ultimate legal question here, is the paramount question, and should be decided upon now, and the committee has been going over this matter, and it is just as able, it seems to me, to decide it to-day as it will ever be; and we object to helping counsel out any further in attempting to bolster up a case of this kind.

You realize that this is in effect merely charges of a citizen against a member of the Senate, and that he is being tried, actually being tried before the Nation, by the Senate, at this moment. The influence is far-reaching. The injury might be very, very great. Delays

in themselves are most destructive. If the gentlemen have a case, it seems to me that they ought to be here with the corpus delicti to show some offense was committed, at this time, and we object to what counsel has suggested. We object to it and hope that the committee will not accede to it. But we realize that it is for the committee to determine, and that we will have to be governed by their decision, however great the wrong or the injury may be.

Mr. EDGERTON. I would like to say this: You talk about delay. It was not our fault. We never answered until in December. We came down here prepared, as we supposed, to prove the corpus delicti, and it does not seem to me that we ought to be charged with delaying it or found fault with, when we produced the five witnesses that we thought connected Senator Schall with this transaction. We acted in perfect good faith. We were disappointed in that.

Senator DENEEN. I think you acted in good faith on the matter. The committee has not found fault at all in the matter. We have tried to accommodate each side.

Mr. EDGERTON. I feel that way.

Senator DENEEN. We were delayed about two weeks on account of Senator Nye's case, when we could not possibly have had a meeting; but aside from that we have tried to accommodate everybody, and you, in turn, have tried to accommodate the committee. The only question is the one pending.

Mr. HUGHES. That is the talk with Mr. Jacobs.

Senator DENEEN. Was Senator Schall present?

The WITNESS. No, sir.

Senator DENEEN. The ruling of the committee has been uniformly that any statements made by Mr. Jacobs are not binding on Senator Schall unless you can show that they were made in the presence of Senator Schall or that he approved them.

Mr. HUGHES. I would like to state what we propose to show by this witness.

Senator DENEEN. You can make an offer of proof.

Mr. HUGHES. We offer to show that in this conversation Jacobs said, "Well, it looks to be a fairly good case." Then he asked this witness, "What is your name?" The witness replied that his name was Andrew Szysko. He gave his address and stated that he lived with his brother-in-law, furnishing Jacobs this brother-in-law's address, which would be in Minneapolis; and then we propose to show that the witness would testify that Jacobs put these things down on a slip of paper and replied, "That is all right," and then in the presence and the hearing of the witness Szysko, Jacobs got hold of the telephone and claimed or appeared to be calling Mr. Qvale. He is the gentleman who was here the other day; and Jacobs spoke a few words, and after that Jacobs put the receiver down and then said to this witness, "That is all right; don't worry. We will get you out of this"; and then that Jacobs, he will testify, further said, "You will not have to appear in court at all." This occurred a few days before the Federal court opened. The witness will testify that on the last Friday of September, 1924—if we were permitted—that shortly after this conversation he was then introduced by a man by the name of Louis Demar to Frank Corneaby at the Schall headquarters, and in the hall there, and that he had a conversation with

Corneaby concerning the case—his trouble. We will show that this witness was then awaiting trial in Federal court, charged with the sale of intoxicating liquors, and that he was told by Corneaby that for $500 the matter could be taken care of; that he then went home and borrowed a part of the money from his sister, and then later he came back with Louis Demar to the West Hotel, to the Schall headquarters, and there paid the money to Frank Corneaby; that he was at the time told by Corneaby that outside of Demar's position, some of the money had to be divided with the Federal men, and the rest of the money was to be paid out in the campaign of Senator Schall. That is the substance of what this witness will testify to, and we have other witnesses who will testify to similar transactions.

Mr. REES. I make the same objection to the offer.

Senator DENEEN. The same ruling. You asked Mr. Corneaby that; all of that; and unless you could show the connection between Mr. Jacobs and Senator Schall, as repeatedly indicated, it would not be competent evidence.

Mr. HUGHES. As I stated, the reason I am offering this is, if this was allowed to go on and Boone Talbot and Jacobs were investigated by this committee as to their transactions, I am sincerely satisfied in my own mind as to what Boone Talbot was doing there, and then we would have to bring this witness all the way back here.

Senator DENEEN. Do you intend to put Mr. Jacobs on? As I said, Mr. Corneaby was interrogated here, and he repudiated all of that and that eliminated all of the testimony of that kind. The other would have to go to Jacobs. Now unless there is an assurance that Mr. Jacobs can be shown to be an agent of Senator Schall, it would not be proper. Mr. Corneaby was on the stand, and he was charged just as Jacobs is charged; and suppose you put Jacobs on the stand and he repudiates it, for instance, what will become of your evidence?

Mr. HUGHES. If we are allowed to show that this man, as testified, had this talk with Jacobs and paid this money to Corneaby——

Senator DENEEN. Corneaby said that he got about $50, or less.

Mr. HUGHES. This witness can state how much he paid, and it can be corroborated by proof of his family from whom he got part of the money.

Senator DENEEN. I think you would be compelled to show Mr. Jacobs's relation to Senator Schall, and the best way to do that is by bringing here the people that know.

Mr. HUGHES. I would now ask for subpoenas for Jacobs and Boone Talbot.

Senator DENEEN. I think we may go into executive session and have you state what you will prove by Mr. Jacobs, and then we will determine that. We made considerable headway the other day in connection with our executive session, and I think we will clear that up better in that way; don't you?

Senator GOFF. Yes.

(Thereupon the subcommittee went into executive session, at the conclusion of which the subcommittee adjourned until to-morrow, Wednesday, February 3, 1926, at 2 o'clock p. m.)

SENATOR FROM MINNESOTA

WEDNESDAY, FEBRUARY 3, 1926

UNITED STATES SENATE,
SUBCOMITTEE OF THE COMMITTEE
ON PRIVILEGES AND ELECTIONS,
Washington, D. C.

The subcommittee met, pursuant to adjournment, at 2 o'clock p. m., in the room of the Committee on Privileges and Elections, Capitol Building, Senator Charles S. Deneen presiding.

Present: Senators Deneen (chairman) and Goff.

Present also: Senator Thomas D. Schall and Messrs. Rees and Smith, counsel for Senator Schall; and Messrs. Hughes and Edgerton, representing the contestant.

Senator DENEEN. The committee will come to order.

TESTIMONY OF PETER A. COSGROVE—Resumed

Mr. HUGHES. I would like to make a motion. I would like to have an opportunity at a later time to present further testimony. I would like to have an opportunity to have Mr. A. N. Jacobs and Boone Talbot here, to have them subpœnaed to appear here for examination before this committee.

I would like to have a continuance of 30 days. I am not at liberty to divulge the result of a long-distance telephone communication with some parties in Minneapolis that I had last night, a private conversation. It may possibly be probable that there may be some action of some kind taken in that county on this matter. There is a great deal of public opinion worked up over the matter, and although it is true that it was presented at one time to the grand jury, that would not prevent another grand jury from taking it up if so desired. As you Senators know, that has no bearing. There was no finding or bill presented, one way or another.

In view of that I would like to have this session adjourned for a period of 30 days, and then prior to the day set for that meeting, I would be willing to present to the committee then a statement or a synopsis of what I would expect to be able to do. At the present time I could not do that with reference to Talbot and Jacobs. I might be able to at that time.

Likewise, I learned last night that a witness has come forward in Minneapolis who will testify that he delivered these Harpoon newspapers into Mr. Schall's house, and that Mr. Schall had checked them over, that being evidence showing his direct connection with the paper.

I understand that in Minneapolis and in St. Paul, the daily papers have indulged a great deal in this matter, printing the proceedings, and one paper has, so I understand, espoused the cause of Senator

Johnson—one of the daily papers—and the matter has been a good deal under discussion there, and undoubtedly it will lead to some investigation right there at home.

I think at the time the matter was originally presented there and came before the grand jury at home, there was but little known of it. There was not the publicity that there is to-day. Under our system there, any member of the grand jury has a right to ask for an investigation, and then it would be up to our grand jury and the county attorney. As to what our county attorney would do I can not say, nor would I assume to speak for him. That is as far as we would care to go in regard to this long-distance telephone conversation in which a group of people called me up at my hotel last night about 10 o'clock, or thereabouts.

For that reason I ask if we could have this session adjourned for about 30 days, and then I will agree that I will present a synopsis or a statement, or perhaps some affidavits, as to what witnesses will testify to.

Senator DENEEN. I understand you are to be here all week.

Mr. HUGHES. I will stay until Saturday.

Senator DENEEN. Senator Neely will return to-morrow or Friday; will he not, Senator Goff?

Senator GOFF. I do not know just what day he will be back. Suppose we ask the clerk of the committee to call Mr. Neely's office and tell them that the committee desires to know, if possible, when Senator Neely will be back.

Senator DENEEN. I think all the members of the subcommittee should be here on the motion to adjourn.

The CLERK OF THE COMMITTEE. I have telephoned Senator Neely's office, and they say that he may be here to-morrow, but they doubt it; but you can count on him on Friday.

Senator DENEEN. I think we should adjourn until Friday.

Mr. HUGHES. Outside of Mr. Cosgrove, referring to what Mr. Corneaby said, I have no further testimony here.

Senator DENEEN. Mr. Rees, will you proceed with the cross examination of Mr. Cosgrove?

Senator GOFF. Mr. Hughes, did you state in this motion how many witnesses you would desire to bring here?

Mr. HUGHES. I did not, Senator, but it would not probably be such a great number. It would be on that connecting matter. It would be perhaps three, and one with reference to knowledge. I would submit affidavits, and if the committee desires to subpœna them on those affidavits, they can do it.

I might state that with reference to the cross-examination of Mr. Corneaby, and what Mr. Cosgrove is purported to have said referring to the governor and Mr. Kellogg, I personally do not see where it has any bearing one way or another, on this contest; but Mr. Cosgrove desires to look over that testimony as a matter of personal privilege.

The WITNESS. I think I am entitled to some constitutional rights here, and if the testimony stands undenied, they will spread it all over the State of Minnesota that Mr. Cosgrove did not desire to deny it.

If Mr. Rees will say he wants to patch it up, I am willing to do so. I am willing to expedite this matter in any way, shape, and form. I am willing to go further. I have not read this testimony, and since

12 o'clock I have been trying to get a copy of it, and I have not read my testimony, and I am not really in shape to testify at this time. If I am allowed to read this testimony I will submit my testimony to the committee and to the attorneys on the other side, and if it is necessary and they want me to come here and be cross-examined on it, I will pay my own expenses to this city and back home; and I will go further and say that I will submit my testimony to the press of the country.

Senator DENEEN. You may proceed with the cross-examination.

The WITNESS. Mr. Hughes did, on the direct.

Senator DENEEN. There would not be any cross-examination on that.

The WITNESS. He put it in, on the direct examination.

Mr. HUGHES. May I say that while Mr. Cosgrove is being cross-examined on his direct, I would like to read over the Corneaby testimony.

The WITNESS. Very well.

Senator DENEEN. Here is the Corneaby testimony [handing transcript to Mr. Hughes]. You may cross-examine, Mr. Rees.

By Mr. REES:

Q. Mr. Cosgrove, you stated that you had met Senator Schall, if I remember correctly, some years ago?—A. Yes.

Q. In 1904 or thereabouts?—A. Well, that was when he was officing in the Boston Block with A. D. Smith, and before he lost his sight.

Q. To what extent did you become acquainted with him, just briefly?—A. Yes; it is brief.

Q. Yes.—A. I was introduced to him by Cliff McKenzie, of Gaylord, Minn., who is now a senator from that district of Minnesota, a man who was officing in an adjoining room, and he took me in and introduced me to Senator Schall at that time.

Q. The point that I had in mind was, to what extent you became acquainted with him.—A. That was all.

Q. That was all, just an introduction?—A. Just in the adjoining room.

Q. All right. When did you next see Senator Schall that you can recall?—A. I met him after he became a Member of Congress in the office of Mr. L. L. Drill in the Exchange Bank Building in St. Paul, Minn.

Q. About when?—A. I could not place that. It was probably in his first or second term.

Q. Was there any considerable conversation between you at that time?—A. Hardly any. Very little. I was introduced. He was in Mr. Drill's office talking to Mr. Drill when I went in.

Q. All right. Do you recall when you saw him after that?—A. Yes, sir.

Q. Just as nearly as you can, without much detail.—A. I can fix that. It was in 1923, a few days after he returned from Washington to enter the senatorial campaign for the special election.

Q. That was in 1923?—A. Yes.

Q. And did you have extended conversation with him at that time, or do you recall? If you can not remember—I was just asking. If it is fresh in your mind you could tell us.—A. It was quite an extended conversation. I think it was quite an extended conversation.

Q. Where did you happen to see him, if you recall?—A. At 554 Security Building.

Q. In his office?—A. In his office; yes.

Q. Were you in his district at that time?—A. Yes.

Q. Were you one of his supporters for the Senate in 1923?—A. Yes.

Q. Were you active in that campaign in his behalf?—A. Well, I did some work for him. I could not say that I was awfully active, like I have been in other campaigns.

Q. Do you recall meeting him at any other time in 1923?—A. Oh, I met him right along during the campaign.

Q. Of 1923?—A. Yes; nearly every day in the city there. I was in there, in your office, and met Mr. Stafford and Mrs. Lyons.

Q. So that you were in Senator Schall's law office quite frequently in 1923?—A. Yes.

Q. And saw the Senator, the then Congressman, there at that time?—A. Yes.

Q. When did you first see him in 1924, if you can recall—early in the year?—A. It was in February.

Q. 1924?—A. 1924, a few days after the dinner in the Curtis Hotel.

Q. There was a large dinner or banquet?—A. A large dinner; an evening dinner.

Q. In the Curtis Hotel?—A. In the Curtis Hotel, I think.

Q. At that dinner Senator Schall made a speech?—A. I think so.

Q. Do you recall whether or not at that dinner he announced his candidacy for the United States Senate?—A. I was not at the dinner.

Q. Oh, you were not at the dinner. It was a short time after that dinner that you saw him in 1924?—A. Yes; I think it was the second day after the dinner.

Q. The second day after?—A. I rather think it was about the second day after the dinner.

Q. You saw him at his office?—A. Yes.

Q. Did you become associated with anybody in conducting a campaign for Senator Schall?—A. Not then.

Q. Not at that time? Did you later?—A. Yes.

Q. Where were you connected with his campaign—where?—A. Why, I was with Mr. Jacobs in the West Hotel and I was afterwards at the Ryan Hotel in St. Paul.

Q. It is a fact, is it not, that during the year 1924, beginning early, you wrote repeatedly to Senator Schall?—A. Yes, sir; I did.

Q. Urging him to become a candidate for the Senate?—A. Yes.

Q. And using persuasions of one kind and another, and giving your opinion that he ought to enter, and that he could win, etc.?—A. He had already announced his candidacy.

Q. But even before he announced his candidacy, is it not true that you wrote him advising him so to do?—A. Before he announced his candidacy?

Q. Yes; before he announced his candidacy.—A. Possibly.

Q. You say you became associated with Mr. Jacobs in some way?—A. Yes. Now, if you will let me say——

Q. Just a moment?—A. Yes.

Q. We can not take two different roads. To what extent were you associated with Mr. Jacobs?—A. I went over to the West Hotel when it was opened up—when the headquarters were opened up.

Q. Yes.—A. I helped arrange things there.

Q. Yes.—A. I was in charge of the headquarters there whenever Mr. Jacobs was away.

Q. Yes.—A. I started in early in the morning, at 8 o'clock, and I stayed there some nights until 12 and 1 o'clock.

Q. Yes.—A. Now, do not get so—I can hear you without shouting.

Q. Did Senator Schall appoint you to represent him and to carry on his campaign?—A. He asked me to go there.

Q. Senator Schall asked you to go there?—A. He did.

Q. Personally or by letter?—A. Personally.

Q. He personally asked you to go there?—A. Yes.

Q. And you spent a great deal of time around the headquarters?—A. I did.

Q. You testified about a voluntary committee in the West Hotel at the time of this organization?—A. Yes; I did.

Q. Were you a part of that voluntary committee?—A. Yes; I was.

Q. Yes. About how many members were there on that voluntary committee?—A. There is a letter there that shows the entire membership; somewhere about 60 or 70. There is a letter there. You know it.

Q. Did you go to St. Paul and open up some sort of headquarters over there?—A. I did.

Q. Did you call that a Schall headquarters?—A. I did.

Q. Did Mr. Schall ask you to do that?—A. No, sir.

Q. What did you do it for?—A. Mr. Jacobs sent me over there, and I went over there.

Q. So you were in the city of St. Paul and engaged rooms or quarters to start a Schall headquarters in that city; and at what place was that, Mr. Cosgrove?—A. At Parlor A of the Ryan Hotel.

Q. How big was that headquarters, about? How many rooms; how much space, is what I am trying to get at?—A. There was an outside room on the mezzanine floor, and there were two inner rooms.

Q. How many people did you put in that headquarters besides yourself?—A. I put in two at the start.

Q. What was that, some office help or something?—A. Yes.

Q. What was it?—A. There were two women.

Q. Two clerks? Or were they stenographers, or were they both?—A. One was a stenographer and one a woman to take charge of the headquarters sometimes.

Q. About when was that, would you say; just your best recollection?—A. A month before the primary.

Q. About a month before the primary?—A. Yes.

Q. What else were you doing besides work in the election, in the months, say, of January, February, March, and up to the primary of that year? What else did you do?—A. I was not doing anything else except helping, going down there and helping Mr. Jacobs; and, if you remember, you read a letter to me from Senator Schall asking me to go over to the German paper, and Mr. James R. Waters asked me to do the same thing, to get Mr. Schall's write up of the German-relief speech in the German papers of the State; and I returned to Mr. Jacobs to get out his letter to the people of the State.

Q. About when was that, would you say?—A. His letter effecting the organization. It was in March and prior to the 1st of April; and I worked off and on from the time Mr. Schall left, and saw Mr. Schall

almost every day. The second day that I went to Mr. Schall's office I was in his office from 10 o'clock until 12.20, pursuant to appointment, and I went to his office at 7 o'clock. The man that was there with him during all that time was Mr. James R. Waters, with whom Mr. Schall made an appointment the day before, and in the evening Mr. Waters and I went to the office at 7 o'clock, and we took Mr. Schall to his house and stayed there until 2 o'clock at night, discussing his campaign.

Q. I wish you would, if you please——A. (continuing). Mr. Waters was with me.

Q. Bear in mind that I did not ask you anything that could elicit this long speech.—A. Well, I——

Q. On March 13, 1924, did you write Senator Schall a letter?—A. I don't know. If I see the letter, I will know it.

Q. I ask you if that is your handwriting [handing witness paper]?—A. Yes. I am going through it to see what it is. I suppose you expect me to look over the letter, do you not? Yes; that is a letter, and a continuation thereto.

Mr. REES. I read from this letter as follows:

> The matter Jim and I proposed to write you about is the raising of campaign funds to pay postage and for stationery and stenographer work in sending letters throughout the State, and to get cuts to have run in the country press as Jim travels about the State. We have talked the matter over, and I will send you a form of authority for you to send us.

By Mr. REES:

Q. Did you so write Senator Schall?—A. I did.

Q. And you wanted Senator Schall at that time to send you some authority for him, to go out and raise funds where?—A. Mr. Waters was going throughout the State, and I was going throughout the State, and prior to that time Mr. Schall had asked me to raise funds.

Q. You were asking Senator Schall to authorize you?—A. Yes, sir.

Q. To go out and raise funds?—A. Yes, sir.

Q. Yes. Well, he did not do it, did he?—A. No, sir; he did not.

Q. I call your attention to a letter of March 17, 1924 [handing witness letter].

The WITNESS (after examining letter). That is my letter, sir; I think a carbon copy. No; that is the letter. That is my letter; that is my signature.

Mr. HUGHES. You are offering this in evidence—all of these?

The WITNESS. Yes; he introduced them.

Mr. REES. I am going at the proper time to offer these in evidence.

By Mr. REES:

Q. I want to call your attention to a statement in this letter of March 17 that I showed you. [Reading:]

> Waters is out of town five days each week. When home he is busy. If I did not have him to hold a little mutual admiration society with me, I would have to quit. If you give Mr. Waters and myself duplicate written authority to collect and receipt for funds for your campaign, we will try and collect some funds. I have listening posts and propagandists over in St. Paul, and should have a little change to buy them a cigar or a lunch once in a while. I have been in St. Paul to-day and could not give any of our Irish friends even a clay pipe or a green ribbon on the blessed day of St. Patrick. Wurra-wurra! Did you ever see such luck?

The WITNESS. "Wurra-wurra"; yes.

Q. You wrote that, did you not, to Senator Schall?—A. Yes.

Q. Is it not a fact that you wrote Senator Schall on an average of about three letters to his writing you one, during that period?—A. It is.

Q. Yes. That is true.—A. Sometimes he wrote to you, and you read a letter.

Q. I call your attention now to a letter of March 20, 1924, and ask you if you will look at that [handing witness letter]. Did you write that letter?—A. (After examining letter.) Yes; that is my letter.

Mr. REES. I will read this excerpt from this letter:

> 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. Magnuson as the manager of the sixth district, but he did not 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.

By Mr. REES:

Q. Now, I especially call your attention to that part where you say that Jake told you that he could not take the management of the Schall campaign because he was a Jew. Was that true?—A. True.

Q. Yes?—A. True as I am sitting here.

Q. And when you say "Jake," you mean Jacobs?—A. Yes.

Q. Mr. Cosgrove, do you recall a telegram sent from Minneapolis to Senator Schall about the 5th of April, 1924, with respect to advising him to become a candidate, or any other way? Maybe I had better show you the telegram and ask you if you sent such a telegram to Mr. Schall [handing telegram to the witness]?—A. (After examination.) This is not the original telegram.

Q. I beg pardon.—A. This is not the original telegram.

Q. That is not the writing, I take it, but is that the telegram?—A. It is, but it is not in such form that I could explain it.

Q. Did you send to Senator Schall, with others, that telegram, or one like it?—A. Yes; I joined with others; but that is not the original telegram.

Q. I suppose you mean that this is not the one that was filed in Minneapolis?—A. No; it is probably the one that Mr. Schall received.

Q. But this is the telegram that was received is it not?—A. Yes.

Q. All right.—A. Pardon me; allow me to say that the telegram was not signed by me, and that my name is misspelled on the telegram.

Q. You authorized such a telegram to be sent, did you not?—A. I was there.

Q. I say you authorized such a telegram as this to be sent?—A. Yes. I demurred at first, and Billy Coe put my name to the telegram, and he put it, by the arrangement, in such a way that my name appeared first, which it should not. Mr. Oce Curtis was the man whose name was signed first, and then the names ran down in one line and Oce Curtis was on the top; and then they took another line on the left, and started with me, and my name occurred first on that line, and I received the answer. That is all there is about it.

Mr. REES. The stenographer has marked this telegram "Contestee's Exhibit 4"; and it is offered and will be in.

Mr. HUGHES. I understand this was in the primary?

Mr. REES. Yes.

The WITNESS. It was before the primary.

Mr. HUGHES. We have no objection to that telegram, whatever.

Mr. REES. It is offered in evidence, and I wish to read it in the record.

Senator DENEEN. Are you going to offer it in evidence now?

Mr. REES. Yes; if the committee will permit. It reads as follows:

CONTESTEE'S EXHIBIT No. 4

MINNEAPOLIS, MINN.

By Mr. REES:

Q. That was 1924?—A. Oh, yes.

Mr. REES (again reading):

MINNEAPOLIS, MINN., 1924.

Hon. TOM D. SCHALL, *House of Representatives, Washington, D. C.:*

Your friends and supporters deem it of prime importance that you file for the Republican nomination for United States Senate immediately. You must make the fight as you have always done and you can win. Progressives call for you to lead them in this crisis.

PETER A. GOSGRAVE.	JAMES A. ARMSTRONG.
OCE CURTIS.	IRVING FRISCH.
O. R. LEEN.	KATE C. LAFERRIERE.
Rev. CHAS. FOX DAVIS.	DORA DEERING.
P. H. STACEY.	W. T. COE.
L. A. LYDIARD.	M. S. WINTHROP.
J. R. WATERS.	

By Mr. REES:

Q. Mr. Cosgrove, I call your attention to a letter dated May 6, 1924, and ask you if that is your letter?—A. (After examining letter.) Yes.

Mr. REES. I will ask the stenographer to mark this letter.

(The letter referred to was marked by the stenographer "Contestee's Exhibit No. 7.")

By Mr. REES:

Q. Mr. Cosgrove, I call you attention to the letterhead that that letter is written upon and ask you if that was the stationery that was used in this West Hotel, "Schall for Senate Club Headquarters"?—A. Yes; the same.

Q. That was the stationery that was used for that place?—A. Yes.

Mr. REES. I want to call the committee's attention to the fact that this is all before the primary.

The WITNESS. This was written before that time, but we never got any money to pay for any stationery, and we had to use the stationery from the Minneapolis headquarters. Jacobs was never able to raise any money, and I would not spend any on any stationery.

Mr. REES. Some member of the committee asked to see the letterhead, the stationery that was used, and having that in mind I have had this marked and asked to introduce it for the purpose of showing the kind of stationery that was used there.

Mr. HUGHES. Of course, I do not want to keep anything from the committee, and I have no objection, only this, that it should be made clear that that was the stationery used in the primary. This seems to be all in the primary.

Mr. REES. No; this stationery was used in May.

Mr. HUGHES. That was the primary. The primary was either in early June or in May.

Seantor DENEEN. It was the 16th of June, I think.

Mr. EDGERTON. Yes.

Senator DENEEN. This does not relate, then, to the election, but only to the primary.

By Mr. REES:

Q. Do you remember writing Senator Schall a letter again asking him for some authorization to go among some high-class Jews and collect campaign money? Do you recollect about that?—A. To go with other men; yes.

Q. Sir?—A. To go with other men, possibly. Let me see the letter.

Q. I ask you if you remember writing such a letter as that?—A. I don't remember writing it. Let me see the letter.

Q. We will find out in a moment. I will recur to it. When the window blew open here, it disarranged my correspondence, and I find it difficult to rearrange it. You spoke yesterday of Mr. Bowen?—A. Yes.

Q. You gave a conversation that you had with Senator Schall about Mr. Bowen?—A. Yes.

Q. In that connection you stated that Senator Schall referred you to Jacobs and Rahn?—A. Yes.

Q. As his campaign managers?—A. I didn't say campaign managers.

Q. Oh; what did you say about that?—A. I think I said that they were managing his affairs or something like that; handling his affairs.

Q. Handling his affairs?—A. The words "campaign managers" were never mentioned.

Q. I call your attention to a letter of August 13, 1924, from you to Mr. Schall, on that subject. Is that your letter, Mr. Cosgrove?—A. (Examining letter.) I will tell you when I read it.

Q. Oh, you want to read the letter?—A. Yes.

Q. Is that your signature, Mr. Cosgrove?—A. Yes. I want to know what letter it is, when you inquire about it.

Q. That is your letter, is it?—A. Yes; my signature.

(The letter referred to was marked by the stenographer "Contestee's Exhibit No. 8.")

Mr. REES. The letter is offered in evidence, and I will read from it.

Mr. HUGHES. May we see the letter?

Mr. REES. Yes, certainly [handing letter to Mr. Hughes].

The WITNESS. It is my letter.

Mr. HUGHES. We have no objection to it.

Mr. REES. I read from the letter of August 13, 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 we will see what the State central committee can do along that line.

By Mr. REES:

Q. This Mr. Bowen that you referred to wanted to get in touch with the Republican State central committee as well as with Mr. Schall, did he not?—A. He did, at that time.

Q. At that time?—A. Yes.

Q. And you were trying to assist him to get in touch with the State central committee, were you not?—A. At the request of Mr. James R. Waters.

Q. Yes, but you in fact were attempting to assist Mr. Bowen to get in touch with the State central committee with a view to his doing campaign work for the Republican Party; is that right?—A. I was.

Q. That is right.—A. At his request.

Q. And you were assisting him with the State campaign committee?—A. Yes.

Q. And you called on the Republican State central committee with him with that in view, did you not?—A. I never called on them with him.

Q. You did not call on them?—A. He did not go with me.

Q. He did not go there?—A. I wrote the State central committe and saw Mr. Siwarth.

Q. You did not go there?—A. Mr. Bowen did not go there. He kept his appointment with Mr. Schall, but he did not with them.

Q. You have spoken of Mr. A. D. Rahn, sometimes referred to as "Andy"?—A. Yes.

Q. And it is a fact, is it not, that Mr. Rahn was a member of the State central committee of Minnesota?—A. Yes.

Q. At that time?—A. Yes.

Q. And during the year 1924?—A. Yes.

(The stenographer at the request of Mr. Rees marked another letter "Contestee's Exhibit No. 9.")

By Mr. REES:

Q. Will you kindly look at this contestee's Exhibit No. 9 [handing witness letter].—A. I have examined it.

Q. Did you write that letter?—A. No, sir; I did not.

Q. Did you authorize anybody to write that letter?—A. No, sir; I did not.

Q. You see your name is signed to it?—A. I do not. It is the name of another man.

Q. Oh. Peter F. Cosgrove is not the same man?—A. How?

Q. Peter F. Cosgrove is not the same man?—A. No, sir; it is not the same man.

Q. Is your name Peter F. Cosgrove?—A. My name is Peter A. Cosgrove; Peter Anthony Cosgrove; and his name is Peter Francis Cosgrove.

Q. So that this is not your letter?—A. No, sir; it is not. He is my youngest son.

Q. He is your youngest son.—A. Yes.

Q. Well, that is all right. You stated that you had been to Mr. Schall's house after his election, I think it was in the month of December, 1924; do you recall that?—A. No, sir; it was in November.

Q. It was in November.—A. I think it was in November.

Q. You called there with Mrs. Cosgrove?—A. Mrs. Cosgrove, and with my youngest son, the writer of that letter.

Q. The writer of this letter?—A. Yes.

Q. You called at his house?—A. I did.

Q. You have stated that you were very frequently telephoning Mr. Schall just about some time after election, and inquiring about his health, and so on.—A. I don't think I said frequently.

Q. How frequently?—A. I telephoned a few times.

Q. A few times?—A. Yes.

Q. And you stated that a Florence Joswich spoke to you on the phone?—A. Yes; answered the phone.

Q. Was she an acquaintance of yours?—A. I knew her.

Q. Did you know her so well that you knew her voice on the phone?—A. Indeed, I did.

Q. You did?—A. Yes, I did.

Q. Yes; that is what I understand you to say. You knew her voice on the phone?—A. Yes; I knew her voice all right, better than I knew Mrs. Schall's.

Q. Yes. Mr. Cosgrove, is it not true that in December, 1924, and in January, 1925, you wrote a number of letters to Mr. Schall—Senator Schall—asking him to assist you in getting an appointment of a niece of yours, Kathryn W. Cosgrove, to a position of some kind in public service?—A. Let me see the letters.

Mr. REES. He has not any recollection of that.

The WITNESS. Not in the way you put it. The letters will speak for themelves.

By Mr. REES:

Q. Yes; we understand. You have not any recollection?—A. I have a recollection of writing the letters, but I did not write them in the way you put it into the record. I want the letters. I want the corpus delicti; yes, sir.

Q. Is that your letter [handing letters to the witness]?—A. (After examining letters.) Yes, sir; two of them are mine.

Q. These are contestee's Exhibits 10 and 11. Now, I call your attention to Exhibit 12; is that yours?—A. (After examination.) Yes, sir.

Q. You wrote them all?—A. Yes, sir; that is my signature. Anyone that has seen it knows that.

Mr. REES. Contestee's Exhibits Nos. 10, 11, and 12 are offered in evidence.

By Mr. REES:

Q. I call your attention now to contestee's Exhibit No. 13, Mr. Cosgrove?—A. That is mine.

Q. You wrote all these letters and mailed them to Senator Schall?—A. Yes. How would they get to you otherwise?

Q. Mr. Cosgrove, will you kindly look at contestee's Exhibit No. 14? I ask you if that is your letter?—A. (After examining letter.) Yes, sir.

Q. To Senator Schall?—A. I say yes.

Mr. REES. I offer in evidence contestee's Exhibits Nos. 10, 11, 12, and 13.

Mr. HUGHES (after examining exhibits). No objection.

Mr. REES. Counsel says there is no objection. I wish to read, then, very briefly, from these letters. [Reading:]

CONTESTEE'S EXHIBIT No. 10

MINNEAPOLIS, MINN., *December 19, 1924.*

Hon. THOMAS D. SCHALL, M. C.,
Washington, D. C.

MY DEAR MR. SCHALL: My niece, Catherine W. Cosgrove, a graduate nurse residing at 1806 Third Avenue South, Minneapolis, Minn., has filed an application for a position as a field nurse in Minneapolis, Minn., in the United States Public Health Service. She is the daughter of Frank Cosgrove of Green Isle, Minn. She was born there about 23 years ago and her father was born there about 67 years ago. For the past 18 years her father has run a rural mail route out of Green Isle. One of her brothers is cashier of the Citizens State Bank, of Waverly, Minn. Her two brothers were in the service of the United States during the World War and two of her older sisters held positions in the Bureau of War Risk Insurance during the war. She is a graduate of Norwood High School, 1919, and a graduate nurse of St. Mary's Hospital, Minneapolis, Minn., December 30, 1923, and has been doing work as a graduate nurse since then in St. Mary's Hospital and outside of the hospital. She has the reputation of being a very competent nurse, is a young lady of fine appearance and address. She and her family were good friends of yours during your different senatorial campaigns. Peter had her working for you in this city. And the Sunday before the primaries this year she went to Sibley County to help put you over. Anything you may do for her will be appreciated. Wishing you a speedy return of your good health and you and Mrs. Schall the compliments of the season,

I am sincerely yours,

P. A. COSGROVE.

Mr. REES. Contestee's Exhibit No. 11 reads as follows:

CONTESTEE'S EXHIBIT No. 11

MINNEAPOLIS, MINN., *December 19, 1924.*

Hon. THOMAS D. SCHALL, M. C.,
Washington, D. C.

MY DEAR MR. SCHALL: I have just written you a letter regarding an application of my niece for a position as a visiting nurse in connection with the United States Public Health Service. Sorry to bother you while you are trying to recuperate your health. I hope that you will soon be yourself again. As soon as you are able I wish to see you privately for about 15 minutes if it is at all possible.

Very truly yours,

P. A. COSGROVE.

Mr. REES. Exhibit No. 12 is as follows:

CONTESTEE'S EXHIBIT No. 12

MINNEAPOLIS, MINN., *December 26, 1924.*

Hon. THOS. D. SCHALL, M. C.,
Washington, D. C.

DEAR MR. SCHALL: Your valued favor of the 24th instant concerning application of my niece Catherine W. Cosgrove for position of field nurse in United States Public Health Service received and noted. I thank you for interest shown. The application was filed at the Plaza Hotel in this city, and I suppose the head of the service here is the party to take the matter up with, but that is merely a guess of mine. You will know what is to be done in the matter. Hoping that you will soon have fully recovered your good health, I am,

Very truly yours,

P. A. COSGROVE.

Mr. REES. Now, Exhibit No. 13:

CONTESTEE'S EXHIBIT NO. 13

MINNEAPOLIS, MINN., *January 10, 1925.*

Hon. THOMAS D. SCHALL, M. C.,
Minneapolis, Minn.

MY DEAR MR. SCHALL: In re application of Kathryn M. Cosgrove for position as a nurse in the Public Health Service, I wish to call your attention to the following facts, viz: Her application was mailed from Minneapolis to the Civil Service Bureau at Washington on December 19, 1924. She will have to first get a rating from the bureau. She applied for a position as field nurse. She may not have the necessary experience for that position, but has the required experience and qualifications for hospital nursing. Miss Cosgrove talked with Miss Griffin this forenoon. I was present. Miss Griffin suggested that Miss Cosgrove might be able to get a position in Asbury Hospital or in some other such institution. Kathryn desires to get a position in Minneapolis if possible. Kathryn and her family stayed by you during the different campaigns. I think that it is safe to say that my son Arthur and my wife and her relations and Kathryn's family and their relatives turned the trick that gave you the lead in Sibley County in the Republican primaries. Mrs. Cosgrove and Arthur made a trip to Sibley County the Sunday before election in addition to the one before the primaries.

Mrs. Cosgrove and the boys and Kathryn and her folks will greatly appreciate anything you may be able to do for her. I shall also appreciate the same on her account rather than on my own as I do not feel that you are under any obligations to me whatever. I have just noted in the afternoon papers the account of the fire at your residence and regret your loss and inconvenience but hope you have suffered no permanent inconvenience or injury.

Very truly yours,

P. A. COSGROVE.

The WITNESS. What number is that?

Mr. REES. That is contestee's Exhibit No. 13.

I next read contestee's Exhibit No. 14. [Reading:]

CONTESTEE'S EXHIBIT NO. 14

MINNEAPOLIS, MINN., *February 14, 1925.*

Hon. THOS. D. SCHALL, M. C.,
Washington, D. C.

MY DEAR MR. SCHALL: In re application of Kathryn W. Cosgrove for a position as a nurse in the Public Health Service. About the middle of January Miss Cosgrove was asked to send and sent in a certificate of registration to the Civil Service Commission. She has not received her rating yet. I suppose nothing can be done further until she gets her rating. If there is anything that you can do to help or to expedite the matter without too much inconvenience to yourself I should be glad to have you do it.

Sincerely yours,

P. A. COSGROVE.

By Mr. REES:

Q. Mr. Cosgrove.—A. Yes.

Q. When did you first make up your mind that you had become an avowed enemy of Senator Schall?—A. I never made up my mind.

Q. When did you first make up your mind that you would go out in Minneapolis and in St. Paul and attempt to look up testimony and find witnesses that would come into this contest and testify?—A. About a week after the primaries.

Q. About a week after the primaries?—A. I mean after the city primaries in Minneapolis in 1925.

Q. About a week after the city primaries in 1925?—A. Yes.

Q. When were they held?—A. Why, I rather think they were held——

Q. Do you recall?—A. I rather think they were held—now, wait a minute. I rather think they were held in May; possibly in April.

Q. Of 1925?—A. Yes; in the spring of 1925.

Q. And that is the time that you made up your mind that you were his enemy?—A. I never made up my mind that I was his enemy. I am not his enemy to-day; nor yours, either.

Q. Well, it is immaterial about me, Mr. Cosgrove?—A. I am not his enemy, either.

Q. Had you, prior to that time, been looking up evidence or trying to look up evidence for the purpose of discrediting Senator Schall in this contest or otherwise, prior to the primary of 1925?—A. No; I do not think I had.

Q. Will you say that you did not? You say you do not think you did.—A. Well, I say that if I did, I don't remember it. I say that the first time that I went out was the time that I mentioned, was the time that I remember.

Q. Well, you are not his enemy now?—A. No, sir; I am not.

Q. Not at all?—A. Not at all, or yours, either.

Q. You feel kindly towards him?—A. I don't exactly feel kindly, but I am not his enemy. I don't hate him and I don't fear him. I simply despise him.

Q. Oh, that is friendly, of course.—A. Yes; it is. That is my position. I am not his enemy.

Q. How many times have you interviewed witnesses in Ramsey County in an attempt to discredit Senator Schall?—A. I never interviewed a witness in Ramsey County, to my knowledge, with any attempt—oh, yes; I did, one. I interviewed Mr. Allen, the man in charge of the permits. Yes; once, that is—and possibly another.

Q. How many persons have you interviewed, do you think, in Hennepin County, that is the county that Minneapolis is in, with a view to discredit Senator Schall before the United States Senate? How many witnesses do you think you have interviewed?—A. I have interviewed possibly a dozen. A great many have interviewed me.

Q. Some of the witnesses, some of that dozen that you have interviewed, have you interviewed them more than once?—A. Oh, yes.

Q. Many times?—A. Yes.

Q. Some of them you have interviewed as high as two dozen times on this subject, have you not?—A. Well, I would not say that I have interviewed them that many times. Frank Corneaby, I have talked to him a good many times; but probably he has come to see me, or he has tried to interview me, altogether, forty times.

Mr. CORNEABY. That is not true.

The WITNESS. I am testifying, Mr. Corneaby. You had your day in court. I have mine.

Senator DENEEN. Nobody is permitted to ask questions but the attorney.

By Mr. REES:

Q. How many times do you think you have been to Corneaby's house?—A. Oh, with what I have been there, and with the telephoning, most of the time pursuant to his requests, I have been there quite a number of times.

Q. Quite a good many times?—A. Yes.

Q. You have interviewed many other witnesses, have you not, with a view to discrediting Senator Schall?—A. With a view to developing testimony in this case.

Q. How many times have you been to the county attorney's office of Hennepin County, trying to have Senator Schall indicted—A. Never.

Q. How many times have you interviewed the county attorney of Hennepin County with a view and for the purpose of having Corneaby and Jacobs indicted?—A. Never.

Q. Never, at any time?—A. Never, at any time, in his office or outside; or any of his attorneys.

Q. Or any other place?—A. No, sir.

Q. You have never been to the county attorney's office on this subject?—A. Yes; I have.

Q. You have?—A. Yes.

Q. How many times have you been there on this particular subject that we are inquiring about?—A. I don't know whether it would be pertinent to this or not, because you excluded the testimony regarding it, but I have been there to the county attorney's office a few times to get a line on the record of Sam Terrin.

Q. Is that all, now?—A. That is all.

Q. Just Sam Terrin. You confined yourself to Sam Terrin?—A. I confined myself, I think, to Sam Terrin, and possibly to Florence Joswich. I don't know but what we have talked about some of the—well, we might have talked about some of those bootleggers at the time, and I was there with Henry Tiegen.

Q. You were there with Henry Tiegen?—A. Yes.

Q. How many times were you at the county attorney's office with Henry Tiegen?—A. Very few.

Q. You say, "Very few." What would be your judgment?—A. My judgment would be that I was not there over four or five times.

Q. Yes.—A. I had to go quite a number of times, a few times, into the office before I could meet the man that I saw; but I was there not above six times; possibly three or four.

Q. Have you been working on the matter of this contest ever since you made up your mind you were going to despise Senator Schall?—A. I have; working hard.

Q. Working hard, have you?—A. Yes.

Q. And constantly at it?—A. Yes; and constantly; and I will continue working.

Q. Yes; you will continue it.—A. Yes.

Q. What is your business at this time?—A. My business? I am practicing law.

Q. Where?—A. In the office of Donald L. Hughes.

Q. How long have you been there?—A. I have been there since the 1st of October.

Q. Where did you have an office before that?—A. I did not office in Hennepin County.

Q. Where?—A. I did not. I was not well enough.

Q. Where did you office?—A. I officed in St. Paul.

Q. Did you have a law office in St. Paul?—A. I did, sir.

Q. How long ago?—A. Up to the time that I came to Minneapolis, on September 1, 1921.

Q. You came to Minneapolis in 1921?—A. Yes.

Q. And you have not had a law office in Minneapolis until when?—A. Until the 1st of October.

Q. 1925?—A. 1925; yes.

Q. For four years, then, you have not been practicing law in Minneapolis?—A. No, sir. If I had been practicing law in Minneapolis or anywhere else I would have been in the cemetery.

Q. In the cemetery?—A. Yes. I had a physical breakdown in St. Paul and had to quit the practice of law.

Q. What business have you followed the last year, say, since, I will make it March, 1924? What business have you followed? What have you done?—A. I have not followed any business from 1921, the 1st of September, 1921, until the 1st of October last year.

Q. No business at all?—A. No business at all, because I was not able, except what I did in Senator Schall's campaign.

Q. In Senator Schall's campaign?—A. Campaign.

Q. In 1924?—A. Yes.

Q. That is the only business you have had?—A. That is the only business I followed.

Q. The only thing you have done. You are a man of family?—A. Yes.

Q. I do not know, and I am asking you: Are some of your family married off and have they homes of their own, or do you all live together?—A. No, sir; some of them are married off. I would like you to split that question. Some of them are married off and some of them live with me.

Q. How many in your family at home?—A. There is myself and my wife and my oldest son and my younger son.

Q. That is four of you?—A. Yes.

Q. How many children have you?—A. I have five altogether.

Q. This Peter F. Cosgrove, is he a nephew of yours, or did you say he is your son?—A. He is my son.

Q. He is your son?—A. Yes.

Q. Is he your elder or younger son?—A. He is my youngest son.

Q. Does he live in your family?—A. He does.

Q. You say you have been practicing law now since, as I recall, September, 1925?—A. The 1st of October.

Q. Oh, the 1st of October, 1925. What compensation have you received from anybody for any services since you have lived in Minneapolis?

Mr. HUGHES. I object to that. That is not proper cross-examination.

The WITNESS. I do not object to disclose my compensation.

Mr. REES. I will withdraw the question, for the present.

By Mr. REES:

Q. Have you received any compensation for the work that you have done against Senator Schall in the matter of this contest?—A. I have received a small amount to cover my expenses in the matter.

Q. What amount, would you say?—A. $200, it amounted to.

Q. And from whom did you receive that? Who paid it to you?—A. Henry M. Tiegen.

Q. That is the man who was secretary for Magnus Johnson when he was Senator of the United States?—A. Yes; exactly.

Q. Are you a man of considerable means?—A. I refuse to answer that question.

Mr. HUGHES. I object to that. Surely that is not proper.

Mr. REES. I have a right to know where the money comes from that is financing this contest.

Mr. HUGHES. I shall object to it.

The WITNESS. I have told you——

Mr. HUGHES. Just a moment. I object to this as irrelevant and immaterial.

Senator DENEEN. What is the ground of your objection?

Mr. HUGHES. As to what his income is, it is irrelevant and immaterial and incompetent, and is not proper cross-examination.

Senator DENEEN. It is proper to show the interest of one in a contest, if he is a witness. They have asked him what he received and he said he has received $200.

The WITNESS. To cover expenses.

Senator GOFF. Do you remember when you had Mr. Corneaby on the stand you asked him about his status in the community and what he had worked at, and what he was doing? The questions were permitted because they went right to the interest of the witness.

This is not going into the amount of this man's income. It is not going into the sources of his income; but here is a witness who has presented himself——

Mr. HUGHES. Let it go on. We are not afraid of anything they can go into about Mr. Cosgrove.

Senator GOFF. It is not a case of being afraid. It is a question of giving each side the same treatment and the same opportunity.

The pending question was read by the stenographer as follows:

Q. Are you a man of considerable means?

Mr. HUGHES. Of course I shall object to that, because it calls for a conclusion of the witness.

Mr. EDGERTON. Does the scope of the inquiry go to the money that he got for work done in this investigation?

Mr. REES. We do not want him to draw his conclusions about it. We would like to know. Money of this character does not come easily, and it does not come openly.

Senator DENEEN. It would be proper, in my opinion, to examine him as to the rewards, financial or otherwise, that he has received or is receiving in this matter. It would also be proper, if a man has given considerable attention to the matter, to see whether or not he can do it without compensation. I think that is the rule; to inquire as to what available means he has of support.

Mr. HUGHES. We will withdraw the objection. Let them go ahead.

The pending question was again read by the stenographer as follows:

Q. Are you a man of considerable means?

The WITNESS. No, sir; not now.

By Mr. REES:

Q. Have you an income, Mr. Cosgrove, independent of work?—A. When I can't work, or if I would not work, our two boys, during the time that I was not able to work—well, about the time that I broke down I possibly had $1,200, in 1921. I, through my wife and at home, contributed a certain amount, and we tried to get along. My oldest son contributed. He contributes to the home $75 a month, and the younger boy has been contributing $50; and then my older son, who is drawing a salary of $275 or $300—I don't know whether he was raised on the first of the year or not—helps out and loans me money when I run short, and then when I get money I pay him back. We try to get along. We all help each other.

Q. Whom have you been consulting with in gathering evidence against Senator Schall?—A. I have been consulting with Henry M. Tiegen.

Q. Who else?—A. I can not say anybody else, except that I talked with the attorneys, Mr. Donald Hughes and Mr. Edgerton.

Q. How frequently have you conferred with Mr. Edgerton about this?—A. Only a few times.

Q. How frequently have you conferred with Mr. Donald Hughes about this?—A. I have not conferred a great many times. We have both been too busy since we went in. The fact is, we have never gone over my testimony.

Q. Have you been working under Mr. Hughes's direction?—A. No, sir.

Q. In collecting this testimony?—A. No, sir.

Q. And seeing these people?—A. No, sir.

Q. You have just been going on your own hook?—A. No, sir.

Q. Just on your own hook?—A. No, sir.

Q. Under whose direction?—A. I have been working in connection with Henry M. Tiegen.

Q. He has directed you what to do?—A. No; I have directed him a great deal of the time.

Q. You have directed him?—A. Yes; and I directed Hughes and Edgerton, too.

Q. You have worked for him?—A. I told you that I did not work for them; I was working in connection with them.

Q. And you directed him what to do?—A. Yes; and if he had done it, we would not be sewed up here.

Q. You admit that you are sewed up, do you not?—A. We have been all week, have we not?

Senator DENEEN. That is not proper.

Mr. REES. I just wanted to see if I understood the gentleman correctly.

The WITNESS. I say that since the 1st of October I have done very little in the investigation. I have been too busy.

By Mr. REES:

Q. That is, last October?—A. Of last year.

Q. Last October?—A. Yes.

Q. I want to call your attention to one other letter which has been marked by the stenographer as contestee's Exhibit No. 15, and ask you if you wrote that letter or had it written?—A. (After

examining letter.) Oh, yes. I am very glad that you produced that. That is one that I did not have a copy of.

Q. You wrote that letter?—A. Yes, sir; I wrote that letter. It is a very important matter; the most important of all. It is Exhibit No. 15, Mr. Hughes. You have not read all the letters, Mr. Rees.

Mr. HUGHES (after examining letter). We have no objection to that.

By Mr. REES:

Q. Did you cause the heading to be written on that letter, Mr. Cosgrove?—A. I did, sir. I did, sir; yes, sir.

Q. All right. The heading is "Ramsey County, Schall Headquarters, Parlor 3, Ryan Hotel, St. Paul, Minn." You caused that to be put on there?—A. Yes, sir.

Q. Did Mr. Schall authorize you to do anything of that kind?—A. No, sir.

Q. He did not?—A. No, sir; Mr. Jacobs did.

Q. But you have already stated to Mr. Schall in a letter that Mr. Jacobs said he could not be and would not be Mr. Schall's campaign manager for the reason that he was a Jew. Have you not already stated that?—A. Yes; that was away back in the primaries. And if I had thought that Mr. Jacobs at that time, or any other Jew, was going to be his campaign manager, I would not go into it; but there was a reconciliation made between——

Mr. REES. Is it the intention to keep Mr. Cosgrove here for the present, or to let him go?

The WITNESS. I will stay here.

Mr. REES. I may want to recall him for one more letter. At the present time I am unable to find it, because this correspondence was disturbed by the draft from the window.

Mr. HUGHES. Was it a typewritten letter?

Mr. REES. I am not sure. I only have the date of it.

Mr. HUGHES. We have some correspondence between Mr. Cosgrove and Senator Schall that all of us will be glad to turn over to you. We will be glad to have all of that correspondence go in.

Mr. REES. If I want it I will call on you for it. We will be able to find it, but if I do not find it, we may ask you for it.

Mr. HUGHES. Certainly; anything that we have in the way of correspondence we will give it to you.

Mr. REES. For the present, that is all.

Senator DENEEN. Have you some questions to ask on redirect examination?

Mr. HUGHES. Yes; I have some.

By Mr. HUGHES:

Q. Mr. Cosgrove, I show you contestant's Exhibit No. 4, and I will ask you to look at the signature. I ask you if you know whose signature that is?—A. (After examining exhibit.) I do.

Q. Have you seen that signature, and signatures like that, before?—A. Many times. I think I saw that signature—well, there were several of the same nature, and if this is the first of them—they are all shown in the Harpoon and if this is the first of them—I saw that particular signature—the fact of it is that I saw Mr. Jacobs write that particular signature.

Q. That particular letter?—A. That particular letter. I think I saw him write it; or at least, I saw him write one; if it is the first one of that series——

Q. Look at the contents of that exhibit; read it to yourself.—A. (After reading exhibit.) Yes; I think that is the one that he showed me at the time that he wrote the letter. I think he was in there when he dictated the letter, and that before he signed it he showed it to me and asked me what I thought of it.

Q. Do you know who the stenographer was there at that time?—A. Let me see [examining exhibit].

Senator DENEEN. Does it make any difference who the stenographer was?

The WITNESS. The stenographer of the Schall headquarters was Ansel Fordestin; but the other I do not know. She may have a middle name.

Mr. HUGHES. We offer this in evidence.

The WITNESS. There was quite a number of them around there at that time.

Mr. HUGHES. This is offered as showing that Mr. Jacobs was arranging for debates with Senator Johnson. The letter is addressed to Senator Johnson, and he is asking Senator Johnson to make arrangements to debate questions with Senator Schall. It was during the election. Of course we have not Senator Johnson here, but I am satisfied, and will say, if we were allowed to we could show that Senator Johnson or his secretary received the letter.

Mr. REES. In order not to yield the point that we have made, that Mr. Schall is not bound by Mr. Jacobs's statements, we have to renew the objection as to no foundation being laid, and that it does not bind Mr. Schall.

(The letter in question was examined by the committee.)

Mr. HUGHES. What purports to be that letter appears in the Harpoon, which has been received in evidence. Is that right?

Mr. EDGERTON. It was in one copy. I do not know which one.

The WITNESS. It was already introduced and appeared in the Harpoon.

Mr. REES. It is another well-known principle that agency can not be established by the statements merely of the agent.

The WITNESS. Yes.

Mr. HUGHES. All that I was trying to do was to open up the correspondence of this campaign. I would like to open it up completely.

Senator DENEEN. Is that pertinent to the issue here?

Mr. HUGHES. Yes; I think so. It shows that Jacobs was his manager. He was out arranging debates with Senator Johnson, according to this letter. It is true that the foundation may not have been laid that Johnson received it; but we will give our word that we can prove that. I do not doubt that we can do that.

Mr. REES. Any individual might undertake to act in this way and try to promote something of this kind.

Senator DENEEN. The ruling of the committee is that it is not a proper question for a number of reasons; not raising the technical one, that even if he was authorized to arrange debates that would not show that he had authority to do the various things that are charged here in the petition, and in the arguments made by Mr. Hughes and Mr. Edgerton, several times.

Another matter. If he was conducting a voluntary campaign as is charged, it would be perfectly proper for him to negotiate for a series of debates. There is nothing criminal in that so far as the facts are concerned.

Mr. HUGHES. Yes; but this matter is referred to in this Harpoon which goes to this particular point, as showing their relations.

Senator DENEEN. We are going to rule on the question as it comes up. On its face it does not show anything except an effort to have a joint debate. It shows that he wrote a letter to Henry Tiegen. The letter is addressed to Senator Johnson, in which he refers to the communication that he forwarded to Senator Johnson's secretary.

Mr. REES. I think the committee should read the letter.

Senator DENEEN. We have read the letter. It was not read in evidence. The substance of it is an offer for a joint debate.

Mr. HUGHES. Yes.

Senator DENEEN. Well, that is not an offense, is it?

Mr. HUGHES. Mr. Rees, if you would like to save time, I would like to offer in evidence the letters, all of them, that Tom Schall wrote to Mr. Cosgrove, some of them in response to letters that you have offered and interrogated Mr. Cosgrove about. One of them has been received. There are nine letters here, one of which has been received.

Mr. REES. We object to that for the reason that they do not tend in any way to prove the charges set forth in this petition.

The WITNESS. Shall I answer to that?

Senator DENEEN. No.

Mr. HUGHES. Of course, he has gone in great particularity over this primary, which he objected to on direct examination, and has offered in evidence, which has been received here, certain correspondence that Cosgrove had with Senator Schall, and it would seem to be perfectly proper to offer the correspondence during that period between Senator Schall, who was then a Representative, and Mr. Cosgrove.

If it is insisted upon we can take each exhibit and go through it. As I have said, I am willing to turn over to Mr. Rees all the correspondence between Cosgrove and Schall, on both sides, for what it is worth. It may not be worth a great deal.

Senator GOFF. It might be thoroughly incompetent to any issue that you have here in the record, that is true. We do not know what is in those letters, and of course whether counsel for the other side are acquainted is not yet disclosed.

This issue seems to me, Mr. Hughes, to be becoming more confused. We are proceeding, while these letters have been introduced, to show some connection, I assume, between Senator Schall and Mr. Jacobs. As I recall an answer was made a short time ago by Mr. Cosgrove in reference to a letter, in which he said he was opposed to Mr. Jacobs being manager of the campaign because he was a Jew; he added a qualifying statement a moment ago to Mr. Rees, that he would have had nothing to do with the campaign of Senator Schall if it had been his belief or his understanding that Mr. Jacobs was to have any connection with it. Do you recall that, Senator Deneen?

Senator DENEEN. Yes.

The WITNESS. That is what I said.

Senator GOFF. As I say, that is confusing merely upon the question of what we are establishing by all of this correspondence, both pro and con.

Mr. REES. If you would allow me to state, it was merely to show the good will, and the now present ill will, of the witness, toward Senator Schall, as going to the credibility of his testimony.

Senator GOFF. I do not question that. Mr. Cosgrove, of course, had a perfect right to refuse to serve on any committee the membership of which included a Jew, if he wanted to.

The WITNESS. Not that; under a Jew manager.

Senator GOFF. Under a Jew manager. Now, in this correspondence which Mr. Hughes wants to offer—and Mr. Hughes has a perfect right to offer anything that he has in his possession—if that is to show that Mr. Jacobs was the manager of the Schall headquarters, if that is what the correspondence is offered for, I say that it is very confusing to me, in view of these many statements that were made here. I have not seen it, and I do not know whether you and Mr. Hughes could get together and quickly page that over and determine whether within the scope of what you have tried to show and what we want to possibly clear up, the letters are pertinent. If you could, I am sure Senator Deneen and myself would be very grateful to you. We are very much pushed for time, as we assume you gentlemen are.

Mr. HUGHES. Perhaps I could clear it up, if you would permit me. It seems to me that Mr. Rees has opened the door on the primary. I think we should be permitted to show any talk Mr. Cosgrove had with Mr. Schall during the primary or before the primary with Mr. Jacobs, in reference to the campaign, or in explanation of conversations that they had. It seems to me it would be proper, after they have opened the door. It was ruled that we could not go into that on the direct examination; and I did not object to it as not proper cross-examination, because I am not inclined to be very technical; and it seems to me that they have now gone into that, and it seems to me that should be cleared up, and it could not be done better than by this correspondence.

Senator GOFF. Could you and Mr. Rees get together on those letters so that you could offer the letters in bulk and let them go in?

Mr. HUGHES. I think perhaps we could.

Mr. REES. What is the purpose of them, may I inquire?

Mr. HUGHES. It is to show the whole story, to get the whole thing in before the committee, the correspondence which you have offered and the rest of the correspondence. I, in turn, would be willing to offer Mr. Schall's replies, so we would have the correspondence between them.

There are several reasons. Another reason why I want to offer it is that the inference was left from one question that Mr. Cosgrove did all the writing and that Schall wrote very few letters. I want to show that Schall wrote quite a number during that period.

Senator GOFF. I would not want to say that I had drawn any such conclusion. I think any letters, of course, that you have in answer—that is, the original letters from Senator Schall in answer—to any letters which have been read into the record by Mr. Rees, would be admissible as part of the res gestae.

Mr. HUGHES. That is all I want.

Senator GOFF. That, I assume, there would be no question about; there could not be any objection raised by Mr. Rees to that. If he offered a letter in evidence, of course he would undoubtedly be willing to admit the answer to the letter. But if you have other letters that are relating to other matters, I thought possibly you and Mr. Rees could get together on that between now and the next hearing.

Mr. REES. I think we could, between now and the next hearing.

Senator GOFF. And determine about that.

Senator DENEEN. We can not rule on them without knowing what the contents are.

Senator GOFF. Yes; we could not rule on them without knowing the contents. Any letters in direct answer to the letters that Mr. Rees put in would be, of course, competent.

Senator DENEEN. Yes. See if you can not agree on it.

Mr. HUGHES. Frankly speaking, I have never been able to agree on anything with the contestee so far.

Senator DENEEN. Then you can submit them to the committee and read them.

Mr. REES. Perhaps that is the letter that I have been looking for [indicating letter].

Mr. HUGHES. This is a letter from Mr. Cosgrove to Senator Schall. You can have it and offer it, and I will not object.

Mr. REES. Of course your conversation scatters a little, as it has throughout.

Senator DENEEN. Now, gentlemen, let us keep on. We want to get through.

Mr. EDGERTON. I suggest that these letters be offered to the committee, and that they admit what they think are proper and reject what they think are improper, in order to save time.

Senator GOFF. While that is generous, it might not be fair to the contestant, in view of what knowledge he has, and the relevancy of the letters to that knowledge. We might be doing you an injustice if we got in possession of those facts and ruled against the letters.

Senator DENEEN. I suggest that they be handed to Senator Goff, and he can be reading them and we can go on with the examination.

(The letters referred to were here examined by Senator Goff.)

Mr. COSGROVE. If it pleases the Senators, I would like to talk to my counsel.

Senator DENEEN. The witness wants to talk to his counsel. Certainly, Mr. Cosgrove.

By Mr. HUGHES:

Q. Did you have any talk with Mr. Schall during the primary season of 1924, with reference to Mr. Jacobs?

Mr. REES. We object.

Senator DENEEN. The question is whether he had any talk. That is a preliminary question.

By Mr. HUGHES:

Q. Answer that yes or no.—A. Yes.

Q. Did you have more than one talk? I am referring, now, to before his nomination.—A. A great many talks.

Q. And in those talks were they in reference to Mr. Jacobs? Answer that yes or no.—A. Yes.

Q. Can you tell us when you had the first talk of that kind with him; about when it was and where?

Senator DENEEN. Approximately, if you do not remember exactly.

The WITNESS. There is a letter there written to Senator Schall that tells my attitude toward Mr. Jacobs, and I can not answer and I will not—I am not going to go on without it.

By Mr. HUGHES:

Q. Can you not fix the time, about; approximating it?—A. No; and I am not going to, in this way. I should be examined in regard to those letters; and there is a particular letter that I wrote an order there.

Q. We will come to that. You know, as a lawyer, Mr. Cosgrove, I can not examine you on a letter unless it is in evidence.—A. I know; but taking up the other letters, there is such—I have related talks and everything else.

Q. Referring your attention to the dinner at the Curtis Hotel in reference to his campaign, you recall that, do you?—A. Yes.

Q. About when was that?—A. That was in February.

Q. 1924?—A. Yes.

Q. I believe also there was a subsequent meeting in reference to his campaign, at the West Hotel in April of 1924.—A. There was a subsequent meeting in Mr. Schall's office, at the time that the telegram was written.

Q. After that telegram did you have any talk with Mr. Schall about Mr. Jacobs?—A. Why, I told——

Mr. REES. No; did you have any talk?

The WITNESS. Yes.

By Mr. HUGHES:

Q. All right; when was that, do you remember? Have you that telegram that was received in evidence?—A. After the telegram?

Q. Yes.—A. A day or two after.

Q. All right; that is in evidence. What was that talk?

Mr. REES. That is objected to upon the grounds urged before. The object of offering the letters was to show the change in the feeling of the witness toward Senator Schall. He has stated what a good friend he was, and he has asked favors of him and been to his house and had his wife at Senator Schall's house, frequently telephoning him and all that, and finally reached a point where he despised him and went out here to destroy him—all of that. The whole purpose of those letters was to show his frame of mind, and this very peculiar and we think abnormal action on his part. It was not to open up anything else than his feeling toward Senator Schall.

Senator DENEEN. Mr. Hughes?

Mr. HUGHES. Well, they opened the door. They went into the primary. They interrogated him upon the letters; they interrogated him about who had charge of the primary campaign. They have opened that up and shown that he was corresponding. There were letters between them.

Mr. REES. But that does not go to enlarge the issue made in the pleadings, but to show the feeling of the witness.

Now they ask the committee to place the construction upon that cross-examination to enlarge the issue and make some other issue to try him.

Senator DENEEN. We have ruled that whatever authority Mr. Jacobs may or may not have had in the primary campaign, it is not pertinent here under the issue, nor would it be under the law.

Furthermore, we all recall what he said about the authority of Mr. Jacobs this afternoon. He qualified that very greatly, but that would not affect the validity of this question.

Mr. HUGHES. They have gone into this primary business. They have opened it up. We did not start it. They have offered correspondence. They have taken up the question of the relationship to Schall through this correspondence. By that conversation we have a right to come in and show what the relationship was, there.

They have left the intimation here, and tried to leave it from his testimony, that Jacobs was not his manager. He can clear that up if allowed to testify, and the question of Magnus is gone into. He can explain that whole matter of Magnus and the whole matter of Jacobs in the primary.

Mr. REES. But I urge that there is no issue that counsel is now trying to make in this case. The issue is fixed by the petition.

Mr. HUGHES. Yes; but if in your probing you strike, under the cross-examination, into matters not admissible under the pleadings no matter how remotely you get into them, you open the door. That is the rule in our State, that under the cross-examination the door is in that event opened.

We were not permitted under the direct examination to touch upon the primary in any way, nor permitted to go into it. Now they have gone into it with this correspondence; and you have also asked him about his manager, and you asked him about Magnus, and all that. The subject has been opened.

Mr. REES. Counsel is in error when he states that I have consented, or that we have here consented, to the enlargement of the issue as stated in the petition. The cross-examination was a legitimate cross-examination under the issue made in the petition. Counsel says that because we exercised our legitimate right and legal right to cross-examine the witness and develop his feeling toward Senator Schall and the great change of feeling toward Senator Schall, the issue has been enlarged, which would require weeks to try.

Mr. HUGHES. Again, Senators, I desire to call your attention to the fact that he went out of his way to ask the witness whether he had authority to put on that letterhead, "Ramsey County Schall headquarters"—on the St. Paul letterhead. He went out of his way, and states that his real purpose in offering some letter here was to show that Jacobs's name did not appear on there, and it was before the address of the primary headquarters. Now, when he has gone that far, are we not to be permitted to open the subject? Are we to be foreclosed and not to be permitted to show what the truth and the facts were concerning Jacobs and Schall in the primary?

(The preceding testimony of the witness was read by the stenographer, as follows:)

Q. After that telegram did you have any talk with Mr. Schall about Mr. Jacobs?—A. Why, I told——

Mr. REES. No; did you have any talk?

The WITNESS. Yes.

By Mr. HUGHES:

Q. All right; when was that, do you remember? Have you that telegram that was received in evidence?—A. After the telegram?

Q. Yes.—A. A day or two after.

Q. All right; that is in evidence. What was that talk?

Senator GOFF. Is that redirect examination of anything that was touched on in the telegram? The telegram, as I recall it, did not refer to Mr. Jacobs. It contented itself with stating reasons why the people of Minnesota, as well as the Progressives were anxious and desirous of having Senator Schall enter the campaign. This is not anything that is connected directly with what is introduced through either the letters or the telegram. You will doubtless agree with me that it is a well settled rule of law that one can not introduce the essential elements of either his complaint or his defense on cross-examination, if objection is properly and duly made.

If this is something you are trying to do on redirect examination which is outside of the scope of the cross-examination, I do not see how that is proper. I think it is proper, as I stated a moment ago when Senator Deneen was signing some papers, here, that if you have a letter that is in response to any letter introduced in evidence, or if you have a question which clarifies or is responsive to any question asked by Mr. Rees relative to anything contained in a letter which was the basis of the cross-examination, you should be permitted to show that, as you say because the door was opened. But it seems to me now that you are getting into a matter that is entirely separate and distinct from anything that was brought out in the cross-examination.

It is true that Mr. Cosgrove very frankly stated the reason why he would not have anything to do with this campaign if Jacobs was to be the manager. I think it is perfectly proper for you to ask Mr. Cosgrove anything further elucidating that conversation or elucidating that statement. I think that is perfectly within your rights. But to go outside and ask Mr. Cosgrove a question that is not connected with that, seems to me not to be what we would call redirect examination.

Mr. HUGHES. I thought that was the very purpose of my question, to bring out the conversation with Mr. Schall concerning Jacobs.

The WITNESS. Will the Senators allow me——

Senator GOFF. You refer to the telegram?

Mr. HUGHES. No; I only referred to that to fix the date of that conversation. He seemed to be undecided about the date, and he remembered signing telegrams, and I used the telegram simply to refresh his memory and to fix the date of the conversation.

Senator GOFF. None of these letters which you have exhibited to the committee through me, which you say purport to be answers by Senator Schall to letters received by him from Mr. Cosgrove——

Mr. HUGHES. Yes.

Senator GOFF. None of these letters purport, as I read them, to answer the statement in Mr. Cosgrove's letter relative to Mr. Jacobs being the campaign manager; is not that true?

Mr. HUGHES. It refers, there, to "Jake," in some of the letters.

Senator GOFF. That is in a letter that you have previously introduced in evidence.

Mr. HUGHES. Yes; that has been introduced.

Senator GOFF. You are now going outside of the correspondence to show an entirely different question. You lay the ground for it, if that ground is laid, that this is a conversation, and there was no letter about it, and it is a conversation that relates to this very matter; I think that is a question that, if that is presented, the committee would rule on.

Mr. HUGHES. Then, of course, this question was asked him if he had any authority from Mr. Schall to open up headquarters and carry on headquarters there. That was asked of him.

Senator GOFF. Of whom?

Mr. HUGHES. Mr. Cosgrove.

Senator GOFF. He said he did not. He made that statement. I think that question was asked him if he had authority, and he said he did not have authority.

Mr. HUGHES. He said he had authority from Jacobs.

The WITNESS. In the St. Paul headquarters.

Senator GOFF. Yes; and he was asked if he had authority from Mr. Schall to put a certain statement on the letterhead, and I understood Mr. Cosgrove to say that he did not have that authority.

The WITNESS. No, sir; that is true. Now I want to ask the Senators a question. I do not wish to proceed any further at the present time until I get a statement from the Senators.

Senator DENEEN. Mr. Cosgrove desires to ask us a question.

Mr. HUGHES. I beg pardon.

Senator DENEEN. Mr. Cosgrove has asked Senator Goff and myself for the right to ask a question. I do not know what he is going to ask.

The WITNESS. If there is going to be an adjournment, Senators, I would like to be able to file a sworn statement in answer to the letters interposed. I was very insistent with Mr. Hughes that he would put my letters in evidence, in chief, as Senator Goff has indicated, and they have not been put in in chief, and at this time I do not wish to proceed any further in this irregular way.

Mr. HUGHES. I hope you will find the letters there. I will offer those letters if you have them.

The WITNESS. You have the letters right there with reference to the whole campaign, and you have been putting them in in answer to a cross-examination. Senator Goff is perfectly right. I would rather not proceed any further.

Senator DENEEN. Well, that is really a matter between you and your counsel.

The WITNESS. Yes; I know. But you folks have a right. I have a right.

Senator GOFF. You do not need to testify unless counsel make a request of the committee.

The WITNESS. If counsel would take up the letters that have been offered and have me explain them, I would explain them.

Mr. HUGHES. Now, Mr. Rees, will you show me the exhibits received in evidence that purport to be Mr. Cosgrove's letters to Senator Schall—that is, during the campaign—not the ones with reference to the young lady wanting a position? You offered some letters in evidence.

Mr. REES. While you are on that subject of letters, have you got a letter there of May 27, 1924, to Senator Schall?

Mr. HUGHES. To Senator Schall?

Mr. REES. Yes; from Mr. Cosgrove. You have got two. Have you got more?

Mr. HUGHES. Will you come over and find it, Mr. Cosgrove? Is it May or March?

Mr. REES. It is May 27, 1924.

Mr. HUGHES. Do you mean from Senator Schall?

Mr. REES. No; from Mr. Cosgrove to Senator Schall.

Mr. HUGHES (after examination of papers). I do not seem to have such a letter. Have you a letter, Mr. Rees, of March 27 of Mr. Cosgrove?

Mr. REES. I do not believe it was offered.

Mr. HUGHES. March 27; 127 West Fifteenth Street, Minneapolis, Minn. Have you that?

Mr. REES. Mr. Cosgrove's letter?

Mr. HUGHES. To Mr. Schall, who was a Member of Congress.

Mr. REES. Yes; we have such a letter.

Mr. HUGHES. You did not offer that in evidence?

Mr. REES. Yes.

Mr. HUGHES. Do you admit that such a letter was received by Senator Schall?

Mr. REES. We are not making admissions, but here is something you inquired for, probably.

(The letter was marked "Contestant's Exhibit No. 4.")

By Mr. HUGHES:

Q. I show you contestant's Exhibit No. 4, and I will ask you if that is your signature [handing letter to witness]?—A. Yes, sir.

Q. Did you write that letter to Senator Schall?—A. I did.

Q. And you mailed it to him; put it in the United States mail?—A. Yes.

Mr. HUGHES. I desire to offer this letter in evidence.

Mr. REES. That is objected to as incompetent and immaterial. It does not relate to any issue in the case.

Mr. HUGHES. It shows that he and Jacobs had a talk, and they were working together.

Senator DENEEN. It is admitted.

Mr. HUGHES. I want it copied in the record.

(The letter referred to is here printed in full in the record as follows:)

CONTESTANT'S EXHIBIT NO. 4

127 WEST FIFTEENTH STREET,
Minneapolis, Minn., March 27, 1924.

Mr. THOMAS D. SCHALL, M. C.,
Washington, D. C.

MY DEAR MR. SCHALL: Yours of the 24th came to hand yesterday afternoon. The inclosure came at an opportune time. I appreciate the fact that you were glad to get my letters. I was afraid that they might peeve you. I had a letter drafted to send you yesterday which went into other things that have been done and things that were discussed Saturday, but having called up Jim to have him go over the draft and finding that he and his wife had left for North Dakota I destroyed the draft. I had prepared and wrote you a shorter letter.

The discussion Saturday had a good effect. Jake and myself have got to understand each other much better. Jake is certainly a rustler. He has intitiative and the art of daring. He is an optomist raised to the nth power. He has had to do heavy work with some very poor tools. Jake has Bob Har-

gadine lined up for St. Paul manager. He wants me to work with Bob and to take in Dakota and Washington Counties. Hargadine told Jake what elements I can help to handle.

I note what you say about the gentleman who told you that things were pointing in your direction and about the other gentleman who has wired you that he is coming to Washington to see you. Give those gentlemen to understand that you are a member of the Rules Committee of the House in what promises to be the most momentous period in American history. Impress on their minds that the party is none too strong in Minnesota and that you are a mighty factor in the State at the present time.

Jake went to southern Minnesota yesterday and will not be back until Saturday. When Jake comes back I will talk the St. Paul situation over with him and see what may be done and advise you accordingly.

Yours truly,

P. A. COSGROVE.

By Mr. HUGHES:

Q. After this letter did you have a talk with Mr. Schall as to the matters in that letter?—A. No. sir. No, no, no. If you will ask me about that letter and let me explain it, I will tell you.

Q. Did you ever have a talk with Mr. Schall about that letter—about the contents of that letter?—A. No; I did not. I wrote him a letter.

Mr. HUGHES. Now, Mr. Rees, have you among your exhibits a letter from Mr. Cosgrove, a letter dated March 25, 1924, to Mr. Schall at Minneapolis?

Mr. REES. Have you not got the original?

Mr. HUGHES. We have a copy. We sent the original to Mr. Schall.

Mr. REES. I do not know. I have a lot of exhibits here and other papers, and I did have them in order, but when the window blew open they got all mixed up.

Mr. HUGHES. Are you sure that you have not such a letter?

Mr. REES. I say I may have, but my papers are not in order now. What was the date?

Mr. HUGHES. March 25, 1924.

Mr. REES. I may have, and if I have I will find it later. I feel that it is a sort of an imposition to keep this committee awaiting for us in this dilatory way.

Mr. HUGHES. That is almost a crucial letter in this contest. I never realized it until just now.

Senator DENEEN. Look it up and you can proceed with some other matter and then go back to it.

Mr. HUGHES. All right, I will come back to it.

By Mr. HUGHES:

Q. I understood you to say in cross-examination that you had opened up headquarters for Mr. Schall in St. Paul?—A. Yes.

Q. Can you explain how you came to open up headquarters there?

Mr. REES. That is objected to as immaterial if Senator Schall did not open those headquarters. It is a question of authorization, now.

Senator DENEEN. What is the purpose of the question?

Mr. HUGHES. It was brought out in their own cross-examination, about this St. Paul headquarters.

Senator DENEEN. I can not tell what you are going to ask.

Mr. HUGHES. I am asking this upon Mr. Cosgrove's request.

Senator DENEEN. What is its purpose?

Mr. HUGHES. It tends to show the connection between Jacobs and Schall, where they have already opened this thing up.

Senator GOFF. I recall that Mr. Cosgrove said in answer to a question by Mr. Rees, "Did Senator Schall authorize you to open these headquarters"—I am only giving the substance of it—and Mr. Cosgrove said, "No; he did not, but Mr. Jacobs did." Is not that your recollection, Senator?

Senator DENEEN. That is what he said.

Senator GOFF. That is what happened in the cross-examination of Mr. Cosgrove. Do you intend to show any facts other than that?

Mr. REES. When he said, "No," that answered the question; but when he went outside of the record and stated that somebody else authorized him, we are not bound by that so as to open up anything.

By Mr. HUGHES:

Q. Did you have any conversation later on with Mr. Schall after the headquarters were opened, with reference to them in St. Paul?

Mr. REES. I think I will object to that. He said that he was not authorized to do that—not authorized to open the headquarters.

A. I did not have any conversation after that letter was written.

Q. Did you have any conversation before that with Mr. Schall with reference to the opening of the St. Paul headquarters?—A. Yes.

Q. When was that?

Mr. REES. That is objected to as immaterial, as long as it was not with Senator Schall.

The WITNESS. It was.

Mr. HUGHES. He says that it was with Senator Schall.

Mr. REES. I know, but he says Senator Schall never authorized him to open those headquarters.

Mr. HUGHES. I asked him for his conversation. I do not know what the facts are.

Mr. REES. I suppose that it is a fact, when he says that Senator Schall did not authorize it. Now, why go into an interminable discussion about other things from which some contrary inference may be derived?

Mr. HUGHES. But you have opened up the subject here by cross-examination. Now it does seem that we would have a right to explain. I do not know what he will testify to. I have not any idea. Just a moment, Mr. Cosgrove; there is a question before the committee.

The WITNESS. There seems to be an argument between the committee and counsel.

Senator DENEEN. He may state it, subject to a motion to strike out.

Mr. HUGHES. Thank you.

By Mr. HUGHES:

Q. What was the conversation? State it.—A. Sometime before Mr. Schall returned to Washington——

Mr. REES. About when, if you can fix the time?

The WITNESS (continuing). In the latter part of April or the first of May; he talked about having a headquarters. We had a talk about having a headquarters opened in St. Paul.

By Mr. HUGHES:

Q. Will you please relate to the committee what that talk was?—A. As I remember——

Mr. REES. This statement is subject to objection?

Senator DENEEN. It is subject to the motion later to strike out.

The WITNESS. As near as I remember——

Senator DENEEN. Do you remember? Not as near as you remember.

The WITNESS. I remember that we did have a talk, and he said, "I would like to," and I think while I was there I went over and negotiated for rooms.

Senator DENEEN. Will you relate the conversation?

Mr. HUGHES. The conversation is what we want; what he said, or the substance of it.

The WITNESS. He asked me what I thought about having a headquarters opened in St. Paul and if I had made any arrangements, and I told him that I had seen the managers of the St. Francis Hotel and the manager of the Ryan Hotel, and that Jake and I had talked about opening a headquarters, and we had talked about Bob Hargadine or some other St. Paul man as the manager of the St. Paul headquarters, and he said, "Very good. I would like to have those opened."

Q. This was before they were opened?—A. Yes.

Q. How long after this talk was it that such headquarters were opened?

Mr. REES. So as not to forget it, I will move to strike out the testimony as being immaterial. It relates to the primary and is not within the issue here.

Senator DENEEN. Has he finished the part that relates to Senator Schall?

Mr. HUGHES. Yes; the conversation.

Senator DENEEN. Do you think that is proper?

Mr. HUGHES. I think it has been opened up on the cross-examination.

Senator DENEEN. It does not contradict anything and it does not relate to any issue.

Mr. HUGHES. But he has opened this matter up, and he has made it an issue, perhaps.

Senator DENEEN. He can not make it an issue. Suppose, for instance, you would be able to show by writing that Senator Schall authorized this gentleman and Mr. Jacobs, or anybody else, to be his managers in the primary. Do you think that would be pertinent in the matter as to the election?

Mr. HUGHES. I think so, to show their connection.

Senator DENEEN. It shows their connection at the primary, but would that show the connection at the election? The issues are on the election.

Mr. HUGHES. This is to show their relation clear back, the relation of these two men, Schall and Jacobs. This is the way we prove the conspiracy. This goes back to their relation before the election; shows how close they were. Here was this man Jacobs active in this primary campaign. Later he followed up, continuing the relation. I understood that certain evidence had been received here

subject to objection or to be struck, or the conspiracy to be proven. Why would not that same thing apply to their association?

Senator DENEEN. The only thing is this, that we can not cumber up the record with such a vast amount of matter and then go back and retry it and reargue it. We must bring it to an end, I think.

Mr. EDGERTON. As I understand it, from my standpoint I can not see any use in prolonging the taking of testimony here unless we connect Mr. Schall personally. Why waste time on that unless the committee gives us a chance for a continuance, and to find, out there in Minnesota, definitely whether we can connect him or not? It seems to me that this is dragging along unnecessarily and taking the time of the committee without accomplishing anything unless we can make that personal connection; so that I am in favor of waiting until we see whether we can make that personal connection and bring it home to Mr. Schall; and if we can not, why go on with this branch of the case, the bootlegging charge?

The WITNESS. This is on my cross-examination, and I would like to explain the letters, myself.

Mr. HUGHES. I certainly take issue with Mr. Edgerton on that particular. I want to stay here and give Mr. Cosgrove a chance to explain his examination. I want to go into the matter that was brought out on cross-examination.

Senator GOFF. I will make this suggestion to you. Senator Neely is absent and very likely will not return until Friday morning, and I do not think it would be either proper or fair to Senator Neely to determine your request for a certain day continuance in his absence, and I would suggest that we adjourn this matter until some time Friday, when we are sure to have Senator Neely here, and Senator Deneen and I will go into executive session with him and the transcript will be written out which will include your request, and we will then determine what, if anything, can be done.

Senator DENEEN. Let us fix an hour. Shall we make it 2 o'clock on Friday?

Senator GOFF. I will say 2 o'clock Friday. I would be willing to make it half past 1 on Friday.

Senator DENEEN. What are you going to do with the other witnesses?

Mr. HUGHES. I want Mr. Corneaby and Mr. Szysko here. I am not through with them, and I want to finish with Mr. Cosgrove.

Senator DENEEN. We will adjourn until half past 1 on Friday, then.

(Thereupon, at 6 o'clock p. m., the subcommittee adjourned until Friday, February 5, 1926, at 1.30 o'clock p. m.)

SENATOR FROM MINNESOTA

FRIDAY, FEBRUARY 5, 1926

UNITED STATES SENATE
SUBCOMMITTEE OF THE COMMITTEE
ON PRIVILEGES AND ELECTIONS,
Washington, D. C.

The subcommittee met, pursuant to adjournment, at 2 o'clock p. m., in the room of the Committee on Privileges and Elections, Capitol Building, Senator Charles S. Deneen presiding.

Present: Senators Deneen (chairman) and Goff.

Present also: Senator Thomas D. Schall and Messrs. Rees and Smith, counsel for Senator Schall, and Messrs. Hughes and Edgerton, representing the contestant.

Senator DENEEN. Senator Neely is not in the city, I understand. Are you gentlemen ready to proceed?

Mr. EDGERTON. If the committee will allow me to say a few words, as I understand it, I have no desire to continue the testimony of Mr. Cosgrove. I want at this time to ask the committee to give us time to get the witnesses here on the other charges, particularly the charges involving the corrupt practices law, which also includes the sending of the cartoon, and the charge that he promised offices to people who supported him in his campaign, in violation of the laws of Congress. We had one witness here under the several charges, where we claimed the corrupt practices act was violated. We have shown by the decision of the Supreme Court of Minnesota that those charges are deliberate, serious, material, and that they were continued. Under the Minnesota statute a man would forfeit his office who violated the law in that respect. We have tried to show that that corrupt practice law, which is not in conflict with any law of Congress, applies to the election of United States Senators and Members of Congress, and it is so held by the opinion of the attorney general of Minnesota, who has been asked to construe the law. Now, if we are right about that, those charges are a violation of the law of Congress, because of the saving clause in the law of Congress which I called the committee's attention to.

Again, I have cited the code, page 149, of the compilation of the corrupt practices act, by the attorney general, which shows that the offices of Senator and Congressman are included; that therefore we must have time if we are permitted to go on with these charges, to present that testimony.

In the meantime, if we can not produce affidavits from people who connect Senator Schall personally with the bootlegging charge, I shall not ask for more testimony to be introduced on that charge. If you give us time to produce the evidence on the other charges, it must necessarily follow that there would be time to produce these affidavits, or under your ruling we fall down on that charge.

Senator GOFF. How much time do you want?

Mr. EDGERTON. The counsel here associated with me has asked for 30 days. Whether you consider that unreasonable or not, I do not know.

Mr. HUGHES. Or longer.

Senator GOFF. Do I understand, Mr. Edgerton, that you intend to procure affidavits from witnesses other than those that have been subpœnaed here, showing that Senator Schall had actual knowledge of the so-called bootlegging charges?

Mr. EDGERTON. No, sir; I do not claim that I can do that.

Senator GOFF. No; I say do you intend to do it?

Mr. EDGERTON. We intend to see whether we can do it or not.

Senator GOFF. Now, with reference to the corrupt practices act charges.

Mr. EDGERTON. Yes.

Senator GOFF. It is my understanding that you intend to show that Senator Schall promised political patronage directly in return for votes?

Mr. EDGERTON. That is what they tell me. They tell me they have the evidence and can produce it. I never have talked with one of them, Senator. I do not represent the Farmer-Labor——

Senator GOFF. What I want to bring out is this distinction, the distinction between evidence that would tend to show that a man running for public office might have said, generally, that in the event of his election he possibly would take care of some one if the opportunity arose, or whether there was a specific agreement descending to such particularity that it invaded the seal of the corrupt practices act because it was a promise in return for a vote.

Mr. EDGERTON. Yes.

Senator GOFF. If you are going to show that, and if you are going to bring affidavits to show that, and you will make that statement to the committee, I think that is a matter which the committee will take up with Senator Neely as soon as he returns, and we can have a meeting of the full subcommittee, and determine whether or not the committee will grant a 30-day extension. Is that what you intend to do?

Mr. EDGERTON. Now, I am not going to tell you that I can do any more than I can. I am told that they have witnesses who will swear that Senator Schall promised them positions if they would support him in the campaign. That is what they tell me. But if we can not produce that, we have no right to ask this committee to hear testimony, and for myself personally I am not going to do it.

Senator GOFF. Have you gentlemen anything to say on the other side—Mr. Rees or Senator Smith? Have you anything to say in opposition to the motion?

Mr. REES. If the committee please, we do oppose this motion for many reasons. I will state a few that spring to the surface at this moment.

This attempt at a contest was begun a year ago. It was filed in the United States Senate on February 2, 1925. We have had many meetings and discussions, and the Senate committee has in all of these meetings and discussions been very, very liberal with counsel; has explained to them what they should do at great length, and in that way they have been advised ahead of time just what they

would have to do. They were advised as to this issue and of other issues, and that they must file with the committee a statement that would show the corpus delicti of some offense which this committee ought to investigate. They have filed those, and they are still short of showing any offense, up to date.

It is such a cruel thing to permit somebody, or a group of persons, who are bent on destructive purposes, to come into the Senate and really crucify a Member of the Senate, by statements of this kind, now. The matter should have long ago been disposed of. It is a most serious thing for the Senate to take one of its men, who has been duly elected, elected according to law by the votes of the State, here representing the sovereign power of Minnesota, because he represents the majority, to take hold of him and hold on to him, as counsel now wishes, for a year. They say, "We have produced nothing;" and they have had adjournments to produce things.

They have asked what you required, and you have told them. You have helped them with their pleadings at least three or four times. And now, is it good faith, is it fair to the sovereignty of Minnesota, to permit these people to still go fishing, still to go far, to make a case? If gentlemen, or anybody, had a real right, a real cause against some Member of the Senate that might cause his expulsion, they can file it at any time and the Senate would receive it at any time. It amounts to this, that the Senate is looking for information. No private citizen not a Member of this body has any right to control the body or any of its branches or any of its committees. That is just a courtesy that the Senate is extending. The only person who has a right to institute a proceeding here is the Senate itself, and that is what it amounts to now; and the Senate has been upon a diligent inquiry for a year to find out if there is anything here that would cause the expulsion of a Member; and while I am speaking of that, what has the Senate expelled for? I am not talking about a contest; there is no contest here. The Senate has never expelled a Member, never in the history of this Nation, except for treason or near treason. Never. And they will not turn around now and begin to expel them for some little, small matter that happened back in Minnesota; so that it is apparent upon the face of the thing that after you hear all this testimony, even if you do hear it all, you are not going to expel Senator Schall from this body. You are not going to flaunt the sovereign power of Minnesota. It is just as sacred as the powers you yourselves are exercising. It is one and the same thing. You are not going to strike down in this body Senator Schall or anybody else, unless there is something that is so awful, so bad in its consequences, so inherently despicable and low, that you can not permit him to sit here. That is what we are up to. That is the situation that the Senate has been working for all this while. They have had Senator Schall on tenterhooks here to see if his colleagues are going to pitch him out at the behest of persons who still say, "We want a further chance to use this committee to throw out one of your Members." It seems to me it is unreasonable; it seems to me it is outrageous; it seems to me that the Senate ought never to institute a proceeding, ought never to hold a public trial, to put somebody out of the Senate, and permit his enemies to smear him, unless they can see that in the end they are going to expel that man if these charges are true.

It is like you bring a lawsuit in the court. The judge says, "Yes; I read all of this, but you have stated no cause of action." The gentlemen have been here numbers of times, and this court has said to them, "You state no cause of action." Finally they say, "Give us your facts. Show us in good faith; give us your facts upon your honors. Give us the facts that will justify us in throwing a Member out of the Senate." What have they done? They say they have acted honorably. Grant it; but the facts which they gave the Senate—that is, the statements that they gave the Senate—are repudiated by their witnesses as being untrue.

We asked to have affidavits made if they were going to file any such statements, but this committee generously said to the counsel, "Upon your professional honor, we will permit you to do that." Have they kept the faith with this committee? Are they entitled to consideration? Are you going to believe that they will keep the faith now? They say, "We will file affidavits." Affidavits of whom, what, where? That does not mean any good faith.

This matter should come to an end, it seems to us, and we object to any further continuance. We have been subjected to all the infamies that they could turn in here. It is no fault of ours that they have tried to divert the sewers of Minneapolis through this Capitol and under the dome of the great Capitol at Washington. It is no fault of ours. But the Senate has been kind to them and helped them. Helped them to what? To strike down, here, the sovereign power of the State of Minnesota and a Member of this Senate. We object to a continuance. We think this matter should be determined now, that they have had a year.

This matter would have been disposed of in any court in the land—and the courts are another branch of the Government—long ago. Perhaps one amendment would have been allowed, and then the judges would have said, "We will not, we can not, listen to you. You have had your day in court." These people have had their day in court. They have had their day upon the consciences and the honor of gentlemen; they have had their day. When they deal with gentlemen, as they are doing when they deal with this committee, they should have given us something here that would warrant th s most august proceeding of pitching a fellow member, a high officer of the Nation, out into the street.

This matter should stop where it is. Another point; let me call your attention to this: Mr. Hughes has threatened here that they are now going back to Hennepin County again, where they have been trying for a year to get an indictment; they are going back there again and get an indictment, and he is going back there and say that the Senate of the United States are waiting for a grand jury; that there is something in the Senate's mind now, "We put it there." They are going to use that as a lever if this matter is continued. They are going back there and say, "The Senate is expecting you to do something." It amounts not to coercion, but nearly to coercion, of the grand jury system of our State.

The gentlemen are not foreclosed, if they have anything, from coming here. We do not object to that. But we object to tehir permitting slander, destructive; we think malicious; we know malignant. It is mendacious if untrue. They have had their day in

court to show that it is true. They have had nothing but concessions. It seems to us, in view of the attitude of mind of counsel and the attitude of the contestant, that there should be no continuation. This matter should be disposed of. They are never foreclosed. The Senate will never foreclose infamy of one of its Members to anybody.

Senator GOFF. Mr. Rees, before you sit down, is it in your mind that counsel on either side have a right to assume that they can go out of this committee and represent this committee in the doing of anything in the State of Minnesota?

Mr. REES. They have not any real right to do that; no, Senator. But you hear the representations that are thrown out. You hear the inferences that are drawn here. I know of nothing that will prevent that being done, just as it has been done.

Senator GOFF. I will tell you what will prevent it being done. This committee will not permit anybody to put it in the position of a prosecutor in the State of Minnesota, or any other State.

Speaking for myself, and, I think, for Senator Deneen, that must be clearly understood, that this committee will never countenance anything like that.

Mr. REES. May I ask you, Senator, with all the respect in the world, how you are going to prevent it if gentlemen do that thing?

Senator GOFF. I do not assume that they will do such a thing. I do not assume that counsel would go out and assume to quote the committee as favoring any such step by any organization or governmental agency in the State of Minnesota.

Mr. REES. We do not know how it can be prevented, and we have sat here under charges that this committee has now investigated and that they find no word of truth in. Are you going to say to this man—I must speak plainly—"Are you now going to turn Christian? Are you going to be righteous?" It seems to me we ought to avoid the appearance of any such thing, because this matter is not foreclosed.

Mr. EDGERTON. In reply to counsel I want to say that we prepared a petition in the first place, and under the rules of practice in Minnesota we do not plead evidence, we charge facts in a complaint or petition.

On their motion the committee required us, under the practice here, I suppose, to go into detail and cite evidence. We did that.

After 10 months we could not get them to join issue, and they never joined issue until December.

I did not understand, at the meeting in December when we were only allowed these few witnesses, that we were foreclosed on all those other charges—some 9 or 10 other charges. We could not be expected to prove our entire case on five or six witnesses. It would be impossible.

Senator GOFF. Mr. Edgerton, in behalf of the committee I think I should say in that connection that the committee has never stated that it would foreclose you on the right to prove any allegation in your petition.

Mr. EDGERTON. No; I did not say that.

Senator GOFF. The committee said that it wanted to eliminate expense wherever possible, and it asked you to give the names of five or six witnesses.

Mr. EDGERTON. Yes.

Senator GOFF. And after that testimony had been heard they would then determine whether they would be justified as a committee in calling additional witnesses.

Mr. EDGERTON. Yes.

Senator GOFF. The committee did not restrict you as to the character of witnesses you should bring here. You could have brought, under your five or six witnesses, one witness to each outstanding allegation in your petition, and if that witness had given evidence of a prima facie character, then you would have had the undoubted right to urge your request for the subpœnaing of additional witnesses, as many as might seem reasonably necessary, to sustain all of your allegations. You gentlemen brought your five or six witnesses, if I may refer now to the record, to simply one of your allegations.

Mr. EDGERTON. And as to the corrupt practices act also. We brought one witness on that.

Senator GOFF. Yes. I want you to understand that the committee has not restricted you in any way. Of course, I am only speaking of the time from the beginning of the taking of testimony. I was not a member of the subcommittee when you gentlemen met in Chicago, and I know nothing of my own knowledge as to what transpired there.

I want you to feel, furthermore, that this committee is not inclined in the least to either impede a full investigation of this matter or to restrict counsel along the lines of a reasonable investigation. This committee, as I think the record will show, has been more liberal with you in your proof than any judge in the exercise of an impartial judicial discretion might probably be expected to be. And those are matters which I wish you would address yourself to and have in mind when you are making remarks about the restriction of the proof.

Mr. EDGERTON. You understand why I said that was because counsel said we had had our day in court. Counsel said that, and I was answering his remarks. He says we have had our day in court. Now, there are many instances—continued, deliberate instances—under the corrupt practices charge where this man went around the State making these charges in addition to the other evidence as to the mailing of that Harpoon.

We have got it that he was the cause of mailing the Harpoon and of having that publication put forth. There is other evidence to be followed up in that matter, bring the personal matter of mailing these Harpoons to the knowledge of Mr. Schall, and one witness has testified at a meeting in St. Cloud that he made improper remarks, which according to our court in Minnesota were deliberate, serious, and material; and there are numerous other instances.

Now, we brought that witness here, and it seems to me that his testimony shows clearly that the corrupt practices act was violated, and we ask permission to bring other witnesses from other parts of the State showing that it was continued and deliberate, as well as other charges there. For instance, there is the charge of promising offices for support in the campaign.

That is all I have got to say in regard to the matter. I claim that we were taken—and I have claimed all the time so far as I was concerned I was absolutely taken—by surprise on the one witness

that we brought here, supposing we could show personal knowledge in regard to Senator Schall. We were prevented, because he did not testify here as he told us on the Monday before we came.

Can it be said, under these circumstances, that there has been an investigation here that would satisfy you gentlemen that we have had our day in court and that we should be now barred from introducing any other evidence? I am satisfied here, and I shall state it in Minnesota, that you gentlemen have been fair and square in your rulings on the law, in my opinion; but I do feel this, that we have not had a chance to present properly so important a case as this.

Mr. HUGHES. May I say a word?

Senator DENEEN. Yes.

Senator GOFF. Certainly.

Mr. HUGHES. There has been so much said about bad faith on the part of counsel, that I am now going to state something that I have more or less suppressed. Mr. Corneaby——

Senator GOFF. Who is this?

Mr. HUGHES. The witness Corneaby led us to believe, and I believed he was sincere at the time——

Mr. EDGERTON. May I interrupt you? Gentlemen, I have my reservation on the train leaving at 3.20. May I be excused?

Senator DENEEN. Yes; we will have to notify you as to the decision of this committee on the return of Senator Neely. May I ask you before you go, Mr. Edgerton, who your witnesses are that you expect to present, and what is the substance of their testimony?

Mr. EDGERTON. On this corrupt practices act, in one of my letters to you I said what they would testify to.

Senator DENEEN. I mean about the appointments.

Mr. EDGERTON. Mr. Donald Hughes can tell you about that.

Senator DENEEN. All right; we will not ask you to wait further.

Mr. HUGHES. As I was saying, Mr. Corneaby led us to believe, and I believed that he was telling the truth at that time, that he was in communication with Senator Schall and that Senator Schall was aware of these means of collecting funds for the election.

Now, if we had not thought that was true, we never would have asked for him to be subpœnaed. We stated in our prospectus or synopsis that we did not know, or that I had not talked with him, and neither had Mr. Edgerton; that we had learned that that was true.

Later on, after I had accosted him, he stated that he had talked to Senator Schall, and later he made a statement before Mr. Edgerton, and we felt sure that he would so testify. We arranged, as with other witnesses, to have him come to Washington, and he failed to show up. He was in my office about 3 o'clock.

Now, this is the part that I have hesitated to say, but since they have dealt in personalities, I can not stand mute any longer. He comes to this city, and it appears that he falls into the hands of a man named Williamson; Williamson who has a position in the Federal Government; Williamson, the avowed enemy of Senator Brooks, the member of the Republican committee from Minnesota; the avowed enemy of former Committeeman Caswell; the friend of Ed. Smith, the boss of Minnesota. Williamson, the man who obtained his position

here in Washington through the influence of Senator Schall and of his counsel, Senator Smith. Now, they have gone into parsonalities. I am going into them.

Corneaby falls into their hands and goes back on what he told us here on the stand.

It is my position that we should be permitted to have an adjournment to go further into this matter of the bootlegger proposition. We have this fact. Our President said a few days ago—I am not a Republican, I am Farmer-Labor, but our President said a few days ago—as we got in in the public press, that no matter who the public official is, the matter should be looked into and prosecuted, of any false charges.

We know that to have pure policies, they must be pure at the inception, at the polls. If we do not, if corrupt practices are maintained, if conspiracy is employed to get campaign funds, it is going to react in that kind of an official.

I claim that I have a right, as the representative of former Senator Johnson, to ask the county attorney of our county to investigate this matter, because we have this fact, that is the fact does stand in this record, it does stand and can be substantiated, that during this campaign men went forth from the headquarters maintained by Senator Schall and went out and perpetrated a fraud upon the Federal voters, collected money, as they claimed, for his campaign funds, and we have this in the record, that Mr. Jacobs was in some way connected with Senator Schall, looking after his affairs.

It is true that your body can not perform, perhaps, as a grand jury. I can see no harm if I, or any other citizen of my State, goes to our county attorney, and if he refuses to act, to our attorney general, and ask that the entire matter be investigated with reference to these things. Also we are hearing now from home. Naturally, as an investigation of this kind develops, there are people there about ready to tell things that have been more or less reticent and quiet heretofore. As I have stated, if we want to get at the facts it seems to me this man Jacobs should be brought here, irrespective of what we know that he will testify to. If he claims that it will incriminate him to testify, that is the strongest evidence that he was out obtaining these funds as claimed, because there are statements taken by the county attorney in which bootleggers claimed that they paid money into his headquarters. That is corroborated by the files of the court, that they did not show here on this telegram he was asked to file. There appear there the names of two lawyers involved in this matter, one lawyer by the name of Winthrop who appeared for some of these bootleggers after they had been shook down and gone to the papers and made complaint, and the headquarters procured this money from them, and so on. Now, it is a vital matter. It is true that it is a serious charge. We put it to you, to use a common, every day expression, that where there is so much smoke there must be some fire.

True, as it is claimed here by this committee, we legally ought to bring the knowledge of this matter directly to him, but it is shown so close to him, even on this hearing which is so partial, that he was involved in these bootlegger matters; so that I claim that the people of Minnesota are entitled to know what the facts are, and we are entitled to have a continuance so that we may further probe into this matter.

With reference to the corrupt practices matter, we can bring and submit affidavits of various people throughout the State of Minnesota who heard statements made by Senator Schall which are like that disclosed in the testimony of Mr. Llewellyn, a statement made on the stump. Also this Harpoon, the statement in there; we can show Mr. Schall's connection with the Harpoon; and we can produce affidavits that this Harpoon newspaper was checked in Schall's house; it was delivered, the copies of it; and that they knew all about its contents.

With reference to the promises, we can produce affidavits concerning that matter in which promises were made. We also would have an opportunity, probably, to go into some of the files here in Washington.

We have asked to have Boone Talbot brought here; Boone Talbot who was in this bootlegger campaign fund matter; Boone Talbot, who is the right-hand man in the Schall headquarters, along with Jacobs and Corneaby, who was out of work at that time; he had no position at that time, and subsequently, after the election of Senator Schall, he received a position which he now holds, in St. Paul, of Mr. Wilson.

This man Beatty, who drove Schall around, has received a position as a Federal prohibition agent, there in Minneapolis or in St. Paul.

Also a man named Johnson, who was around the Schall headquarters, likewise has received a position.

I think we should have an opportunity. I would be willing to do this; I would be willing to confine this proposed testimony to affidavits, affidavits either from the parties themselves or affidavits from people who know of the matters at first hand. I could see where that could do no harm to anybody. I would go further. I will not take the affidavits in my office. If the committee desires, we will go before any judge or go before the county attorney or any other officials, and have these affidavits made. They could be made there in the form of affidavits, or of questions and answers.

What the people in Minnesota want, irrespective of party, there, whether they be Farmer-Labor, whether they be Republicans or whether they be Democrats, is to know the truth of these charges, to learn what the facts are. There are Democrats as much interested in this as are Republicans. The chairman of the Democratic county committee is a witness. He heard some of these statements of Senator Schall. We would like an opportunity to bring people who were present in the Peoples Church in St. Paul when Senator Schall got up there and went after Senator Johnson, stating among other things:

> I could tell you things about Magnus Johnson that would make you shudder.

Now, it does not stop there. This manager of Senator Schall, of this campaign, went out of his way to publish concerning Magnus Johnson some of the foulest libels that were ever published in that State.

Senator GOFF. You would not understand that that was admissible, would you, here?

Mr. HUGHES. Yes; because we did attempt to show that during the campaign——

Senator GOFF. You said after the campaign.

Mr. HUGHES. Yes; and during the campaign, both.

Senator GOFF. What relevancy would that have to a conspiracy to violate the law?

Mr. HUGHES. This, that during the campaign Schall's manager discussed with Mr. Cosgrove, as I recall, and also Mr. Frisch, who was the attorney in Schall's office and signed his telegrams, that they wanted to get a pamphlet concerning Magnus Johnson; that he had been arrested and plead guilty to being drunk, which was all false; and that after this campaign, after the contest was started, papers were filed, and came out, Jacobs the former manager of Schall, and still close to Schall, went down to see him in the office about these very charges that they talked about circulating, and they were circulated, and Magnus Johnson swore to a complaint, and the matter came to trial and Mr. Jacobs was convicted and sentenced to a term in the county workhouse.

Senator GOFF. Would you contend that if three or four days after the election in 1924 Mr. Jacobs and Senator Johnson had met on the street and gotten into a fist fight and both of them had been taken before the police court, that would have any bearing upon these matters here?

Mr. HUGHES. Not at all.

Senator GOFF. Then how would this have any bearing? This is an act subsequent to the completion of the conspiracy which you charge, and when that conspiracy is executed and completed, the men have no relations to each other, and their acts are not binding upon each other.

Mr. HUGHES. I will concede that under the rule of conspiracy, the law is that after the conspiracy is completed, what one coconspirator says as to another is hearsay.

Senator GOFF. Or what one does.

Mr. HUGHES. Or does. It is a relation of a past matter. But it would be confirmatory, that is all, of the fact that during the campaign he wanted to get out this very same kind of libelous article on Johnson. I only mention it for what it is worth.

Now I urge, and honestly urge, that we be given this opportunity to prepare a statement.

Since there has been so much criticism of a statement that I prepared here, and Mr. Edgerton, I am willing to confine it——

Senator GOFF. We are only concerned with your legalities and not with your political personalities, so that you need not take any time in replying to anything of that kind so far as Senator Deneen and myself are concerned.

Mr. HUGHES. What I would be willing to do is to furnish the committee with either affidavits or with the facts—that is, from the witness himself or from other witnesses—as to what they will testify. In other words, before the witness comes here we will give you an affidavit from that witness that he will testify to this and to that, and then, if the committee in its sound discretion—or your full committee, however that may be—does not deem that that is sufficient, we will abide by the decision.

Senator GOFF. If you submitted an affidavit to the committee here with the understanding that the committee would read that affidavit and then would determine whether to subpœna the witness, it would be only fair to the committee that you would serve a copy of that affidavit upon counsel for the other side.

Mr. HUGHES. Oh, certainly; we are willing to do that.

Senator GOFF. So that they might be able to get certain reply affidavits, to be considered coincidentally with your affidavit, so that the committee would know the pro and the con in the contest.

Mr. HUGHES. That I would be willing to do. It might save a great deal of time.

Senator DENEEN. In this matter of the appointments, do you designate any particular person that you expect to have here before the committee?

Mr. HUGHES. What is it?

Senator DENEEN. Do you know any particular person or persons whom you desire to have subpœnaed to come before the committee, and will you state what they will testify to?

Mr. HUGHES. Do you mean at this particular time?

Senator DENEEN. Any time. Do you make the statement now?

Mr. HUGHES. My proposition was that I would submit to the committee the affidavits of witnesses.

Senator DENEEN. No; but have you particular persons in mind, or do you expect to look for them?

Mr. HUGHES. I have at this time certain persons in mind that will give affidavits.

Senator DENEEN. What are their names?

Mr. HUGHES. I do not claim now that I could produce the affidavit of Mr. Jacobs or Mr. Boone Talbot. I do not claim that. But I do claim that I can produce the affidavits of persons who have talked with them as to what they know—admissions that they have made.

Senator DENEEN. That would not be any evidence, would it?

Mr. HUGHES. In a matter of an investigation, would it not? Now, we have made this charge. I will admit that in a court of law——

Senator DENEEN. Suppose John Jones comes in and makes a statement in your behalf, and you then produce 10 men to say that he made other statements. All you have proved by that is that he is unworthy of belief. You do not give any affirmative testimony. You negative your own testimony.

Mr. HUGHES. Would it not, then, in a charge of this kind, be incumbent upon this committee to say, "Did you make this statement"?

Senator DENEEN. When you speak of the person who has made these admissions, do you refer to Mr. Jacobs?

Mr. HUGHES. Mr. Talbot, I refer to.

Senator DENEEN. Will you state what Mr. Talbot will swear to if he is brought before the committee?

Mr. HUGHES. I could not state, offhand. It would involve a certain correspondence which he had with Andy Rahn and with Senator Schall. It would also be in reference to the collection of this money and what he did with it and how it was spent in the campaign.

Senator DENEEN. Will you state to the committee what he will say—what Mr. Talbot will say?

Mr. HUGHES. No; I am stating what he told us.

Senator DENEEN. Have you talked with him about the matter?

Mr. HUGHES. Mr. Talbot?

Senator DENEEN. Yes.

Mr. HUGHES. I have not talked with him. I met him one night in the post office.

Senator DENEEN. Has Mr. Edgerton talked with him?

Mr. HUGHES. Not that I know of.

Senator DENEEN. Have any of your associates talked with him so that you can state what he will say?

Mr. HUGHES. I am speaking now from the statement of a reliable man whose name I would not want to disclose now. He talked with Mr. Talbot, in which Talbot said, "I could unseat Schall if I wanted to. I have in my possession correspondence between Schall and Andy Rahn in reference to this matter." That he collected this money, and that he was promised a position and was appointed in the position he received; and he expected a much higher position.

Senator DENEEN. You say this was a talk with Andy Rahn?

Mr. HUGHES. No; I do not even know Andy Rahn.

Senator DENEEN. You say this conversation occurred between Talbot and Andy Rahn?

Mr. HUGHES. No; this conversation I am relating is what a man told me that he had.

Senator DENEEN. That Talbot said?

Mr. HUGHES. To him.

Senator DENEEN. About Andy Rahn?

Mr. HUGHES. About Andy Rahn and Senator Schall.

Senator DENEEN. Do you make any connection of Andy Rahn and Senator Schall?

Mr. HUGHES. I think if we were permitted to go clear into this——

Senator DENEEN. No, no; what have you in mind? You are asking for a continuance for 30 days. I am trying to elicit from you whether or not you have any evidence in mind that you wish to present, or whether you simply desire to go and hunt evidence.

Mr. HUGHES. What I desire would be to bring both of these men, and perhaps others, who had this talk with Mr. Talbot.

Perhaps this is not strictly legal, but it is my position, if I make it clear. Mr. Talbot, as these men say, has said these things to them. Now, if they are true, they absolutely connect Senator Schall up with the bootlegger matter and other matters, and the promises of offices.

It seems to me that as this is an investigation and not a trial it would be up to the committee to ask Boone Talbot to come in here and either admit or deny those facts. If they are criminal, he probably would refuse to testify on the ground that they would incriminate him. That would be pretty near proof that what he had admitted was true. If he denied it, it would be a question whether he was telling the truth or these men.

Senator DENEEN. The reason for my asking is this: Senator Neely is not here. He may be here to-morrow, but will be here Monday. He will read the statements you have made.

You have facilities to get into communication with Mr. Talbot, through your friends over the long-distance telephone in Minneapolis. Then you could come in and state definitely what he would say. It occurs to me that is what you should do. It is just like talking about absent witnesses in court. You come into court and state that a witness can not be present and that you expect to prove thus and so by him, and you ask to have the case continued. If the statement made by you is sufficiently applicable to the case and not merely a

statement of cumulative evidence, the judge will continue the case, or you would make the other side admit that the witness would so testify. That is the rule in Minnesota; is it not?

Mr. HUGHES. Yes.

Senator DENEEN. Why should you not call Mr. Talbot on the telephone?

Mr. HUGHES. It would be useless to call Mr. Talbot.

Senator DENEEN. Or call a friend, a lawyer in Minnesota, and ask him if he would ascertain whether or not Talbot will come before the committee and make certain statements. Then if you make a statement as a lawyer that he will come before the committee and make certain statements, then it is for the committee to determine whether they will go to the expense of having him come here, just as we did with the other witnesses.

It is quite another matter to say that you want a continuance because you want another witness, and you do not know what the witness will say. We would have no basis then upon which to found a judgment, and we would be going to the expense without the slightest intimation as to whether or not it is useful. There is the difficulty. These rules about continuing cases are the same in every State, I take it. They could not be different.

Mr. HUGHES. I suppose so. I want to state that when it comes to the matter of corrupt practices, there will be no difficulty at all about getting those affidavits.

Senator DENEEN. I mean about the appointments. Take one thing at a time. Do you intend to present any persons who have received appointments who will testify to the charges that you make?

Mr. HUGHES. On the appointments?

Senator DENEEN. Yes.

Mr. HUGHES. Yes.

Senator DENEEN. Will you name the person, and state what he will say?

Mr. HUGHES. We will be able, in the case of the appointments, to make the same kind of showing that we would, or get, in reference to Mr. Talbot; that is to say, from the direct testimony that Beatty and Johnson were around with Mr. Schall during the campaign, in the headquarters, we will be able to produce affidavits from people that they have talked with, in which, particularly in the case of Mr. Beatty, he stated that a position had been promised to him by Senator Schall. The affidavit will come from a man who is an attorney at at law in Minneapolis.

Senator DENEEN. Will Mr. Beatty testify to that?

Mr. HUGHES. I do not know. I have never talked with him.

Senator DENEEN. Or this Mr. Johnson?

Mr. HUGHES. I do not know.

Senator DENEEN. And who is the other one you named; Mr. Talbot?

Mr. HUGHES. Mr. Talbot, as I have stated before, is a high-grade man in the city of Minneapolis, a man of high reputation, not of the style of Jacobs and Corneaby; a different type of man, and I never knew a thing against him until he got in these headquarters. I am inclined to think that he would come here and tell the truth. The only thing that might deter him would be a fear that he might be incriminated.

Senator DENEEN. Will you relate to us what he would say?

Mr. HUGHES. If he was permitted, and was not afraid of conviction, he would likely say that he had assisted in receiving this money; that he was in consultation with Senator Schall; that Senator Schall was aware of this means of collecting funds, that they had discussed it, and he had been in their office; that he was in charge; that Mr. Andy Rahn was likewise familiar with the means of collecting funds; that they had been in consultation among themselves and with Senator Schall; also he will state, if he was here, and was not afraid to testify, that he had been promised a position in Minnesota.

Senator DENEEN. You put in a qualification there, each time; I have listened closely to that. You said, "and was not afraid to testify." Now, it is comparatively easy and inexpensive to get in communication with him through your associates in Minneapolis this afternoon or this evening, and learn whether he would say this.

Mr. HUGHES. Well, Senator, I would naturally not be able on the telephone to communicate with Talbot.

Senator DENEEN. But you could get in touch with others there. You have stated to the committee a number of times that you have been in communication with persons in Minneapolis and St. Paul, and have stated what they intended to do, and there could not be any difficulty in communicating with some one and getting him to inquire and learn what the person will state and then the committee could determine whether a subpœna should be issued for the person.

Mr. HUGHES. I do not think Mr. Talbot would—in fact he said he would not—testify unless he was compelled to. I do not think that he would state it now, or I know that he would not state it to me.

Senator GOFF. You do not want to use this committee as an investigating body to get you evidence in Minnesota, do you?

Mr. HUGHES. Perhaps I have a different view of this. It seems to me it is an investigation and not a trial.

Senator GOFF. I want to put this proposition to you. I had it in mind when you were arguing. To come down to the ultimate issue, you think that the Senate of the United States, or any legislative body, would be justified in expelling a Member who had violated no law, but who had possibly done something against the so-called moral standards of some one else, so that you would go to the floor of the Senate and you would say, "We have not gathered these facts by any legal means. We did not suppose we had to. We have taken hearsay; we have accumulated gossip; we have brought together acrimony and political differences, and we have built out of it a composite proposition which is the outgrowth of investigation and not of legal research, and we therefore say to you, the Senate of the United States, "Because of this, expel this Member." Your argument leads you to that, because you are saying that you know this is not strictly the law, and that possibly you could make no headway along those lines in a court of justice; and I want you to tell me if you think the Senate of the United States would do a thing which a court of justice would repudiate?

Mr. HUGHES. Well, I do not know, Senator. Of course, I understand that a great deal of hearsay is indulged in on the floor of the Senate, and in going into investigation matters.

Senator GOFF. I know that might be in debate, and all of that; but this would not be debate when it came down to the real judicial conscience of the Senate; and if ever a contest would arise involving the judicial conscience of the Senate, it would be as to whether a Member of the Senate was fit to remain there or not; and you must see the difficulties as well as the responsibilities of this committee when you are making these offers and submitting these requests.

Now, as I have personally stated a great many times, and I know I voice the views of Senator Deneen, we want to do everything we can to give a full hearing here. We are merely agents of the Senate. We want to do just what the Senate would have us do, and in reaching those conclusions we are guided merely by the exercise of our sound judicial discretion as it is guided by our experience in life, as lawyers and as American citizens. That is the only thing that can light our footsteps and furnish us the discrimination to go on, and we want you to realize that, and try to conform to that wherever you can. We can not adjourn this committee from time to time merely because something has developed here that could not be developed in Minnesota, and therefore you are to go back with what you have developed, and see whether or not you can redevelop it in Minnesota. I do not think that is fair to the committee and I do not think you should ask that of the committee, if that is what you intend to do.

It was stated here in the evidence that a year ago, or approximately a year ago, evidence of these matters was submitted to a grand jury in the city of Minneapolis, and that the grand jury made an investigation. I think the witness Corneaby testified that he went before the grand jury, and nothing came out of that investigation. Speaking my own mentality in the matter, it registered this impression on my mind, that if nothing came out of that grand jury investigation when the facts were so fresh in the minds of everyone, why would you expect a grand jury now impartially and fairly and judicially to investigate this question and arrive at any other or a different conclusion; and I think those matters all go to the sound discretion of this committee in granting your request for a continuance upon some indeterminate suggestions that you may do this or you may do that.

Now, if you can, as Senator Deneen has so clearly said, following the analogy of the rule in both civil and criminal cases, within the next day or so state that you as a member of the American bar feel, after conferring with your associates in Minnesota, that you can bring testimony in the persons of certain men, and produce such testimony, and that it will be relevant to the issues, and not only be that, but that it will be testimony that will not as far as your reasonable understanding goes, be a surprise to you, and that the witnesses will sustain those propositions, and that upon that ground you want a continuance, then I think the committee would be entitled to take that into consideration and have a session with Senator Neely—because we do not wish to act in this matter in the absence of Senator Neely—and let you know definitely what we can do. But I do not see where we have any jurisdiction, or where we have any sound discretion, of granting a continuance in this matter at the request that you be allowed to go back home and see what you can gather together, or see whether or not you can take this so-called gossip—and I do not [illegible]estion that you have heard this—and concrete it, so to speak,

coagulate it together now, and make a legal proposition out of it which will justify this committee as the agent of the Senate, in either granting you subpœnas to bring those witnesses here or in continuing this cause with the implied approval of the Senate of the United States. That is my position; and in many of these matters I am not speaking for Senator Deneen; but I wish you would act along those lines, and we are willing to meet you here to-morrow and let you report what you have been able to find out; or, if you think that is too short a time and you expect to be here Monday, I shall be very glad to come here as a member of the committee, and meet you or your associates here at any hour on Monday, and see what you have then determined; and Senator Neely will no doubt have returned to the city and you can have the full argument, and if you desire to have an executive session with only the counsel and the parties present at that time in order that you may state fully what you do not want the public press to know, we will have an executive session for you. Does that meet with your approval, Senator Deneen?

Senator DENEEN. Oh, yes. We should know something about the matter.

Mr. HUGHES. That is satisfactory.

Senator GOFF. Suppose we leave it that way? You understand our minds?

Mr. HUGHES. Yes; I understand.

Senator GOFF. Whenever we do a thing that you gentlemen disagree with, you have a right to appeal to the full committee; and if the decision of the full committee does not suit you, you have a right to go to the Senate with it. We want you to feel that you are not restricted, and we are not putting anything in the way.

Mr. HUGHES. That is satisfactory; and if the committee will set an hour on Monday, I will endeavor in that time——

Senator DENEEN. We will make it 2 o'clock Monday afternoon.

Senator GOFF. Now, you know just what we want you to do, and you do everything you can along those lines.

Mr. HUGHES. May I recall Mr. Corneaby for one question?

Senator DENEEN. And then you will excuse him as a witness?

Mr. HUGHES. Yes; then I will excuse him.

Senator DENEEN. And Mr. Cosgrove; do you want to let him go, too?

Mr. HUGHES. Yes; Mr. Cosgrove is excused, so far as I am concerned.

Senator DENEEN. Very well.

STATEMENT OF W. F. CORNEABY—Resumed

By Mr. HUGHES:

Q. Mr. Corneaby, I will ask you to look at that exhibit, contestant's Exhibit No. 6, and I will ask you if that is your handwriting?—A. (After examination.) No, sir.

Mr. HUGHES. That is all.

Mr. REES. Is that all?

Mr. HUGHES. Yes, sir.

The WITNESS. Gentlemen, I desire at this time to make a few remarks, if I may be able to.

Senator DENEEN. Keep your chair. Is it explanatory of your testimony?

The WITNESS. Yes, sir.

Senator DENEEN. Very well.

The WITNESS. Is Mr. Cosgrove in the room? I would like to have him hear what I say. He has made repeated statements in this committee room here and I have been unable to testify.

(At this point the witness, P. A. Cosgrove, came into the committee room.)

Senator DENEEN. Mr. Cosgrove, this witness wants to make a statement in your presence. He wants you to hear it. Will you please give attention to what the witness has to say?

The WITNESS. Mr. Cosgrove came to my home in September, around the middle of September.

Senator GOFF. What year?

The WITNESS. 1925, of this year, and in the presence of my wife and my wife's sister, my brother, and a man by the name of Mr. Case, we were arguing this contest, and I told him there was no contest, and he says to me, he says, "We don't give a damn, so much, whether we unseat Senator Schall or not, but," he says, "we want to smear him up"——

Mr. HUGHES. I object to all this as irrelevant and immaterial. There is no testimony in the record of any conversation between Cosgrove and Corneaby in his direct examination, and I did not ask Mr. Corneaby for any conversation with Mr. Cosgrove.

Mr. REES. They brought it out on their own examination. The committee has a right, I should think, to hear motives, if there are any motives, or any ill feeling.

Senator DENEEN. I do not recall the exact testimony, but was there not a great deal of testimony on the part of Mr. Cosgrove regarding Mr. Corneaby?

Mr. HUGHES. There was none as to any conversations.

Senator DENEEN. I thought there was.

Mr. HUGHES. As I remember, there were no conversations. Mr. Rees went into that himself. This is my witness. Mr. Rees went into that conversation with Corneaby on cross-examination and developed it.

Senator DENEEN. We will take it subject to a motion to strike out later. I am not sure what the testimony was. If we could stop to read it all, I could rule on it. I do not know what he intends to say.

The WITNESS. He made the statement that in the event that they were unsuccessful in the unseating of Senator Schall that they would smear "that blind bastard" up so bad that Mr. W. S. Brooks, who is now national committeeman from the State of Minnesota, would continue to hold the Federal patronage, as he has in the past, in the appointment of the judges and Mr. Caswell and others. He says, "Mr. E. W. Beck, along with Mr. H. R. Clarkson, his private secretary, are the men interested in this contest." And he said if this subcommittee would not allow them to bring witnesses here in the city of Washington that through the influence that Mr. W. S. Brooks had with Frank B. Kellogg, Secretary of State, they would go on

the floor of the United States Senate, through powerful Republican administration Senators, and air their charges on the floor of the Senate and discredit Senator Schall.

I also want to take exception to your remarks on my character. Although it might not be good, it is just as good as yours, every day, Mr. Hughes.

By Mr. HUGHES:

Q. When did you talk with Mr. Williamson last about this?—A. This morning.

Q. Whereabouts?—A. About what, did you say?

Q. Whereabouts?—A. Here in this committee room.

Q. In this committee room?—A. Yes.

Q. Are you staying at his house?—A. No, sir; I am not.

Q. Where are you staying here now?—A. At the Hotel Harrington.

Q. The Hotel Harrington?—A. Yes.

Q. How long have you been staying at the Harrington?—A. Since Friday and Saturday night; seven days to-day.

Q. How long did you stay at Mr. Williamson's?—A. One evening. I was at Mr. Williamson's home when I needed medical attention.

Q. You have talked this matter over with him?—A. No, sir; I have not.

Q. You have talked with Mr. Williamson about Senator Brooks and Mr. Caswell?—A. No, sir; I have not.

Q. You know, as a matter of fact, that Mr. Williamson is an enemy of Senator Brooks?—A. If he is, he has a perfect right to be.

Mr. HUGHES. Oh! That is all.

Mr. WILLIAMSON. Senator Deneen, I would like the privilege of making a statement, with the consent of counsel.

Mr. HUGHES. I object to the witness making a statement.

Senator DENEEN. I do not know the subject matter he desires to present.

Mr. SMITH. Mr. Chairman, Mr. Hughes brought my name in in connection with Mr. Williamson in connection with Mr. Corneaby. I would like to have the members of the committee cross-examine Mr. Williamson. I think it is only fair that the truth should come out. I do not think those slurs should be permitted. I would like to have him given the privilege of making a statement.

Senator DENEEN. I do not care to cross-examine him.

Mr. HUGHES. We object to that. I understand we are to adhere to the rules of evidence, and it seems to me to allow him to make a statement would be to turn this affair into a town meeting.

Senator DENEEN. I think if he cared to make a statement, he should make it after you have rested your case. Is that right?

Mr. HUGHES. I think we can not try it except in one way.

Senator GOFF. I think, Senator Smith, you are entitled, on the ground of personal privilege, to make any statement in reply to the statement made by Mr. Hughes, that you see fit. You have a perfect right to do it.

Mr. SMITH. I would like to say that I never had a word of conversation with Mr. Corneaby or Mr. Williamson in reference to his testimony; never in my life. I never spoke to Mr. Corneaby and

never spoke to Mr. Williamson about his testimony in this case nor about the testimony of any other witness in this case; and I would like to have that go in the record.

Senator DENEEN. That will go in the record.

Senator GOFF. You are entitled to put that in the record.

Senator DENEEN. Is there any further testimony?

Mr. HUGHES. I think, if the Senators please, that Mr. Cosgrove wants to say something.

Senator DENEEN. Very well.

TESTIMONY OF PETER A. COSGROVE—Resumed

The WITNESS. This testimony is false and untrue, and is perjury, as I stand here before you. I have never talked to this man in the presence of those people. Mr. Case I do not know. I have never been to Mr. Corneaby's house at 1605, I think it is, Marquette; never been inside. I could not find the flat to-day. And Mr. Corneaby invited himself to my house; and if any man in the world has been making malicious statements, he has. He invited himself into my house on Christmas day, as we were ready to sit down to our dinner, and I told him I could not discuss this. I said, "I can not discuss this, Mr. Corneaby, with you any more. What is it you want here?" He says, "Mr. Cosgrove, could you let me have $2?" I said, "Christmas day, I couldn't refuse you. I have just got $4, and I will go it 50-50 with you." And he has invited himself—he has accosted me on Fifteenth Street when I left the railroad cars, on several occasions, so that I had to go home in another way. And I am going to make this statement, that I am going, when I get to the city of Minneapolis, to prepare the facts as I understand them, with the witnesses and everything, and the times and places and circumstances, and what Mr. Corneaby said and what I said, and all that was said from the inception of this matter until the present day, and I am going to file a copy of that with the county attorney of of Hennepin County, and I am going to send a copy of that to you gentlemen and to every member of the Committee on Privileges and Elections and to every Member of the Senate of the United States, and then I defy Mr. Corneaby and his friends; and I will file a copy with the county attorney of Hennepin County. That is all I have to say about it.

Mr. HUGHES. That is all, Senators.

Senator DENEEN. Then we will adjourn until 2 o'clock Monday.

Mr. REES. Before the ruling on the question perhaps I should make, and I do not want to waive making, motions to strike out.

Senator DENEEN. No; that will come up later. We will adjourn until 2 o'clock Monday afternoon, in this room. Are the witnesses excused?

Mr. HUGHES. I understand they are.

Senator DENEEN. All the witnesses are excused?

Mr. HUGHES. All the witnesses are excused.

(At 5 o'clock p. m. the subcommittee adjourned to Monday, February 8, 1926, at 2 o'clock p. m.)

SENATOR FROM MINNESOTA

MONDAY, FEBRUARY 8, 1926

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE
ON PRIVILEGES AND ELECTIONS,
Washington, D. C.

The subcommittee met, pursuant to adjournment, at 2 o'clock p. m., in the room of the Committee on Privileges and Elections in the Capitol Building, Senator Charles S. Deneen presiding.

Present: Senators Deneen (chairman), Goff, and Neely.

Present also: Senator Thomas D. Schall and Messrs. Rees and Smith, counsel for Senator Schall; and Messrs. Hughes and Edgerton, representing the contestant.

Senator DENEEN. The committee will come to order. Who has the floor?

Mr. HUGHES. I presume probably I have.

The last time we met, Friday afternoon, if the committee will recall, I asked for a continuance for 30 days in order to enable me to furnish the committee with a list of witnesses who have not been here.

As to what they will testify to, I will try and obtain affidavits from them, as I told you, so that when you received this list it would be accompanied by the affidavits showing what each witness would testify to if subpœnaed here.

Of course, this contest is divided into perhaps two or three parts. There is a part referred to as the bootlegger part, and another portion which has been referred to as the corrupt practices portion; and then there is a third part which will be referred to also as the corrupt practices part, but that would be relative to the Federal law in regard to promises to people of positions in case of Senator Schall's election.

Taking up first the corrupt practices part, it will be very simple to provide the committee with an abundance of affidavits from people who heard statements made by Senator Schall during the campaign.

Senator NEELY. Pardon me a moment. If these are offenses that you speak of, of course, they are criminal offenses. Why were they not prosecuted in the criminal court in Minnesota?

Mr. HUGHES. You mean as to promises of offices?

Senator NEELY. Yes.

Mr. HUGHES. That I can not answer. I have never personally had this matter up with the United States district attorney. The only time it was up, it was in regard to the bootlegger matter, and that my brother had hold of at that time. The witnesses will testify——

Senator NEELY. The offenses alleged specifically are criminal offenses, most of them?

Mr. HUGHES. Yes; practically all of them are criminal offenses.

Senator NEELY. And there is no doubt that of these criminal offenses the Federal court has juridsiction in Minnesota?

Mr. HUGHES. There is no question as to that.

Senator NEELY. I understand you charge a number of violations of the Federal law. You do not know personally why there were no prosecutions in the Federal court for the district of your State?

Mr. HUGHES. No; I have never had it up with the United States district attorney. As I was stating, it will be a simple matter, however, to bring affidavits of people who heard what Senator Schall said during the campaign. Those affidavits will come from men who were running for office themselves, and were there on the platform with him, and from others. Their names are set forth in the petition.

Next, in regard to the matter of promises of offices; that somewhat runs along with the bootlegger charge, because many of the same witnesses that we would call to substantiate the bootlegger charge we also would have to depend upon to substantiate the charges of promises of offices.

I indicated to the committee on Friday that I would like to have this man Talbott subpœnaed here. I will not say what he will testify to. I can not. He is hostile.

Likewise as to Jacobs.

As to Boone Talbott, he now has a position under Mr. Wilson in the internal-revenue collector's office. He is a man of high standing. Until this matter of the bootlegger charges came up, he always bore a good reputation so far as I know. He managed Mr. Campbell's campaign for mayor there, and he is generally looked upon as a very respectable man, and I am inclined to think that if he came here he would do one of two things, he would either admit these things or he would stand upon his constitutional right. I have referred to the fact that he has, so I am informed, had conversations with others concerning the campaign. I have been unable to get in touch during the week end with one of these parties. He has made statements to a man in Minneapolis in which he has more or less related his connection and his actions with the Schall campaign. Also he has related to him certain correspondence that he at one time had in his possession, certain correspondence that was in the possession of Senator Schall, all of which would have a tendency to substantiate the bootlegger charges and Senator Schall's connection therewith, and also as to the matter of offices that had been promised.

Also, with reference to a man named Beatty who now has a position as a prohibition agent in Minnesota, I understand he likewise has made a statement to a party there in Minneapolis in which he has stated that he was promised a position.

What I propose to do during the time of this continuance, if you grant it, is to get the affidavits of these people who made these statements. It is true that it may be hearsay evidence, but at the same time it would bring to the surface here what the real facts are.

Here would be the natural conclusion: If Talbott came in here he would hardly dare deny these statements. He would be afraid of perjury. If he admitted them, then, of course, Senator Schall

would be connected, without any question. If he stood upon his constitutional right, there would be a very strong inference that what he had told was true.

Also, something has developed since the last adjournment that I want to take up with the committee with reference to Mr. Corneaby. If the committee will recall, Mr. Corneaby stated before the committee that he slightly knew Senator Schall. He said that he slightly knew him, and, as I recall, he testified he did not meet him during the campaign, although you recall Mr. Cosgrove stated that he saw Corneaby in Mr. Schall's office sitting at a desk with his feet upon the desk.

Senator NEELY. Where do you gain anything by proving that your witnesses that you brought here are unmitigated liars?

Mr. HUGHES. If you will just allow me to read this telegram, I think it will clear the matter up.

Senator NEELY. Do you mean that you can rehabilitate two witnesses that have lied to the committee?

Mr. HUGHES. I do not try to rehabilitate Mr. Corneaby. That is not my idea. My idea is to show that even if he is my witness, if he had told the truth he would have connected Schall up; that there was a connection.

Senator GOFF. You do not expect the committee to consider that as evidence? I think Senator Neely's position is well taken on the record. He says you are trying to rehabilitate your own witness, by showing that as to your own witness, who you say, surprised you, if he had told the truth and we would then believe your rehabilitation, we would be justified in concluding that he was intimately associated with Senator Schall. I fail to see how we can take any cognizance of that.

Mr. HUGHES. Of course, here is the situation. This witness goes on and denies that he knew Senator Schall, although he led us to believe——

Senator NEELY. How did he lead you to believe?

Mr. HUGHES. By what he said in my office; and he accosted me in the police court in Minneapolis. I never saw him until that time. He accosted me in the corridor at the police court, where he stated that he had talked the matter over with Mr. Cosgrove, and he said that he had told Mr. Cosgrove these things; and then he came in the office and told me and Mr. Edgerton that he had talked with Schall on the phone.

Now, we bring him to Washington and bring him in here, and he says that is not so; that he only slightly knew Senator Schall. I have two telegrams here that to a certain extent clear that up, and explain, I think, why Corneaby acted as he did, and it seems to me this is a matter for this committee to act almost upon its own initiative, and I would like permission to read this telegram, which is from a lawyer in Minneapolis.

Mr. REES. I was just wondering if the telegram is of a character such that the committee ought to privately consider it without broadcasting it here. I do not know what it is.

Senator GOFF. Show this telegram to the chairman of the committee and let him look at it.

Mr. REES. That might be done.

(The telegram referred to was here shown to the chairman of the committee and examined by him.)

Senator DENEEN. The telegram is an effort to impeach your own witness. That is all you could offer it for. There could not be any affirmative proof in it, could there?

Mr. HUGHES. I think that——

Senator DENEEN. What affirmative proof could there be?

Mr. HUGHES. It would show in what way and why this witness acted as he did. It seems to me to be a matter for this committee now to go into. Apparently, from the contents of that telegram, an attempt has been made to bribe this witness and he has probably been bribed. That might bring us right down to the source to which we are trying to trace this whole proposition. Perhaps I may be wrong, but I have never in this investigation conceded that we are bound before this committee by the strict rules that prevail in a court. This is an investigation.

Senator NEELY. You say this might lead to something. This committee is not out on a fishing expedition. You came here with a case, or stated that you had one. You brought witnesses there, after you had been admonished by every member of this committee, and I remember particularly that I endeavored to impress upon your mind the importance of bringing the strongest witnesses you had to testify to the material allegations in your complaint concerning Senator Schall's disqualifications or unfitness for this office. Now you bring those witnesses here. They testify, and you are now coming here discrediting them and complaining, in effect, that they have perjured themselves, and you want to read telegrams into the record on your own statement, because it might lead to something else in the nature of the discovery that some one had beenb ribed. Do you think the committee ought to pursue that kind of a course indefinitely?

Mr. HUGHES. That is what I am asking, that——

Senator NEELY. If out of the whole State of Minnesota you could not find five witnesses that would come down here and tell the truth about this matter and sustain your contention, do you think the committee would be justified in continuing and spending the taxpayers' money on the kind of statements that are contained in this telegram? And the substance of this—we might as well understand it—is this, that one of your witnesses who started down here and who said he was hard up, a few days later had bills amounting to probably as much as a thousand dollars; and evidently the conclusion you want drawn is that Senator Schall or some of Senator Schall's friends bribed him.

Mr. HUGHES. Certainly; that is it.

Senator NEELY. It seems to me that is going a long way beyond the legitimate scope of this investigation. Of course, if you had any proof that Senator Schall had given this man money or that anybody authorized by him to do it had given it to him, there is no question but that would be very relevant to the issue; but to say that this might lead to such testimony as that—it is going away beyond the scope of any similar investigation that I have heard of in any of these contests.

Mr. HUGHES. That is why I wanted to check up on all these matters. Here is a telegram offered to the committee, showing the connection of Corneaby with Senator Schall.

Mr. REES. I think that ought to be submitted without being broadcasted.

(The telegram last referred to was examined by the committee.)

Mr. HUGHES. I want to ask that these telegrams be put in the record.

Senator NEELY. I am in favor of the first one going in. It is not relevant, but I do not see that it can do any harm.

This second telegram shows that Corneaby used Senator Schall's car and acted as his chauffeur; that he saw Corneaby with Schall frequently. This is simply adding to and multiplying the proof that the witnesses you have already brought here were not reliable.

Mr. HUGHES. Here is what it does show. It shows that Corneaby—which we were not allowed to show by this committee. We offered to show by Szysko that he paid Corneaby $500; and if we were allowed we could show that Szysko and others paid this money to Corneaby. Now here is Corneaby running around with Schall. We can eliminate Corneaby so far as his testimony is concerned. Here is a man going around in Senator Schall's car, and in the campaign. I do not know how much closer you could bring Corneaby and Schall together than that; that he is around driving in his car, and around with him, and around collecting.

Senator DENEEN. When did Corneaby testify; about a week ago, was it not?

Mr. HUGHES. He testified——

Senator DENEEN. It was a little more than that.

Mr. HUGHES. He testified first on Friday last.

Senator DENEEN. I mean his principal testimony.

Mr. HUGHES. Here before the committee?

Senator DENEEN. Yes.

Mr. HUGHES. I think it was a week ago.

Mr. REES. It was Friday a week ago.

Senator DENEEN. And I take it for granted, from everything that appears here, that the substance of his testimony was published in the Minnesota papers?

Mr. HUGHES. I do not know. I have not seen the Minnesota papers.

Senator DENEEN. And he was kept here until Friday. Why did you not produce these gentlemen; and why have they waited until Corneaby has gone home to attack him? The time to attack him was when he could come in and answer.

Mr. HUGHES. These telegrams came in to me this morning from out there in Minnesota. I got in touch by long-distance phone with Mr. Tiegan Saturday night and told him to call me, and that is the first that I learned of this man Casserly. I did not even know of him until this telegram came.

It does seem to me that we should be permitted to go back and check up this matter and then submit testimony. I can not think of anything fairer than to submit affidavits from prospective witnesses as to what they will testify to. Then you will have the record before you, and if, in your judgment, that testimony is not material or is not proper, why then——

Senator DENEEN. Are you prepared to outline any testimony from any others than these two you have submitted, Mr. Talbott and Mr. Beatty?

Mr. HUGHES. Of course, as I have stated time and again, as to the statements so made, the names disclosed in the petition are of various people, and it would be, as outlined in the petition, that they heard it.

Senator DENEEN. Aside from the petition have you anything to add to what you have said about Talbott and Beatty?

Mr. HUGHES. No, sir. I want to be fair with the committee.

Senator DENEEN. I received a telegram from Talbott yesterday. It came to my office, and it is here to-day.

Senator NEELY. I think that should be read into the record.

Senator DENEEN. The telegram reads as follows:

ST. PAUL, MINN., *February 26, 1926.*

CHAS. S. DENEEN,
United States Senate, Washington, D. C.:

If hearings in the Johnson-Schall controversy are being prolonged in anticipation of any evidence I will give to strengthen contentions of Johnson's attorneys, hearings may as well be closed.

BOONE S. TALBOTT.

I take it for granted he sent it. All I know about it is what there is there.

Mr. HUGHES. All right; that would place him in this position, when he came here. Naturally, he received an appointment there. Naturally, what is the position he would be in if he came here? If the party that he stated his connection to with this campaign came in here or made an affidavit, and the committee thought it sufficient to bring him here, and Talbott was to be here facing these people here, he would either have to deny what he said or admit it, or else stand on his constitutional right. Probably, from that telegram, he would refuse to testify.

Senator NEELY. Suppose he stood on his constitutional right, what evidence would that give us against Senator Schall?

Mr. HUGHES. It would show that what he had failed to deny was true; otherwise he would have denied it.

Senator NEELY. Suppose that he should deny he knew anything about it; what light would that throw on it?

Mr. HUGHES. I question if he would dare to.

Senator NEELY. Are you willing to say on your responsibility as a practicing attorney, before this committee, that he would not deny it?

Mr. HUGHES. That he would not deny what he said to this man?

Senator NEELY. Yes.

Mr. HUGHES. That would be asking me something I could not say.

Senator NEELY. In other words, you are not willing to vouch for him yourself, on your responsibility as an attorney, but you want this committee to hazard the result and get him to give testimony, without any way of knowing to what he will testify?

Mr. HUGHES. No; the name I will not disclose at this time—I can not—but I offer to this committee, if I am given this continuance——

Senator NEELY. Is not that a suspicious circumstance? If your witnesses are so irresponsible that you can not even mention the name of a person you offer as a witness, do you not think that very fact must have the effect of making us doubtful of his testimony? I do not mean I am questioning anything you say or believe about it, but is not a witness whose testimony is of such a flimsy character that you can not take the chance of announcing what he will say—I assume because you are afraid somebody will tamper with him——

Mr. HUGHES. No; not at all.

Senator NEELY. If that be a fact, that that witness is not reliable and is not worthy of belief by this committee——

Mr. HUGHES. No; not that. The witness is worthy of belief, but I am not in a position at this time to disclose his name.

Senator NEELY. What would he say?

Mr. HUGHES. He would relate a conversation with this Mr. Talbott, in which Talbott admitted his connection with this transaction, with this bootlegger matter, with the promise of a position. In fact, Talbott told him, he says, "I didn't get the position I wanted. I am disappointed. I expected something else; they have given me this." And in this conversation Talbott said, "If I could be taken care of, if I could be sure that I would have a position, I would come through now and tell the truth; and if I told the truth I would connect Schall up and he would be unseated."

Senator NEELY. Here is Talbott's telegram in effect denying that and saying, "If the hearings in the Johnson Schall controversy are being prolonged because of any testimony it is expected that I would give, you might as well adjourn." What have you to say about that?

Mr. HUGHES. As to his telegram, look at the environment he is in under Wilson; right there, holding a job under the administration.

Senator NEELY. For that environment the committee is not responsible. We can not make a case. All we can hear is the case you have, and if you have no case there is nothing for us to hear.

Mr. HUGHES. We could get by, barring technicalities such as we would have in a court. I look upon this as an investigation.

It must be apparent to the members of the committee from what they have here now that there is something wrong. There was something wrong in those headquarters; that you have got to admit. and with those close to Senator Schall, who were shaking these bootleggers down.

Senator NEELY. You certainly have not proved that Senator Schall has shaken anybody down.

Mr. HUGHES. Yes.

Senator NEELY. I have defended persons charged with murder; I have sat at the counsel table with them, but I have not had any connection with their alleged crime, nor did I feel that I was guilty of murder because I persented their defense. Nobody can convince me that because Senator Schall's chauffeur turned out to be a bootlegger the Senator by virtue of that fact alone became a bootlegger, too.

Mr. HUGHES. This man Corneaby had a desk in his office and he drove his car; he ran people into these headquarters and got money from them, along with his manager, Jacobs.

Senator NEELY. If you have any proof that Senator Schall has done anything like that, or that he has violated any law, frankly, as one member of the committee, I should like to hear it; but I am not interested in what Senator Schall's chauffeur did, and I am not interested in knowing what people he came in contact with, casually or even intimately did, unless Senator Schall was guilty of the violation of some law because of his association with them.

Mr. HUGHES. As I have stated, we have not only shown those close to him in this business in his headquarters carrying on the shakedown business, his manager going over to these prohibition men

who testified, and that they said that "Tom" wanted this done, referring to Schall. And now Boone Talbott, who, if we can believe his telegram, will not testify has made a statement that he would come through and unseat Schall.

Senator NEELY. When did you first get that information?

Mr. HUGHES. On this Talbott statement?

Senator NEELY. Yes.

Mr. HUGHES. I learned that just the day before I left home, at that time.

Senator NEELY. When was that?

Mr. HUGHES. That would be about January 25.

Senator NEELY. Was that before these other witnesses were heard?

Mr. HUGHES. That was before these witnesses were heard; after they were subpœnaed; just as we were leaving, that afternoon, a party came into my office.

What I offer here is to put in writing and furnish affidavits of what we propose to show.

If, then, in the judgment of the committee that is not sufficient, and in the judgment of the main committee or the Senate that is not sufficient, then, of course, that would dispose of the matter.

Senator GOFF. In other words, what you want to do is this: You want to bring in the affidavits of men who will say that Mr. Talbott made statements contrary to what he has indicated in his telegram he possibly would make. Therefore, logically, you intend to present to the committee this proposition, while your principal witness is unworthy of belief when he is put under oath, that your other witnesses have extracted out of his mendacity the truth which you would therefore ask the committee to credit and believe. I want to say to you that I do not think that that is proper, either as an investigation or as a legal procedure. You, in your ordinary relations in life would not believe a man, or would not believe that the truth could come from a man, who denied making the statements that others said that he made, and I do not see how we can accept that proof and go to the Senate, and recommend to the Senate to believe it. I know of no reason that would justify that I know of no principle of reasoning that would justify it. I know of no rule of logic based upon the experience of mankind that would qualify anyone to accept as truth what was obtained under such circumstances. I fail to see that. I should think that after that was all done, you might turn around to these very witnesses who stated that Mr. Talbott had made contrary statements to them, and you could say, "Well, would you believe him under oath after all your experience with him?" I think they would have to say, in view of that, that they would not believe him under oath. I do not see how you could get anywhere with that; do you, Senator Deneen?

Senator DENEEN. No; nor I.

Mr. HUGHES. Mr. Talbott would be in this position, if confronted with the circumstances. He would either admit, or claim his constitutional privilege. I do not think he would deny.

Senator GOFF. I know, but you would not expect a court—and I know you would answer in the negative—to try and extract the truth out of your witnesses when they have denied what you expected to prove by them; and you certainly can not expect this

committee or the Senate to take these men out there in Minnesota and go into the question of their heredity, the question of environment, the question of whether their fathers had the reputation of being truthful and veracious, or whether their mothers had that reputation. That is where it would eventually lead us, if we would follow this out. I do not see where there would be any end of the collateralism that would be involved in bringing in a matter of this kind.

Mr. Talbott might turn around and say, "Now, gentlemen of the committee, you have permitted these gentlemen to come in here and say that I made contrary statements. Now I want you to let me subpœna some men here who will show that these men are not worthy of belief before this committee, and that they have a very bad reputation for truth and veracity in the community where they live"; and this committee would be obliged to permit that.

If we are going into all these collateral issues, I should think that the committee would say, "Very well; you bring in those men." Where would we end? Where would there be a termination of these questions? I put that to you in all frankness. This committee is not responsible for the failure of your proof. This committee did not know your witnesses. This committee did not bring them here. You brought them here. They have surprised you, as you say, and now you want to go on impeaching their testimony and then asking the committee to go before the Senate of the United States and contend that these men are worthy of belief. I fail to see how we can do it.

I am speaking for myself. Of course I am not binding my associates.

Mr. HUGHES. Here since this man Corneaby testified I have these telegrams here. Take the case that something has happened there, may have happened, to Corneaby which would have a strong tendency to show that if he did tell us as we claim, there was a good reason for his changing his testimony. It seems to me that we should have a right to check that up and find out what there is to it; if it is true that he has been bribed, that he has received money. He is a witness of this committee. He is not my witness; he is your witness, a witness before this committee. That should be investigated, and then possibly he may come back here and tell the truth, after that. He may disclose the thing. He may connect the very thing that is insisted upon before this committee.

I will concede that in a court it would be entirely different. But here is a matter that involves an election, and it goes to the conduct of this election.

Senator GOFF. Let me ask you this question. I think I put this question to you the other day: Will you expect this committee, or the Committee on Privileges and Elections, to go before the bar of the United States Senate, and say to the gentlemen of the Senate representing 48 States of the Union, 96 in all, "We have investigated these election proceedings; we have discovered nothing in the nature of legal evidence; we have found nothing that would have made a prima facie case to go to a jury in a legal proceeding; but we have gotten together a great deal of gossip and in an investigational sense, and while it is not legal evidence, gentlemen of the

Senate, we ask you to accept it upon our recommendation and expel Senator Schall from the Senate of the United States." I ask you if that is not the logic of where all of this would lead us, in the absence of legal evidence?

Mr. HUGHES. No; what I am asking for now, Senator, before you have to go on the floor, is a continuance in order to check up this matter.

Senator GOFF. No; but we are reasoning with you as to where your evidence is going to lead, to justify the continuance; and you are telling us just about what you expect to do; you expect to bring a man here who will show that Corneaby is not worthy of belief.

Mr. HUGHES. No; that will show that Corneaby has been bribed.

Senator GOFF. Oh, well, then—he is not worthy of belief. You do not show any evidence there that a man will come in here and testify, "I know that John Jones gave so much money to Corneaby in consideration of his agreeing to come down here and lie to the Senate committee." If you put in such a proposition as that and can show those facts and circumstances such as you would show in an indictment for bribery, you put up a different proposition to the committee. But all your telegram says, as Senator Neely reads it, is that Corneaby said he had no money, and then that Corneaby was seen to have some money in his hand. I understand you do not know where he got that money; you do not show a corrupt agreement; and you expect this committee to sit here and infer from the fact that he had some money in his hand, and in view of the fact that he had no money before he received or accepted this money, that therefore that money must have come to him corruptly. He might have borrowed the money, so far as that is concerned.

Mr. HUGHES. What I ask is to have leave to go back and have that investigated. If he borrowed the money, well and good. If he did not borrow the money, somebody has committed a crime against the United States laws. I would then ask the United States district attorney of Minnesota to investigate it.

Senator DENEEN. Have you anything more to offer?

Mr. HUGHES. No; only I would like permission to incorporate in this record the two telegrams offered, and also a telegram from Mr. Walker. That is not exactly on the line of Mr. Corneaby. Mr. Walker is employed in the city of Minneapolis as a foreman in the sewer department. He has been there for 30 years, and was a worker in the Schall campaign.

Senator DENEEN. I suppose that should be submitted to counsel on the other side.

Mr. HUGHES. Yes [handing telegrams to Mr. Rees]. I ask that these be printed in the record.

Senator DENEEN. When they have been examined by the other lawyers, we will hear what they have to say about them.

Mr. HUGHES. Also I have here an exhibit which was received in evidence and marked "Contestant's Exhibit No. 3," and I would like to have the stenographer put that in the record. It was received in evidence. It is a letter from Senator Schall to Mr. Cosgrove.

Senator DENEEN. We will hear you gentlemen on the motion by Mr. Hughes to postpone the hearing of the case, and later we will take up those telegrams. We will not consume time arguing that matter.

Mr. REES. If the committee please, I shall be here to speak to this point whenever the committee wish to hear me.

Senator DENEEN. Just to the point of the continuance.

Mr. REES. At this time?

Senator DENEEN. At this time, just to that point.

Mr. REES. There is nothing in the world here that would justify a continuance at all.

The impelling force of Mr. Hughes's persistence makes one wonder if they have any right to have any reason, or if they have any rights at all that might be contrary.

This committee was not ordered to investigate this election. This matter was merely referred to the committee for its consideration and for disposition. It might be different if the Senate committee had said, "Investigate this matter." It might be different, then.

Now, where are we? We are in a trial that has been going on here for days. The moving party, the contestant, has said, "We have a case." It has taken him months to get ready to lay that case before this committee. In fact, he must have started getting ready before he even filed his petition. That would be over a year.

He comes to the committee with all this vast amount of assertion in his petition, and the committee said, "We will hear you, gentlemen. We want to be fair and we want to hear you and give everybody a hearing, here. We will hear you; but show us by five witnesses—you claim you have many—that some offense has been committed." They have utterly failed. In fact, they show this committee by their five witnesses that so far as the bootlegging is concerned, no offense was committed by anybody; not anybody in Minnesota; not anyone. That is the status.

Now, we are in the middle of the trial, and the court is hearing the testimony—or about the end of the trial—and counsel say, "Oh, well—oh, we do not ask to dismiss, but we want you to adjourn court and we want you to give us a chance to make everybody come here, 1,500 miles, again, and hear it."

Why, an investigation of this character is more serious than a common law suit; it is much more serious than a common lawsuit. In a criminal case, with the worst criminal in the world, what would happen? Why, the Federal court would say to the United States Government, "You must finish now. Are you through? Have you evidence to sustain the charge?" And in the situation in which our opponents are, they would say, "You see our situation. We have got no more evidence. There is nothing here." And the judge would say, "Justice as established by the Government, justice to a common criminal, would not permit a thing of that kind to be done." Such an act as that in a common criminal case where the corpus delicti is not established, would, in judicial procedure, be considered outrageous. It would be unheard of.

Now, that is what they are saying here, with a persistence that nothing can stop, that has flowed on and on and on, never discouraged, never stopping. They are persisting in assertion of the right, persisting in the demand that this committee shall adjourn this hearing, this trial, and haul Senator Schall before the bar of the United States Senate, which I contend is a higher tribunal, if possible, than the Supreme Court of the United States; haul him up here again upon

hearsay, upon illogical inferences, upon what we know has been misrepresented here as to what witnesses would swear to; haul him up here again, in the eyes of the public; torture him, strike him down; and when you do that, when they say they have got no case, what are you doing to the sovereignty of Minnesota that has selected Senator Schall? It seems to us that there must be some reason, there must be something, I do not know what it is. Maybe, if they get this continuance, as I suggested the other day they will rush back to Minnesota and say, "The Senate of the United States is waiting for a grand jury in Hennepin County." Maybe they will say it. Nothing can prevent them from saying it. Counsel may not, himself; but they know how to put that stuff out.

It seems to me this matter ought to be ended because in a year's time they have absolutely got nothing; in a year's time all they offer is that they will impeach the very testimony that they asserted would be true. They have said they would show this kind of testimony to destroy Senator Schall. When it falls down on them, then they say, "It is unworthy of belief, and we ask you to turn us loose up there in Minnesota, to give us liberty to kindle the fire around Senator Schall again." I say it seems unreasonable.

This body is always open for complaints. If some Senator has so degraded himself that he ought not to sit here, it is always open. They are not foreclosed. But this case within the pleadings, this case, is a screaming child of malice, and it ought to be silenced, it ought to be stopped, it ought not to be allowed to use this Senate.

It seems to us that Senator Schall is entitled to very great consideration at a time like this. Any Senator can be and would be attacked if such attacks are invited, if they are allowed, if they are considered; any Senator that sits in the Senate no doubt would be attacked, and attempts be made to destroy him, or many attempts made to destroy him, just as there have been with Senator Schall. They never had anything in their petition that was good. We have thought that it was an awful thing, with a defective petition like that, to be brought in here and be tried, and even evidence taken, at all. They have been helped and helped, and helped for a year by the Senate, who are trying to be fair. In trying to be fair it seems to me that the Senate may fall backwards upon us and crush the political life, the political hope, of Senator Schall, by collecting innuendo and hearsay and rumor. It seems to us that justice should say with the firm hand now, "We have given you every opportunity in the world. We can not go further." It seems to us that you should deny a continuance and say that this case is ended; that if they have anything in the future you will hear them.

Senator DENEEN. Is there anything more?

Mr. HUGHES. In reply to the statement that no offense has been proven, committed by anybody, of course, we were not permitted to show. We had Mr. Szysko on the stand, by whom we offered to show that he paid money in to Corneaby, but we were not permitted to do that.

In answer to Mr. Rees who says that this could be started at any time, then what harm would it be to postpone it for 30 days? What difference does it make, if it can be opened up all the time. As I stated before, my proposition is to put in writing and furnish the committee with affidavits as to what these prospective witnesses

would testify to; to check up this telegram, from which it at least is a fair deduction that somebody has bribed Corneaby. All that I ask is a period of 30 days to check that up, and then make a report in writing to this committee under my signature as attorney. I will go further than that; I will also offer affidavits in which it will all be sworn to by the prospective witnesses, as to what they will testify to. Then this committee will save time and expense. They will have there before them all of the testimony relevant to the case, and they will find out; and I should think they would be interested in wanting to know about this $1,000, the money that Corneaby has. All of that will be in this report.

As to what the grand jury in Hennepin County will do, I am in no position to say, but it would seem to me that if Senator Schall was as innocent as he claims he is, he should not be afraid of a grand jury investigation in Hennepin County.

I assume that back there, there would be some kind of investigation. Undoubtedly the press has published more or less of these proceedings. There have been gentlemen here from the Minneapolis papers taking down this case, and undoubtedly it has gotten into the public press, and undoubtedly the grand jury of Hennepin County will make an investigation. And if they do, in case it is done in the next 30 or 40 days, that will all be a help to you gentlemen in this investigation, and it seems to me, in fairness, we are entitled to this continuance. It is not asking anything unreasonable or making any additional expense for the Government. It can be done and handled in a private manner, as was our prospectus of what the witnesses would testify to. It can be mailed to the chairman of the committee, and copies can be furnished to Senator Schall's representatives.

I have always refused to furnish copies to the press. When the first prospectus was prepared, the representative of the Journal asked me for a copy, and I said, "I can not give you a copy." He said, "Very well, that is very nice of you." It would be strictly executive, and would not get into the press, and I can not see what harm it would be. It would clarify this and bring this entire matter to a close.

And again, I would like before I go home to have some ruling on this corrupt practices part. As to that, of course there can be no question but what he said those things, made those statements. There are an abundance of people who will substantiate that. That is my position.

Senator NEELY. I move that these telegrams be admitted to the record, including the one sent to the chairman of the committee, and that the committee now proceed to hold an executive session.

Senator DENEEN. Do you want to be heard on the matter of the telegrams?

Mr. REES. No.

Senator DENEEN. We will have an executive session now.

(Thereupon the committee went into executive session, at the conclusion of which they resumed their open session.)

Senator DENEEN. The committee has had a consultation and decided not to postpone this case. Now, are you prepared to go on with your case?

Mr. SMITH. We will be ready to-morrow morning.

Senator DENEEN. Will you be prepared to-morrow morning, or in the afternoon, to go on with your case?

Mr. REES. I suppose we will, your honor. The question was just what, in the eye of the committee, we should answer. We will want to make certain motions about the testimony.

Senator DENEEN. Will you have your motions ready by to-morrow?

Mr. REES. Yes; we will be ready by to-morrow.

Senator DENEEN. At 2 o'clock?

Mr. REES. Two o'clock, yes.

Senator DENEEN. Will you have them reduced to writing so that we can expedite the hearing of the case?

Mr. REES. That is, have the motions reduced to writing?

Senator DENEEN. Yes.

Mr. REES. Yes, sir.

Senator DENEEN. Can you be here to-morrow at 2, Mr. Hughes?

Mr. HUGHES. Oh, yes; I will be there.

(By order of the committee, the four telegrams following are here printed in the record, and also the letter marked "Contestant's Exhibit No. 3.")

[Telegram]

MINNEAPOLIS, MINN., *February 7, 1926.*

DONALD HUGHES,
Care Raleigh Hotel, Washington, D. C.:

I learned to know Corneaby at Minneapolis Steel & Machinery plant three years ago. In October, 1924, Corneaby used Schall's car and acted as Schall's chauffeur in city. Saw Schall with Corneaby frequently. This was at time Corneaby was shaking down bootleggers. Will testify.

FRANCIS CASSERLY.

[Telegram]

MINNEAPOLIS, MINN., *February 7, 1926.*

DONALD HUGHES,
Care Raleigh Hotel, Washington, D. C.:

Corneaby told Landlord Gustaf Glassbrenner, 2244 Seabury Avenue, this city, he was going to Washington to testify for Magnus. Also said he was very hard up and could not pay his rent that day. Few days later Corneaby met Glassbrenner and flashed large roll of bills, all of large denomination, totaling at least thousand dollars, and paid rent. Glassbrenner client of mine and reliable business man and will tell truth.

FRED JENSEN.

[Telegram]

ST. PAUL, MINN., *February 6, 1926.*

CHAS. S. DENEEN,
United States Senate, Washington, D. C.:

If hearings in the Johnson-Schall controversy are being prolonged in anticipation of any evidence I will give to strengthen contentions of Johnson's attorneys, hearings may as well be closed.

BOONE S. TALBOTT.

[Telegram]

MINNEAPOLIS, MINN., *February 7, 1926.*

DONALD HUGHES,
Care of Raleigh Hotel, Washington, D. C.:

I supported Schall for Senator in 1924. Schall employed me to work in campaign and directed me to Jacobs, his manager, for my pay. Jacobs paid me by checks, but last check was returned—not sufficient funds. After election Mrs. Schall made check good. Will gladly testify.

A. R. WALKER.

CONTESTANT'S EXHIBIT No. 3

HOUSE OF REPRESENTATIVES,
Washington, D. C., April 5, 1924.

Mr. P. A. COSGROVE,
127 West Fifteenth Street, Minneapolis, Minn.

MY DEAR PETE: I am just in receipt of yours of March 31, together with Tribune clipping.

I think that is a mighty good idea for you to look after the foreign papers. Jake is a good, level-headed boy. Frisch is a kid. He is only staying over in the office until I can get back. I made arrangements when I left that he should be out of there March 1. Jacobs recognizes your ability, for he has often spoken to me of you and writes me constantly of the good work you are doing.

Just dictated a letter this morning to you, but this one can follow for what it is worth.

Best wishes,
Your friend,

THOS. D. SCHALL.

(At 4 o'clock p. m. the subcommittee adjourned until to-morrow, Tuesday, February 9, 1926, at 2 o'clock p. m.)

SENATOR FROM MINNESOTA

TUESDAY, FEBRUARY 9, 1926

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE
ON PRIVILEGES AND ELECTIONS,
Washington, D. C.

The subcommittee met, pursuant to adjournment, at 2 o'clock p. m., in the room of the Committee on Privileges and Elections, Capitol Building, Senator Charles S. Deneen presiding.

Present: Senators Deneen (chairman), Goff, and Neely.

Present also: Senator Thomas D. Schall, and Messrs. Rees and Smith, counsel for Senator Schall; and Messrs. Hughes and Edgerton, representing the contestant.

Senator DENEEN. The committee will come to order.

Mr. HUGHES. Before we proceed, Senator, I want to supplement my oral motion that I made yesterday with a written motion that I have here in regard to the matter of a continuance. Inasmuch as my motion of yesterday was not in writing, it did not include all of the witnesses that we would like to have subpœnaed here, and my written motion is as follows:

> Now comes Donald G. Hughes, attorney for contestant, and in addition to the oral motion heretofore made before you Monday, February 8, 1926, and now in the record of proceedings here, does hereby ask for a continuance of the hearing herein in order that certain witnesses in addition to those mentioned in the oral motion may be summoned to appear before you and testify. In support of this motion is presented the additional names of witnesses desired, together in some instances with statements hereto attached of what is claimed they will testify to.

This contains in all the names of 36 witnesses, and statements running from A up to and including the letter Q, and the statements are many of them with reference to people who paid money into the Schall headquarters for immunity, so-called—the bootlegger statements.

Also it contains a statement from a newspaper man as to an advertisement in the name of Edwards which he secured and for the disposition of which it went into the headquarters of Senator Schall, and Senator Schall approved of the advertisement. The statement sets that out.

Also some of the statements were taken by the county attorney, and I have copies or the originals attached here in reference to the bootlegger charge.

Then there are the names of witnesses by whom we would desire to prove the statements made by Senator Schall which we claim were derogatory to Senator Johnson during the campaign. The names of those people are set down, with their addresses.

I have not statements from them, so that I did not attach the statements.

Also there is a statement of a Mrs. Coleman, who will testify, who had a talk with Senator Schall during the campaign; and just to-day the young lady here, the deputy clerk of the committee, handed me a telegram from this lady which I would like to have included here, in which she states what she would testify if she came here [handing telegram to the chairman].

Here is a copy of my motion, Mr. Rees [handing paper to Mr. Rees]. I have not the exhibits attached to that, but this is a copy of the motion without the exhibits. I have only one copy of these exhibits. That is a copy of the motion that I have just read.

Also attached to this motion is a copy, but not a certified copy, of the court files of Ramsey County, Minn., in 1906, which pertains to an indictment returned against Thomas D. Schall. At that time he was accused of subornation of perjury; and along with that is a synopsis of the disposal of that case.

We make this motion based upon this showing and upon these statements, asking for a continuance in order to permit the people whose names are mentioned to come here and testify. The names on there, in connection with which statements are not furnished here, we are in a position to supply those statements or affidavits.

Mr. REES. If the committee please, we object to all of the exhibits attached to the written motion, for the reason that it is now apparent that many of them do not relate to any issue in this case. This case should be tried within the issues fixed in the petition. We feel that this is an attempt merely to besmirch, an attempt to make a public record out of much that is very malicious and very destructive, and has nothing to do with this case at all. We feel that this motion has been disposed of by the ruling of the committee on yesterday upon the matter then before it; that this motion and proposed matter thereto attached, which seems to be a very large bundle of papers, is not made in good faith to the committee, who have ruled upon this matter, but is for the purpose not only of injuring Senator Schall, but for the purpose of now taking advantage of a situation to injure the committee itself which is hearing this matter.

Senator NEELY. Pardon me a moment. For myself I want to say that as one member of the committee I do not think we are interested or fearful of that. We are willing to hazard that. We want to do justice to these parties, and, of course, if that would injure the committee, that is a penalty that as public officials we have to bear; so that that matter, so far as I am concerned, may be dismissed, and I do not think that should be given any consideration. I just want to make this observation on the record. This is purely a matter of doing right between the contestant and Senator Schall, and, regardless of results, of course, the committee will endeavor to do that right as it sees it.

Mr. REES. Yes. Senator, as you have just come in, I will say that before you came in I had called attention to the fact that some of these exhibits attached to that motion relate to matters that happened as far away as 1906, and which are not within the issues of the petition at all. It does not relate to any matter connected with the petition.

Senator GOFF. There is an allegation here that in 1906 Senator Schall was indicted in the courts of Minnesota for subornation of perjury. It is to be assumed that his people knew about that in the election and possibly condoned it.

Senator NEELY. What became of the indictment?

Mr. HUGHES. There were two indictments. The first one was defective, and the second was nolled upon the representation as to Senator Schall that he was going blind.

Senator SCHALL. That is a lie.

Mr. HUGHES. The first one was not.

Senator SCHALL. You know it, too.

Senator NEELY. There was no judgment in this case?

Mr. HUGHES. No judgment.

Senator NEELY. There was no conviction, and it would not be admissible in any court.

Mr. HUGHES. It goes to the moral qualifications of Senator Schall and his fitness for the office, we claim; and we have shown that at this time he was going around with bootleggers and they were mixed up in the campaign.

Senator DENEEN. Do you claim, if a man is indicted and not prosecuted, that that should be introduced in evidence against him?

Mr. HUGHES. It may go to his character and reputation as being a law-abiding citizen, and as to his general moral character.

Senator GOFF. You do not know of a court where that has ever been ruled, do you?

Mr. HUGHES. I think so.

Senator GOFF. I wish you would show me where it has been.

Mr. HUGHES. You have a right to show the fact where a man has been indicted for an offense involving moral turpitude.

Senator NEELY. I move to strike out all reference to anything that happened in 1906, 20 years before this contest started, regardless of the nature of the allegations. We are not here to investigate a man's reputation for a period of a quarter of a century before he was elected to office. The inquiry ought to be restricted to within the reasonable bounds of the allegations or pleadings filed in the case. Even if Senator Schall had been guilty of the offense charged and had been convicted of it 20 years ago, as Senator Goff suggests, it must be assumed that it is a matter that occurred up there in a court, and the people of Minnesota, his constituents, must have known of it at the time they elected him to the Senate.

Senator DENEEN. It would not be evidence in any court or in any investigation. A charge made in his absence, before a grand jury, is not admissible in a court, and there never was a case tried in a court of record but what the court instructed the jury that an indictment itself was no evidence of guilt. That has never been varied from in any case where there were instructions, or oral instructions. That will be dismissed, that part of it. You need not answer that.

Mr. REES. That is, the motion to file——

Senator DENEEN. That part of it.

Mr. REES. To file that writing. I do not know what all those other exhibits are, your honor.

Senator DENEEN. We have no knowledge of the contents.

Mr. REES. And the committee, I take it, has no knowledge of it. It seems to me that the record ought to stand as it is, without injecting a lot of new matter that was not before the committee when they passed upon the question.

Senator DENEEN. This is quite a voluminous motion that Mr. Hughes has submitted. I do not know what the proper procedure would be, whether we should read it in executive session or not. It will take some time to read it.

Mr. REES. It surely ought not to be received here.

Senator DENEEN. Have you read the motion?

Mr. REES. I have.

Senator DENEEN. Mr. Hughes, did you serve a copy of it on them last evening?

Mr. HUGHES. I served a copy of the motion, but not the exhibits, because in the case of many of them I have only the one copy of an exhibit. Some of them have been sent to me since I have been here.

Senator GOFF. Were they all of them in your possession yesterday when you made your oral motion?

Mr. HUGHES. Yes, sir.

Senator GOFF. You did not make any mention of them, did you?

Mr. HUGHES. I understood this was a preliminary hearing, in the first place.

Senator GOFF. But yesterday on your oral motion for a continuance, you made no reference to these documents, and you made no request that you be permitted to file them as a part of your oral motion?

Mr. HUGHES. That is true.

Senator GOFF. They were in your possession at that time?

Mr. HUGHES. All but one telegram.

Senator GOFF. Yes; all except this telegram that came here to-day?

Mr. HUGHES. Yes.

Senator GOFF. Am I correct in the assumption that those documents furnish the motive of your motion; that you had them in mind when you were making the motion yesterday orally?

Mr. HUGHES. No; yesterday I was under this impression, that the first six witnesses were in the nature of a preliminary matter; and what the committee wanted at that time, as I understood, was direct evidence involving Senator Schall directly; that they had ruled here that Szysko's testimony was not admissible.

Senator GOFF. You understood the ruling of the committee to be that the six witnesses were to make the prima facie case?

Mr. HUGHES. Yes.

Senator GOFF. And that if the six witnesses made a prima facie case then the committee would take into consideration your motion to bring in other witnesses to corroborate or substantiate the prima facie case. Now, the prima facie case was not made, as the committee ruled yesterday; therefore I do not see the relevancy of these documents.

Mr. HUGHES. The committee yesterday evening, when they adjourned here in the afternoon, as I took it, ruled that Senator Schall was to be allowed to-day to put in testimony, or proceed——

Senator GOFF. The committee ruled that he could put in testimony or proceed to make such motions in writing as he saw fit, to strike out from the record the evidence which the committee had received subject to objection.

Mr. HUGHES. Yes. Now, I construed it this way, that that settled our case so far as we were concerned, and I wanted to get in the record all the testimony that we were in position to offer, so that in case of an appeal from this committee's ruling, either to the main committee or to the United States Senate, that body there would have before them all that we proposed to show here, or prove. That would be what we proposed to show to date in this case.

Senator GOFF. For the purpose of saving time, Mr. Chairman, I will make the suggestion to you and Senator Neely that this matter be considered by the committee in executive session, when they reach it, and that the committee either permit it to go into the record, or keep it from the record, or that they permit some portions, as they are advised, to go in, and keep other portions, as they are advised, from the record, merely in substantiation, if at all, of the oral motion which was made yesterday by Mr. Hughes.

Senator NEELY. I am in favor of that.

Senator DENEEN. I favor that also, and we will consider it passed.

Senator GOFF. In that way we will save time and get ahead.

Senator DENEEN. Are we prepared to go ahead now?

Mr. REES. Are the other side through?

Senator GOFF. Yes; he has made his motion.

Mr. HUGHES. That telegram there I would like to have labeled "R," and have it attached to the motion.

Senator DENEEN. Yes; that belongs with it.

Mr. HUGHES. What I was endeavoring to do was to get my record complete before the committee so that in case we wanted a review, all the motions that I made would be there, in the nature of a bill of exceptions, to settle the case.

Senator GOFF. You see, the committee does not know what is in there, and we can not settle it.

Mr. HUGHES. Yes; I will present it to the committee and ask that the papers be kept there, because some of the papers are from the county attorney, and I will have to return some of them.

Senator DENEEN. Yes; now, Mr. Rees.

Mr. REES. Yesterday some telegrams were received and put into the record with a view of throwing light on the transactions here as to what the facts may be. Before I make the motion, I would like to pass to the committee, if I may, a paper that I have in my hand, for their consideration, and to determine whether or not that may be also for the same purpose, just for the purpose of throwing light on the situation [handing paper to the chairman].

Senator GOFF. You mean that you offer it in evidence?

Mr. REES. I offer it to you for your consideration, to see if you will consider it at this time.

Senator GOFF. Do you mean by that, whether we would consider reading it, or consider it in evidence?

Mr. REES. In evidence. Perhaps if you would reserve your ruling until I had made my motion—that is merely to keep the question alive, that is all.

At this time the contestee moves to dismiss the above proceedings; that is, the proceedings in the case of Magnus Johnson against Thomas D. Schall in contest, for the reason and upon the ground that the evidence is insufficient to establish any cause of action or cause for the expulsion against him.

Our position is that the corpus delicti has not been established, and that any judge similarly situated in any court would be obliged to grant such a motion and dismiss the case.

I assume that the committee will not act upon that now, but will merely act upon it together with other matters. I do not wish to make any further argument upon that point at this moment. Perhaps I should submit it and then later make other motions, if they are required.

Senator GOFF. You understand, Mr. Rees, that this committee now sitting will make its report to the full committee; and whatever you feel is necessary to place the record in that condition that you wish it to be in from your angle of vision, I think you should do now so that the committee here, when it reports to the full committee, will have your record as you wish it to be.

Mr. REES. I did not wish to waive whatever rights we may have under a motion to dismiss, by proceeding further with other matters. The committee understanding that, I will proceed.

The contestee moves to strike out of the record all of the evidence received for the reason and upon the ground that the same is sufficient to establish any cause for expulsion, or any cause of contest against the contestee.

As to the motion to strike out of the record, our position there is that the corpus delicti, that is some offense or the body of some offense, must be proven, before any other evidence of the circumstances of it, or of the conditions surrounding it, would be admissible.

The first thing is to prove, in every such case where a penalty is attached, that some offense has been committed. There is no evidence here that anybody has committed any offense; that it ought to be sustained on that ground.

There is no evidence here that Senator Schall has committed any offense. Upon that ground alone the motion should be granted.

Another motion for the consideration of the committee.

1. The contestee moves to strike out all of the following upon the ground and for the reason that the same is slanderous, libelous, and destructive in its nature, all of which, if taken as true, fails to establish a cause for expulsion or a contest against Senator Schall, viz:

1. The testimony of Peter A. Cosgrove.
2. The testimony of Andrew Szysko.
3. The testimony of Addison C. Townsend.
4. The testimony of Maurice Silverman.
5. The testimony of Charles E. Llewellyn.

2. The contestee further moves to strike out of the record all statements made by attorneys for the contestant as to what the testimony would be which they were offering or proposed to offer, where such evidence was not received or admitted by the committee in evidence or was afterwards by it stricken out, on the same grounds as stated in paragraph 2 of the motion.

3. Also, all assertions of contestant's counsel to the effect that A. N. Jacobs, A. A. D. Rahn, or Frank Corneaby, or either of them, were the campaign manager or managers, or authorized agent or agents, of Senator Schall, or that he had been connected up with them or their activities by any testimony in the case.

4. Also all testimony of the witness Peter A. Cosgrove as to what Jacobs may have said about writing the so-called J. M. Anderson story.

5. Also all testimony received relating to the primary headquarters of the voluntary committee, or other persons, in the West Hotel, Minneapolis, Minn., for the senatorial campaign in Minnesota in 1924.

E. E. SMITH,
JOHN M. REES,
Attorneys for Contestee.

Senator GOFF. Mr. Rees, excuse me a moment before you start. Mr. Chairman, I must ask you to excuse me for a short time that I may go to the Committee on Claims. Just as soon as I can get out of that meeting I will return here. I will leave my proxy with my colleague, Senator Neely, and you can vote me for a quorum. Whatever Senator Neely votes will be satisfactory to me.

Senator DENEEN. You may proceed, Mr. Rees.

Mr. REES. Personally I feel that we have, in our various attempts to argue this case, presented each point that I now have in mind. There is no evidence here that establishes even remotely that anybody has committed any crime at all or any offense, either Senator Schall or members of the voluntary committee which operated in the West Hotel.

If that be true, if we are right in that, then none of this evidence that I have referred to was admissible—ought to have been received.

This question of the corpus delicti was established in the case of Aaron Burr and has been carried throughout the history of this country and all the States, that first there must be some offense established or shown. If no offense is shown, then there is nothing to try.

We claim that there is a total lack of evidence to establish any offense to have been committed by anybody, and especially by Senator Schall. If an offense has been committed by anybody besides Senator Schall, if that offense was not committed by an authorized agent, Senator Schall can not be held for it at all. And no offense was committed.

The Senate is not interested in the fact that some other citizen of Minnesota may have committed an offense, unless that citizen at the time was the authorized agent of Senator Schall. There is a total lack of evidence here, there is not a scintilla, to speak in the language of lawyers, of evidence here, going to establish any offense, and for that reason we think it all ought to be stricken out, every bit of the evidence.

In the event that it is not all stricken out, we think that all the evidence which was offered for the purpose of connecting Senator Schall with any illegal liquor transactions should be stricken out as wholly inconsistent in any way. We have hearsay; we have conjecture; we have opinion of witnesses; we have the assertion of witnesses, all of which they say is not personal knowledge; they do not know it. It is mere inference. It should be stricken out, because the only purpose of it is to get something in a public record that would besmirch a Member of the Senate.

That is about all we could say, I think. We feel that we would be imposing upon the good nature of the Senate to attempt to argue, or reargue, the points that we have attempted to present here before, and we should not take the time to do that. We submit our motions without further argument.

Senator DENEEN. Now, Mr. Hughes.

Mr. HUGHES. A great deal has been said during this hearing about besmirching the name of Senator Schall, but there is one strange thing throughout this entire proceeding from its inception, even before this contest was started and even after the contest was started, and even after it appeared in the public press, that this man Jacobs was out dealing in post offices; Senator Schall, as far as I know, himself or anyone in his behalf, has never asked the county attorney of Hennepin County, has never asked the grand jury of Hennepin County, to investigate what took place in his headquarters; nor, so far as I know, has he ever asked the United States district attorney for the district of Minnesota, or any Federal judge, to investigate what has taken place.

Senator NEELY. Mr. Hughes, neither have Senator Schall's enemies asked the grand jury to investigate, have they?

Mr. HUGHES. Yes; we asked the county attorney, and he did start to investigate.

Senator NEELY. Did you ask the Federal district attorney?

Mr. HUGHES. No; except at the time this matter first came up, during Judge McGee's lifetime, my brother went to Judge McGee with clients of ours whose names appear, I think, there, who stated that their cases had been fixed, and who had paid money in for that into Schall's headquarters, and who had been told that they need not show up for trial. My brother came to me and he said, "I don't know what to do." I said, "The only clean thing to do is to go to the judge. We are not in the fixing business, and we do not want to get into any trouble. Put the matter up to Judge McGee." At that time the matter was put up to the late Judge McGee.

Senator NEELY. What did he do about it?

Mr. HUGHES. What did Judge McGee do?

Senator NEELY. Yes.

Mr. HUGHES. He had a conference with the United States district attorney. I was not present, but I will tell you what he did do. It was reported that it happened. He took this list of names in which it was claimed the cases were fixed for the people who paid money into the Schall headquarters, and they were instructed not to appear in court, and he called the defendants and they were not present in court. In many cases their attorneys were present. Then he issued bench warrants and the men were then brought in on bench warrants, and then the facts commenced to leak out, that they had paid this money.

Senator NEELY. Did it leak out in any court of record, in a proceeding in Minnesota, that they had paid Senator Schall any money?

Mr. HUGHES. No; this man Corneaby, as the file shows, was intimately and closely connected with Mr. Schall in his headquarters, and that he and Jacobs were collecting this money.

Judge McGee died shortly after the election. It is claimed that he committed suicide. Of course we are unable to show what he would testify if he was living.

Senator DENEEN. Were not all of these witnesses before the grand jury of Hennepin County?

Mr. HUGHES. No; I think they were not all.

Senator DENEEN. Mr. Corneaby testified that he was there.

Mr. HUGHES. He was there for a few moments.

Senator DENEEN. He said that he was there for about an hour.

Mr. HUGHES. I do not recall that.

Senator DENEEN. And that he told everything he knew.

Senator NEELY. Is your district attorney under suspicion, also?

Mr. HUGHES. No, he is not; and I would say that he is a fearless county attorney. He is not afraid of anybody.

Senator NEELY. Was your grand jury composed of reputable citizens of the State of Minnesota?

Mr. HUGHES. Supposed to be. It was the talk that certain elements of the Republican Party had prevailed upon the grand jury to present a no bill. We offered to show here, but were not allowed, that statements were made by Mr. Jacobs as to what would be done by the grand jury.

We proposed to show, but were not allowed, that it was claimed by Jacobs that Andy Rahn—he is an influential politician in Hennepin County—had the grand jury fixed.

Senator NEELY. Is it your position, then, that your politics in Minnesota are such that it is impossible to obtain justice in any court in that State in a matter of this kind?

Mr. HUGHES. I would not say that. I would say this, and I want to say——

Senator NEELY. Then, if that is not your position and your belief, why did not you or some of your associates persevere in prosecuting these matters in Minnesota?

Mr. HUGHES. The matter is still with the county attorney of Hennepin County, Minn.

Senator NEELY. If they have not been prosecuted for nearly, or more than, two years, you do not expect them to be prosecuted in future, do you?

Mr. HUGHES. I do not know. I can not speak for the officials. I am not an official myself.

Senator DENEEN. You did not answer the question of Senator Neely as to whether or not the grand jury was under charges of wrongdoing.

Mr. HUGHES. Would not that mean, Senator——

Senator DENEEN. I say you did not answer the question of Senator Neely about the grand jury, as to whether or not they were under charges of wrongdoing.

Mr. HUGHES. The matter was somewhat spoken about, Mr. Chairman, and it was common talk around the courthouse and was commonly reported, that certain Republicans had prevailed upon the grand jury to present no bill or return. I will go further——

Senator DENEEN. Is it your charge that the grand jury was crooked?

Mr. HUGHES. That is all I can say about the grand jury. It is a secret body. I do not know what goes on in there. I am only stating from what I heard.

Senator DENEEN. That is what I presumed. I wanted to know whether or not you were making charges that anything was done that should not have been done by the grand jury.

Mr. HUGHES. That I can not say, only from what I heard.

Senator DENEEN. The grand jury did not find a true bill?

Mr. HUGHES. They found no bill.

Senator DENEEN. No bill?

Mr. HUGHES. I do not think they returned any bill. They neither brought in no bill or a true bill. There was no bill returned.

Senator DENEEN. The matter was presented to the grand jury, it was investigated by them, and no indictment was found?

Mr. HUGHES. No indictment.

Senator DENEEN. No return, rather.

Mr. HUGHES. Yes, sir.

Senator NEELY. Mr. Hughes, I should like for you, if it is possible at this instant, to divest yourself of any peculiar interest you have in this case, the interest that anyone ordinarily would have as a partisan of his client's cause, and as a lawyer of sufficient standing and reputation in Minnesota to be sent here by your client or clients to appear before a committee of the United States Senate, to state if you personally think that this committee ought to sit as a board of review for the purpose of investigating charges that were presented to a grand jury of your own citizens, with the result that the charges were either found to be invalid, or to contain so little of merit that the grand jury paid absolutely no attention to them, and found no indictment by reason of the evidence recorded or having been submitted to them? In other words, if the people of Minnesota, acting through their own grand jury, have found that no offenses were committed, do you think that this committee ought to sit here and review the proceedings out there, and in spite of the action of your grand jury, as a matter of law decide that the grand jury was wrong, and that they should have found indictments; or that this committee ought to reach such a conclusion as you indicate, that it thought they were in error in not indicting Senator Schall, Jacobs, and these persons around the headquarters?

Mr. HUGHES. There was never any indictment asked for Senator Schall. The indictment was asked, as I understand, for Corneaby and Jacobs, on the ground that money had been obtained by them under false pretenses. I can not really see what difference it would make in investigating the case here, what a grand jury did there, one way or the other. We are presenting testimony——

Senator DENEEN. What was the false pretense?

Mr. HUGHES. The false pretense was this, that Corneaby and Jacobs would go out—or, Jacobs would not go out himself but he would send a man named Demars out, and Corneaby—and they would go to persons who were awaiting trial and represent to them that for certain sums of money—sometimes they would ask a thousand dollars, or they would come down to $500, or they would take whatever they could get—their cases would be fixed, and that Senator Schall would use his influence to have their cases fixed; that they would have to give some of the money toward his campaign, and some of it would have to be given to fix the officers; that they had an arrangement whereby they could fix Captain Townsend, etc., and they also went so far as to claim that Judge McGee could be

fixed; that he was in their headquarters. As I outlined in that motion, they had a man named Clagett there, who was a bald-headed man, that they would trot out, and try to leave the impression that he was Judge McGee; and by those various things these men awaiting trial, most of them bootleggers and practically all of them guilty and having no defense, and they having been advised by their attorneys that they had no defense, that here was a judge who was very strict in the enforcement of the law, who was giving the highest penalties under the law and who had a reputation for being very strict in regard to bootleggers, and this was what was capitalized, and under these pretenses this money was obtained from these people; and, of course, as a matter of fact, nothing was fixed. That is very evident, because the cases were all called and they either had to plead guilty or stand trial, and in nearly all the cases there were convictions and the men went to jail; and then it was that statements were made and that the false pretenses were exposed.

Senator DENEEN. They were charged with making these pretenses, that they had influence with Senator Schall and with the judge and with Captain Townsend, and they were charged with having made false pretenses, and none of those men were involved in it, Senator Schall or Captain Townsend or the judge; and the grand jury, on hearing the testimony, did not return an indictment.

Mr. HUGHES. I do not know what testimony was presented before the grand jury. I do not think a great deal of it was presented.

Senator DENEEN. Anyway, the result was that there was no true bill found?

Mr. HUGHES. The fraud, of course, was larceny, under our statute—obtaining money under false pretenses.

Senator DENEEN. Yes; I understand. Senator Schall was not involved in it any more than the judge or Captain Townsend.

Mr. HUGHES. Well, I think he is.

Senator DENEEN. I say there was no complaint against him before the grand jury?

Mr. HUGHES. What was presented before the grand jury was simply the facts that were involved. The theory of this is that Jacobs was Schall's manager, and there was a close connection between him and Jacobs and Corneaby, as we claim, and as we would show if we were permitted to go fully into this as appears by this last motion; and that the facts would also tend to prove that you could come to but one conclusion, that Senator Schall must have known what was going on at that time in his headquarters.

And I want to say, when they talk about besmirching him, that he has never himself—I have never heard a word from Senator Schall—asked the county attorney to investigate this thing, and I have never heard a word from Senator Schall either in the public press or anywhere else. He has remained perfectly silent during the whole thing; and it would seem, if he was not involved, if he was innocent, and a fraud has been perpetrated upon him, that his attorneys here would say so, and that if his headquarters had been used without his knowledge as a place of extortion and larceny, that he would come out when it was so charged, and demand a full investigation thereof before the proper tribunal, in Minnesota.

Senator DENEEN. I understood that the matter was investigated.

Mr. HUGHES. Not against Schall. There was no presentation against Schall.

Senator DENEEN. I understood that the grand jury investigated it.

Mr. HUGHES. No; and the county attorney told me frankly, he said, "I think it is useless to submit it to the grand jury. There is a Republican grand jury there, and I do not think they will do anything, but I will submit it"; and he took that in.

Senator NEELY. In view of your statement as to what you think Senator Schall should have done, I wish to inquire if it is not a fact that in this campaign you claim that the contestant, Magnus Johnson, was, at least by inuendo, accused of having accepted a bribe of $20,000 for his vote on the World Court, or for taking a certain position in regard to the World Court? Is not that a fact?

Mr. HUGHES. Yes.

Senator NEELY. Has Magnus asked for an investigation up there, to determine the facts; for a grand jury or some inquisitorial body in the State of Minnesota to determine whether he is innocent; or has he, like Senator Schall, and like almost everybody else in public life, ignored those things as being too trivial for a busy man to waste his time running it down?

Mr. HUGHES. He thought best to submit it to this committee.

Senator NEELY. You did not answer my question a while ago. I want to ask you if it is your opinion that this Committee on Privileges and Elections ought to sit as a sort of an appellate court to review peoceedings by the grand jury in the State of Minnesota and in your courts up there, when the grand jury and the courts refused to proceed the way some one thinks they ought to have proceeded in reaching their conclusions? Is not that what your contention here is, in regard to these matters that have been investigated in Minnesota without damaging facts having been found or reported? Is not that what your contention here amounts to? There was no bill returned.

Mr. HUGHES. It was a hung grand jury. It developed, as I understand, into a row between the Progressives and the Republicans on the grand jury.

Senator NEELY. Well, is not that at least a very strong indication that the grand jury found that no law had been violated?

Mr. HUGHES. I would not say so.

Senator NEELY. Then you think that your grand jury was made up of perjured men; because, of course, they had to take an oath that they would discharge the duty for which they were impaneled, and one of the duties—and the only duty, for that matter—for which they were impaneled, was to inquire into violations of the law and to return indictments against those who they found had violated the law. Now, when they did not return an indictment against these persons associated with Senator Schall as you contend, they did one of two things; they either found there were no violations of the law, or else they violated the oath that they were obliged to take before they could act as jurors. Which horn of the dilemma do you take?

Mr. HUGHES. I think they violated their oath.

Senator NEELY. That is what I wanted to know—your attitude.

Mr. HUGHES. I will tell you why. The grand jury in Minnesota has come into ill repute, and at almost every meeting of the bar association there is a considerable discussion to abolish it, and we had only recently an instance where indictments were presented and those indicted were tried and all the defendants were acquitted, and it was openly charged in the court room and in the press, and by the attorneys and everyone else, that the grand jury of Hennepin County in that particular case had become an instrumentality of politicians.

Senator NEELY. Without meaning to acquiesce in the reflection upon the grand jury of Hennepin County or its citizenship, I would inquire of you, inasmuch as these offenses were cognizable by the grand jury and in the Federal court, why they were not prosecuted there, if you found that the situation in Hennepin County was so bad?

Mr. HUGHES. Now that you have driven me to it, I will confess that I have no confidence whatever in Lafayette French, the district attorney for Hennepin County.

Senator NEELY. Is he a Farmer-Labor man?

Mr. HUGHES. No, he is a Republican. It is not because he is a Republican that I have not any confidence in him, but because I do not think he does his duty in this matter.

Senator NEELY. Then simply because he did not indict Senator Schall's campaign manager and others connected with the campaign, you have reached the conclusion that he is a crook?

Mr. HUGHES. Well, I would like to state this: That a hearing was held behind closed doors in the United States district court, the contents of which, it being executive, I am not permitted to disclose, but from what I know of some of the facts which were disclosed there, I know that the actions of the United States district attorney were such that if they were before the proper tribunal, he should be removed; and I do know that following this an investigation was made by the Government, the outcome of which I am unable to state.

Senator NEELY. Without in any way impugning the motives of anyone and voluntarily conceding your right to appear for anyone in a proceeding of this kind, I would like for you to tell this committee if you do not think from all that has been developed in this proceeding now, that in the last analysis this whole contest is not over a seat in the Senate, but that it is the result of a fight between the Republicans and the Farmer-Labor Parties in the State of Minnesota?

Mr. HUGHES. It is not that at all, sir. It involves a moral issue. What the people of Minnesota want to know is whether the tactics that were carried on in the Schall headquarters can be again repeated; whether it will be countenanced by the members of this body.

Senator NEELY. Since you have expressed your lack of confidence in the district attorney in Minnesota, may I inquire whether you have any evidence of any irregularity on his part in connection with this particular matter that would have justified your preferring charges against him?

Mr. HUGHES. Do you mean in the way of formal charges?

Senator NEELY. Yes.

Mr. HUGHES. That I could not state.

Senator NEELY. Do you not think, if he is as unfit for office as your opinion of him indicates him to be, that it is your duty to institute proceedings against him?

Mr. HUGHES. I have one fight on my hands here in the Senate now, Senator. You could hardly expect me, alone and unaided, to attempt to impeach the United States district attorney. I understand the Government has made an investigation, and I will refer you to Mr. Golding, and no doubt he can give you the information.

Senator NEELY. I do not mean that he ought to be impeached; but you are all so active down here in Washington, and I was just wondering why some of you did not do something back home in the State of Minnesota.

Senator DENEEN. It is customary in the Federal court for the judge to instruct the grand jury after they are sworn in, about crimes, and their duty to investigate crimes, in your jurisdiction?

Mr. HUGHES. Yes.

Senator DENEEN. Did you ask the judge to give an instruction to the grand jury to look into this matter?

Mr. HUGHES. I did not. The matter was taken up with Judge McGee, and I have no doubt if Judge McGee had lived the entire matter would have been gone into.

Senator DENEEN. But nothing was done about it by the grand jury?

Mr. HUGHES. All I know——

Senator DENEEN. The question was gone into by the grand jury?

Mr. HUGHES. I will answer you this way. I understand Mr. Irving ———, a former Republican committeeman, and Mr. Herbert Repp, about the time this matter was going on in the Schall headquarters, complained to one of the judges whose name I do not desire to give, and I understand that that judge claimed that he would take no action, because he said it was a plan to besmirch Schall, or words to that effect.

Senator DENEEN. Very well. Now, you can proceed, unless there are some other questions.

Senator NEELY. I have none.

Senator DENEEN. Go on with your argument.

Mr. HUGHES. Now, coming to the matter of the corrupt practices act, the testimony of Mr. Llewellyn stands here to-day undisputed and undenied. Mr. Edgerton submitted to your honorable committee a brief upon that, and I will rest my argument, with reference to that, upon his brief, as I take it that may be a question of law that the committee may desire at some subsequent time to pass upon.

As to a desire on the part of the contestee to strike out portions of Mr. Cosgrove's testimony, particularly with reference to the primary election, your committee will recall that it was Mr. Rees who developed from Mr. Cosgrove his connection and his correspondence, etc., with reference to the primary election, and it is my contention that when he did that the door was opened, and whatever questions and answers appear in Mr. Cosgrove's testimony on redirect examination with reference thereto were admissible upon the usual grounds of evidence, that where you open the door upon cross-examination, it is pretty hard to close it; and also Mr. Cosgrove's testimony was all admissible to establish his relations with Senator Schall and their close connection.

With reference to Szysko's testimony, I do not think there is anything much to strike out. He was not permitted to give his testimony.

Senator NEELY. He was the bootlegger?

Mr. HUGHES. What?

Senator NEELY. He was the man who confessed that he was a bootlegger?

Mr. HUGHES. He was a confessed bootlegger, and he claimed that he had had extorted from him $500 by Mr. Corneaby. That testimony was not given; only a statement of what we proposed to show by him.

It has been said by Mr. Rees that no offense of any kind has been established. In the absence of being able to offer Mr. Szysko's testimony, it is a bit difficult to establish any offense; but assuming that Syzsko could have testified as indicated in my proposal, then an offense was established there, namely, that a fraud had been perpetrated upon him under the laws of our State, and the perpetrators were guilty of larceny. That is the situation as I view it.

Mr. REES. May I just say a word?

Senator DENEEN. Yes.

Mr. REES. Hennepin County has, I think, 10 district judges; has it not, Mr. Hughes?

Mr. HUGHES. Ten or eleven.

Mr. REES. Ten or eleven district judges. Many of these judges have served with great distinction, and always with honor. Some have been there many years.

The district judges in our county themselves are the officers of the State, and draw the grand jury of the State. No other persons than they are privileged to draw even one member of the body known as the grand jury.

It seems to me that this committee would realize that those men in their high positions, enjoying the esteem and the confidence of our people for many years, still enjoying it, would not draw grand juries that would be crooked, that would be serving the crooks of the land. So I resent the notion, I resent the imputation, that the grand jury is corrupt or crooked. It seems to me that they are very high-class people.

In our State many women—and especially in our county, many women—very high-class ladies, are members of the grand jury, so that when a grand jury makes an investigation in Hennepin County, regardless of what their political faith may be, it seems to me that that investigation is upon the same high plane as the judges who select the grand jury; as the grand jurymen themselves. The judges of our Federal courts are upon a very high plane; some of them wonderful men in the world. They would not sit idly by with this matter going right into the office of his honor, Judge McGee, all being laid down before him while he is a member of that bench, and in that way coming to the knowledge of the Federal judges, three of them in our State. It seems to me that to have it implied that there is something wrong with those judges, or with the grand juries that serve under them, or to say that there is something the matter with the United States district attorney—the implication that he is crooked—why, I assure this committee that Minnesota is behind those wonderful men upon the bench out there, behind the wonderful people upon the grand jury of our county and upon the grand jury of the United States court.

There is no reason for coming to the Senate of the United States—appealing to the Senate of the United States over the heads of that character of officials and that character of people. It is not with our

consent if the committee get the wrong opinion of those officials and those people up in our State.

You should bear in mind, too, perhaps, that there is a large vote in Minnesota. Senator Schall, it is admitted in a petition, had 388,000 votes; not so large as Illinois, not so large as New York or one or two other States, but a very large vote; and that 388,000 voted for Thomas D. Schall, and 380,000 more voted for Magnus Johnson, showing a great vote out there. Those people are able to take care of themselves. They have testified when they elected Senator Schall. Those are not weaklings. Those are upright, upstanding men and women up in that State. The air is rather pure up in that country. It is true we have acrimonious, destructive, people there, as you know from this case; but upon the whole our people have nothing to apologize for in the selection of their officials or in their citizenship; and I deny the imputation that has been cast upon all of them by these proceedings.

Senator DENEEN. We will have to take up this matter and determine what we will do, in executive session. Do you expect to introduce any testimony?

Mr. REES. If the committee please, I passed to you a certain paper. You received telegrams yesterday with a view of being enlightened upon certain phases of this case. I asked the committee, if they considered it appropriate and proper, for the privilege of introducing that document, that paper, in evidence.

Mr. HUGHES. May I see it?

(The paper in question was here examined by Mr. Hughes.)

Mr. REES. The point is that it is not put in evidence with a view of trying the case, but along the same lines, as merely information to the committee.

Senator NEELY. Mr. Chairman, as to the telegrams that Mr. Hughes has offered to the committee, to which there were objections, I think that they should be admitted on the same theory as the others, and I think that they should all be allowed to go in, and I think this should be allowed to go in, too. I think not only this but a number of the other telegrams are, under the strict rules of evidence in a court of law, not admissible.

Senator DENEEN. They will be admitted as the others were admitted, subject to a motion to strike out.

Mr. HUGHES. We are, of course, unable to cross examine that man referred to.

Mr. REES. We were unable in the same way, on the telegrams and letters introduced by you yesterday. It would bear on the matter whether the committee should subpœna him.

Senator DENEEN. Very well; it may be marked.

(The paper referred to was marked by the stenographer "Contestee's Exhibit No. 17.")

Senator DENEEN. Now, do you expect to offer any testimony?

Mr. REES. We have no testimony to offer.

Senator DENEEN. We will go into executive session, and as soon as we can get into communication with Senator Goff we will be able to rule on this. We will have to notify you when we are ready to decide. Mr. Hughes, you will be at your hotel how long?

Mr. HUGHES. Until this is settled.

Senator DENEEN. We had better adjourn subject to call and we will notify you. You are at the Raleigh Hotel?

Mr. HUGHES. At the Raleigh Hotel.

Senator DENEEN. We will determine it quickly; it will not be delayed.

Mr. HUGHES. We would like to arrange for an appeal from the decision of the committee, if it is against us. I do not know what the practice is.

Senator DENEEN. You can go right to the full committee. We will let you know and have you go with us, or you can go alone, to Senator Ernst and have a protest made to the general committee, when we report. Do you care to argue again?

Mr. HUGHES. No.

Senator DENEEN. Mr. Rees, I am just discussing the matter with Mr. Hughes, and he says that he does not care to argue the case further, no matter how we rule, unless we rule that some of his testimony can come in. Do you care to argue the case further?

Mr. REES. No.

Senator DENEEN. Then we will let you know when we will meet again.

Mr. HUGHES. All right.

(The telegram submitted by Mr. Hughes in this session, and the paper submitted by Mr. Rees, marked "Contestee's Exhibit No. 17," are here printed in the record as follows:)

MINNEAPOLIS, MINN., *February 8, 1926.*

DONALD C. HUGHES,
Care Committee on Privileges and Elections,
United States Senate, Capitol, Washington, D. C.:

I worked in Schall campaign in fall of 1924. Was engaged to work by Jacobs. Did not receive all my pay. Talked with Schall about amount due me after election. Schall told me he had nothing to do with paying bills of his campaign, as Jake was managing it. During campaign Jacobs and Corneaby had keys to Schall's office; I saw them unlock the door a number of times. Schall paid me $25 November, 1925, for my good will. Will testify if called.

Mrs. EMMA COLEMAN.

CONTESTEE'S EXHIBIT NO. 17

I was not the campaign manager of Senator Schall. When Schall became the Republican nominee for Senator in 1924 a group of minnesota citizens organized a Schall volunteer committee, with headquarters at 572 West Hotel, Minneapolis, and they requested me to take charge of activities at this volunteer committee headquarters. This volunteer committee headquarters was organized without the previous knowledge or consent of Senator Schall. He knew nothing of the activities carried on by either this committee or by those in charge of the work of this committee. Oce Curtis, of Minneapolis, and T. K. Kelly, of Minneapolis, both reputable citizens of standing in their community, acted as president and treasurer, respectively, of the Schall volunteer committee.

As manager of this volunteer committee I was responsible for my actions to Oce Curtis, president; T. K. Kelly, treasurer; and L. A. Lydiard, who was chairman of the executive committee of the Schall volunteer committee. Schall was not consulted, nor did he in any manner suggest or advise what this committee should do.

A. N. JACOBS.

Subscribed and sworn to before me this 2d day of September, 1925.

NELLIE BRISLAIN,
Notary Public, Hennepin County, Minn.

My commission expires August 31, 1928.

(Thereupon, at 3.20 o'clock p. m., the subcommittee adjourned, subject to the call of the chairman.)

SENATOR FROM MINNESOTA

THURSDAY, MARCH 4, 1926

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE
ON PRIVILEGES AND ELECTIONS,
Washington, D. C.

The subcommittee met, pursuant to adjournment, at 2.30 o'clock p. m., in the room of the Committee on Privileges and Elections, Capitol Building, Senator Charles S. Deneen presiding.

Present: Senators Deneen (chairman), Goff, and Neely.

Present also: Senator Thomas D. Schall, and Messrs. Rees and Smith, counsel for Senator Schall; and Messrs. Hughes and Edgerton, representing the contestant.

Senator DENEEN. The committee will come to order.

The committee considered the statement that was filed by you, Mr. Hughes, in reference to the proposed testimony of the witnesses who are named here, and they felt that the testimony would be along the lines of that you have already introduced, and there was not sufficient cause to justify them to go to the expense of bringing those witnesses here. Now, do you want to argue the case?

Mr. HUGHES. I would like to argue the phases of that motion. I am also awaiting a telegram that I have given instructions should be delivered here at this room, in which a man by the name of Gale G. Plagman, who is the man who impersonated Judge McGee in the Schall headquarters—I received a telegram in which it was stated that he desired to telegraph this committee what he knew concerning these charges; that testimony would directly connect Senator Schall with the bootlegger money.

Mr. Tiegan, without allowing him to send the telegram, preferred to take his affidavit. I understand that he has given an affidavit this morning in Minneapolis, at 9 o'clock, and I received a telegram to the effect that the statement or affidavit would be sent by day letter, verbatim, and when I left the hotel I left word there with the telegraph operator to send the message here. Now, I am very desirous of submitting that telegram when it comes. Upon the contents of the telegram that I received this morning I judge that it is along the evidence of directly connecting Senator Schall up with this bootlegger business.

Senator NEELY. When did you first receive information that this message would be sent?

Mr. HUGHES. This morning at 8 o'clock.

Senator NEELY. Have you known of this man's attitude in regard to the case, in the past?

Mr. HUGHES. I do not know the man personally.

Senator NEELY. But I say, have you known what his attitude was in the past? In other words, why did you not obtain this statement some time during the last month, instead of waiting here until to-day?

Mr. HUGHES. Well, I don't know; you take notice in these other election contests that these things do not go on in a cut-and-dried way. They sort of work out as you go along.

Senator NEELY. Yes.

Mr. HUGHES. There has been a good deal of attention aroused in this matter in Minnesota.

Senator NEELY. I think there is no doubt about that, from the newspaper clippings that have been sent to members of the committee.

Mr. HUGHES. Of course, I have not been aware of what he would testify, or that he would be a witness, but now he has signified his desire to be such a witness, and it would seem that if this telegram is such as I have been led to believe it might be, it would be worth waiting for, and we should be entitled to have him here.

Senator NEELY. What evidence have you that this man will testify in such manner that he can connect up Senator Schall? What evidence have you of that?

Mr. HUGHES. In a few moments, or whenever this day letter is delivered, that will be answered.

Senator NEELY. Of course, we can wait until to-morrow for that. What have you now?

Mr. HUGHES. I have only a telegram from Mr Tiegan, in which he stated that Mr. Plagman has stated to him——

Senator NEELY. Who is Mr. Tiegan?

Mr. HUGHES. Mr. Tiegan is the former private secretary of former Senator Johnson; and Mr. Plagman has made this statement to Mr. Tiegan, and Mr. Tiegan did not allow Mr. Plagman to send a telegram, but he desired Mr. Plagman to make that affidavit, which was made this morning at 9 o'clock in Minneapolis. And Mr. Tiegan stated in his telegram to me that it connected Senator Schall with the bootlegger money. I know that Gale Plagman was in the headquarters and was around there, and it was generally reported that he was the man who posed as the late Judge McGee in the Schall headquarters.

I also would like to speak on the motion that I made, both the written motion and oral motion, for subpœnaeing the extra witnesses. I understand Mr. A. A. D. Rahn is in Washington. I think while he is here we should have an opportunity to examine him. He was mentioned in the testimony here as one of the managers of the Schall campaign. I understand he can be found this evening at the Congressional Club at some kind of a dinner there. I learned from the social columns that he is in the city.

Senator DENEEN. What is his name?

Mr. HUGHES. A. A. D. Rahn. He was mentioned in the testimony here. The testimony was that he appeared considerably in the Schall headquarters, and that he was also in daily consultation with Mr. Schall during the campaign; and there is no doubt that he was well aware of the——

Senator NEELY. What would he testify to if he was brought here?

Mr. HUGHES. Well, Senator, you must realize that many of these witnesses, such as Rahn or Jacobs, would be adverse witnesses. I can not vouch for what he would testify.

Senator NEELY. But, Mr. Hughes, are you not really trying to put this subcommittee in this position: Every time we get to a place where we can decide the thing, of rendering an adverse decision on some motion for further time, simply because you have stated you wanted to bring somebody before the committee, and then when it comes down to the point you say you do not know what a witness will swear to. I am not going to be put in that attitude. I think you gentlemen have had an abundance of time to get some relevant testimony in here—in my judgment you have not done it here, so far—showing that Senator Schall is guilty of an offense. As a matter of fact, the witnesses who were brought here on your request at the expense of the Government all said that they knew that he was not guilty of anything.

Now you come before the committee and say if we will bring somebody else here and give you an opportunity to continue and prolong the hearing you can make out a case, but when asked what any witness that you want summoned here will swear to you say you do not know. That is not a fair way to treat this committee.

Mr. HUGHES. You can not ask me to vouch for a witness like Andy Rahn, who was appointed by Senator Schall——

Senator NEELY. That may be true, but if that is the only kind of testimony you have, you ought not to ask this committee to continue to spend the taxpayers' money for the expense of bringing such witnesses on here, conducting a fishing expedition, when you can not say that you have any assurance that any of the testimony adduced will be relevant.

Mr. HUGHES. I want to call the attention of the committee to the fact that in the Newberry case and in the Lorimer case that very practice was pursued. Senator La Follette took that matter up after it had been killed by a Senate subcommittee. At the instance of Senator La Follette some newspaper man was brought here from Chicago, and was forced—or rather, the person who was guilty came through, and brought out the evidence. Now, if the attorneys in the Lorimer case had been asked to state what that newspaper man in Chicago would testify to, they could not have done so.

It was exactly the same way in the Newberry case. In the Newberry case the bill of exceptions in the district court below was excluded, and there was hearsay testimony. There were many defendants tried in the Newberry case in the district courts, and many of the cases against them were dismissed, and still that evidence went in here in the Newberry investigation.

Now, I claim this. We have evidence here showing, by a Mr. Casserly, that he saw Senator Schall and Corneaby around during the campaign in Schall's car. The telegram is in the record, and it states at or about the time when Corneaby was shaking these bootleggers down.

Senator NEELY. Yes; Corneaby was your witness, you put him on the stand, and he repudiated practically all you had said that he would testify to, before. He testified that he did not know of Senator Schall having been connected with this bootlegging business, that he did not know of his having derived any benefit from it, or even having approved it in any way, shape, or form. Those are not his exact words, but that represents the substance of what he testified to.

Senator DENEEN. Let me call your attention to a telegram I have received, dated March 3. [Reading:]

MINNEAPOLIS, MINN., *March 3, 1926.*

CHARLES S. DENEEN,
United States Senator, Washington, D. C.

In recent issue of Farmer-Labor Advocate, newspaper published in Minnesota, I saw reprint of telegram sent to Donald Hughes by me. I know nothing about Senator Schall and Frank Corneaby riding around together. I did not authorize sending this telegram and know nothing that will help Johnson's case. I have made affidavit to this effect.

FRANCIS CASSERLY.

That came in yesterday.

Mr. HUGHES. I would not be surprised if we were forced here to go to the other side to get what our witnesses will testify to.

I received a letter the other day that Jacobs was recently sentenced to the workhouse, and he is probably there now. He has recently been out trying to fix one of the witnesses that testified here. I would not be surprised, when we are forced to go to the other side, what our witnesses are to testify.

Senator NEELY. Are you willing to state to the committee that in your opinion this witness you asked us to summon here, in the city, Rahn, will say that Senator Schall was in the bootlegging business, or that he derived any profit from the operations of these various people that you claim were dickering with the bootleggers about the time his campaign was on in Minnesota?

Mr. HUGHES. Senator, I will be unable to state what Andy Rahn will testify to.

Senator NEELY. As a lawyer, do you think we ought to summon him, unless you can assure the committee that he will, or at least believe that he will, give testimony?

Mr. HUGHES. He is right here in the city.

Senator NEELY. Yes; and there are many other people within a radius of 10 miles; but ought we to summon them all, or should we summon anyone without the assurance of some responsible person at least that they will testify to something relevant to the issues here?

Mr. HUGHES. Mr. Rahn can probably establish the connection between him and Jacobs. Mr. Rahn visited Schall's law office, visited his headquarters, and had something to do with the management of them and the operation of these headquarters.

There was testimony to be offered, and I do not know whether it was received or not, in which we offered to show that Rahn took over the Harpoon—that was during the primary—and that shows that there was a close connection between Rahn and Senator Schall.

Now, from him we will probably be able to elicit what the connection was between Senator Schall and Jacobs. They were all in there together, conducting that campaign. Senator Schall had only one headquarters, that was in the West Hotel, in Hennepin County. He had no other headquarters. Andy Rahn would naturally be a hostile witness; no question about it.

Senator NEELY. Then if he did testify that he knew nothing about this, I suppose then you would contend that we ought to bring somebody here from Minnesota to impeach him and show that he had not told the truth. That has been your attitude toward the

other witnesses that were brought on here; and would not that be your attitude toward Rahn?

Frankly, I am in favor of calling Rahn. I think this case ought to have been settled before this—I am not speaking for anybody else on the committee—and I think you have utterly failed to make out a case; but I am willing to give you this other chance on this other man here in the city, notwithstanding the fact that you do not vouch for him at all, as to what he will say. You express probability.

Mr. HUGHES. I will be frank with you, Senator——

Senator NEELY. Of course ordinarily that would not receive any consideration. To my mind, somebody back in Minnesota has been determined to put this committee before the people out there, for some political or other purpose, in the attitude of wanting to suppress something in this case. What we have tried to do is to get some relevant evidence here, and Johnson's lawyers so far have not brought us such evidence, and I should like to get it if there is any. But I do not want, every time we get ready to decide this case, to have somebody get up and say, "If you will just give me a chance, I will produce so and so. I think if this committee will subpœna so and so from Minnesota, I believe you will get something." We ought to have this decided, and we ought not to continue the case indefinitely.

Your associate counsel long since refused to vouch for the evidence that might be adduced in this case. You will not vouch for anything, but you only say that there is a probability that somebody will testify a certain way; and of course you could keep us going on forever, on statements of that kind, without involving yourself, because you do not assure us of anything. You will not take the responsibility as a lawyer of saying that John Smith or Bill Jones will testify to anything relevant in this case. You simply say there is a probability that Rahn would give testimony showing certain things.

Mr. HUGHES. I think that is true, because Mr. Rahn was in the headquarters, and was close, and has for years been back of Senator Schall, both in congressional fights and in the fight for the Senate.

Senator DENEEN. Senator Goff has just been informed that a message has just been delivered over the telephone, within the last few minutes, to the effect that there is a telegraph messenger coming here from the Raleigh Hotel with a telegram from Minnesota.

Senator NEELY. Now Mr. Hughes wants the committee to adjourn, and to issue a subpœna for Mr. Rahn, who has been mentioned in the case, and to have him before the committee to testify. He is not able to make a statement as to what kind of testimony will be given by Mr. Rahn.

I think Senator Goff should be informed also as to his first statement. While past experience does not indicate that further investigation would develop anything, still this request puts the committee in an embarrassing position, in that it might be said that opportunity for hearing a witness was not given. Mr. Hughes says he has a telegram from Minnesota this morning to the effect that there is a certain man by the name of Plagman in Minnesota who will personally swear that Senator Schall was himself connected with this bootlegging business. Now, Mr. Hughes further asks for an opportunity to get that evidence here.

Senator DENEEN. Plagman is the man that they charge impersonated Judge McGee.

Senator GOFF. Where is Mr. Rahn?

Senator DENEEN. Mr. Rahn, they say, is visiting in Washington.

Senator GOFF. It does not appeal to me very strongly, on this statement, that you have received a telegram of a hearsay character, that somebody out in Minnesota said that if this witness was called here he would give certain testimony. Why do you not get a telegram directly from the witness? Why do you not get a statement directly from the witness? Why can you not communicate with this man in the State of Minnesota and say, "I desire that you answer, considering yourself on your oath, as a gentleman, what you will testify if you come to the city of Washington"?

Mr. HUGHES. Senator, I understand this telegram is a day letter, and that it is a copy of the statement of Plagman, of his affidavit which he has made in Minnesota, that is on the way now from the hotel. That is what the telegram that I received at about a quarter of 2 o'clock informed me, that they were sending his affidavit by telegraph.

Senator NEELY. I move, Mr. Chairman, that we have a short executive session.

(At this point the subcommittee held an executive session for 10 minutes, at the expiration of which time the open session was resumed.)

Senator DENEEN. While we are waiting for this telegraphic message, we will defer acting on those two witnesses, and announce later in the session what will be done.

How long do you want for your argument?

Mr. HUGHES. What argument; on what has gone heretofore in the case?

Senator DENEEN. Yes.

Mr. HUGHES. Oh, that depends; possibly half an hour or so.

Senator DENEEN. How long do you want, gentlemen?

Mr. REES. Do you mean on the merits of the case?

Senator DENEEN. Yes; on the merits of the case.

Senator GOFF. Why not limit them to 30 minutes on a side?

Senator DENEEN. Very well.

Senator GOFF. I propose that they be limited to 30 minutes on a side.

Senator DENEEN. Will that be agreeable?

Mr. HUGHES. Yes.

Mr. REES. Yes, sir.

Senator DENEEN. I suggest that you go right to the point. We are all of us familiar with it, and I think all of us have had experience as lawyers in election cases, and you can take it for granted that we are very familiar with the rules, and also familiar with the testimony in a general way. Mr. Hughes, we will hear from you first. It is now 3 o'clock.

Mr. HUGHES. Senators, I do not know that I will take up all my time on this argument. I have not a copy of the testimony, so that I will have to rely on my memory.

Senator DENEEN. We may send for the transcript, if you wish.

Mr. HUGHES. No; I will have to depend upon my memory. If I misstate anything, of course it will not be intentionally. If it does not agree with your remembrance, you will have a right to reject it.

This contest divides itself into, first, the bootlegger charge, in which we charge that during the campaign the Schall headquarters collected sums of money from men who were charged with violations of the United States liquor laws.

We were not permitted to offer any testimony with reference to men who had paid money in. Mr. Szysko was offered for that purpose; and I believe, as I recall, there was some testimony that he had been approached during the campaign to put up money, and that he did so; that he had been approached by Mr. Corneaby, and that he visited the Schall headquarters; and he either testified, or it was later stricken out, that he paid money in there to the headquarters, sums of money, when he was awaiting trial.

In corroboration of that we called certain men who were connected with the Federal prohibition service, as you recall. Captain Townsend was called, who testified about Mr. Jacobs coming to him on several occasions during the Schall campaign, particularly in the fall, and stating that "Tom"—meaning Senator Schall—wanted certain cases passed. As I recall Townsend's testimony, it was testimony to that effect; and that Mr. Jacobs asked him to continue certain bootlegger cases then pending in the Federal court; that he did so on more than one occasion.

As I recall there was also testimony from Mr. Townsend of the talk with Senator Schall after he was elected. I do not know whether all of that was permitted, but the substance of it was that Senator Schall objected to a Mr. Silvermann, that is, there was some talk by Captain Townsend about him being reappointed, or appointed, Federal prohibition director for Minnesota; and there was testimony that if Captain Townsend would agree not to keep Mr. Silvermann, he would be appointed by Senator Schall; and that Captain Townsend refused to make that promise.

An effort was made to show, but under the rule we were prevented from showing, why Mr. Townsend wanted to keep Mr. Silvermann; and he said that he had nothing against him; that there was nothing against Mr. Silvermann; and he wanted to show but was not permitted the reason why he considered that Senator Schall did not want Mr. Silvermann to remain in Minnesota.

Senator NEELY. In order to keep the record straight, right there, you recall that in response to a question which I asked Captain Townsend, the prohibition agent and evidently a very reliable man, he said in substance that he knew of no instance in which Senator Schall had violated any law, in which he had attempted to violate one, or in which he had attempted to obstruct the enforcement of any law; and he furthermore stated that he knew of no effort to commit any sort of offense on his part, and did not know of his having approved of one or the commission of one.

Mr. HUGHES. There is one qualification, Senator. As I recall, Senator Neely, Captain Townsend did testify that during the election of 1924, while Mr. Schall was a candidate for Senator, he had telephone requests from Senator Schall's office; and that Senator Schall there asked Captain Townsend to lay off from a certain man, a Jew in St. Paul named Wilbisch, or some such name; that he was having some trouble about his alcohol permit, and that Senator Schall felt that if the case was followed up he, Senator Schall, might

lose some votes; and that Minnesota was a pivotal State in the Republican column, and President Coolidge might lose some votes. I think the Senator will recall Captain Townsend's testimony to that effect; and that he said to Senator Schall he could not, and reminded him of the fact, if he should violate his oath of office to do that, what would happen.

Now with reference to Silvermann, his testimony was to the effect that Jacobs was continually over there, from time to time, wanting these cases continued. Mr. Jacobs was not a lawyer, that appears. What motive would prompt Mr. Jacobs to go around over there to the Federal prohibition agents, asking to have cases continued? One of two things it must be. Senator Schall through his attorneys here denies this and says that Jacobs was not his manager; that Jacobs was not his secretary; that Jacobs had no business over there on his behalf, asking to have cases continued; but if we had been permitted to show that Szysko paid the money in, that fact, coupled with the fact that Jacobs was over there hounding the Federal prohibition officer, asking to have cases continued, saying that "Tom" wanted them continued, corroborated by the further fact as to this Joswich woman, who was a stenographer in Schall's headquarters and who also frequented the Schall house, that he was there asking to have her permit reinstated, would all show that the only purpose, the reasonable and fair deduction that you could gather from Jacobs's demand upon the prohibition agents, was that he was there trying to hold these cases up that had been fixed, until after election.

Now, in that connection you may say, "Well, where is there any evidence here that Jacobs in any way was connected with Senator Schall?" I want to state that in the testimony of Mr. Cosgrove—and however Mr. Cosgrove may have appeared at times to be excited, I believe, and I think the subcommittee believes, that Mr. Cosgrove was a man who told the truth, and was a frank witness, he was sincere. It is true he may have been more or less partial, as he appeared upon the stand, but he is the type of man that was positive to the point, and sincere—I say that the testimony of Mr. Cosgrove shows that there was a connection between Thomas D. Schall and Arthur Jacobs, and Corneaby in that letter; that he showed that Jacobs was there in the headquarters; that during the election he had seen both Jacobs and Corneaby in Schall's law office in the Security Building; that they had a key; that he had been in there on several occasions and had found Arthur Jacobs in there. Furthermore, that Corneaby was sitting at a desk in Schall's law office—not the headquarters but Schall's law office—during the campaign of Senator Schall for the office of United States Senator; Corneaby, the man who was around approaching Szysko and other bootleggers, bringing these people up to the headquarters to meet Jacobs who was there in the Schall headquarters; and that is not denied by Senator Schall.

Senator Schall has never gone on the stand, although an opportunity was given him to deny any of these statements. He has contented himself with remarks, unsworn, so that I could not cross-examine him. He has never denied under oath the Townsend statement.

Now we have Mr. Cosgrove showing further the connection between Jacobs and Tom Schall. We have Schall admitting that Jacobs was

in partnership with him in operating the Harpoon newspaper. That testimony is before this committee, and that testimony stands unchallenged and undisputed. Cosgrove testified that Schall stated to him that he owned the Harpoon, and that he said, "Since I have gone into politics I let Jacobs run it."

Senator GOFF. Let me ask you a question as a lawyer.

Mr. HUGHES. Yes, sir.

Senator GOFF. Suppose you introduced evidence that showed that Senator Schall appointed a man as his agent to do a special thing, to become his special agent in the execution of a specific thing; does that prove general agency?

Mr. HUGHES. It shows, I think——

Senator GOFF. Answer my question; does that prove general agency?

Mr. HUGHES. I think that the proof here would show general agency, because Mr. Cosgrove has testified that Schall has told him that this man had charge of his campaign.

Senator GOFF. I see. That is your answer?

Mr. HUGHES. Yes; that is my answer. Of course there is a difference between special and general agents; but the testimony here is to show the connection. Here it is that he admitted to Cosgrove—and Senator Schall does not deny it—that he had charge of his campaign.

We have the Anderson transaction—Anderson and the Equity Exchange—in which this libelous article is concerned that appeared in the Harpoon, that is on exhibition here and has been received in evidence. We have testimony there showing Jacobs, Schall, and Anderson connected.

Senator GOFF. Then you are in the position of contending that if A appoints B to become his publicity agent, that fact is evidence that he also appointed him to become his bootleg representative?

Mr. HUGHES. I will answer that in this way, that Mr. Cosgrove has testified that Mr. Schall said to him that Jacobs had charge of his campaign, showing the close connection—showing the circumstance.

If we had been permitted under the rules, we could have shown by testimony that money was paid and Jacobs received it. That was not allowed to be received here in evidence, showing the close connection between Schall and Jacobs—and Corneaby, for that matter, who was there in the office.

Now it would seem to me, this of course was limited to only a few witnesses, and Szysko, as I say, was not permitted to testify and the committee ruled——

Senator GOFF. Now, you say you were limited to a few witnesses.

Mr. HUGHES. In this preliminary.

Senator GOFF. You were limited to five or six witnesses, which you said would prove your prima facie case, whose credibility you represented to the committee, and you assured the committee that if they would bring them on here, these men would so testify that they would make a prima facie case. The committee had never seen or heard of them, and believed what you said and brought those men here, and those men did not make the prima facie case that you said you expected to make.

You then claimed that you were surprised by their testimony. Now, that is not the concern of this committee, any more than it would be the concern of a court if you brought your witnesses in and they surprised you and you failed to make your case.

Senator NEELY. May I observe at that point, Mr. Chairman, that these witnesses were brought here by the committee at the request of Mr. Hughes, the attorney for ex-Senator Johnson, after not only one admonition, but repeated admonitions, from yourself, Mr. Chairman, and myself, that those witnesses should be selected with reference to the fact that they could give the very strongest and most damaging testimony against Senator Schall that was available in the State of Minnesota.

Mr. HUGHES. I wanted to add, in regard to the statement about witnesses disappointing me; I can not see where there is any variance between what we claimed Captain Townsend would testify to and what he actually testified to here.

When you come to Mr. Silvermann, the same will apply. The general trend——

Senator NEELY. Mr. Hughes, I do not want to take up too much of your time, but if you will pardon me——

Mr. HUGHES. Yes.

Senator NEELY. There is just this difference between how you claimed he would testify and what he did testify to, and that is the difference between day and night. You said he would connect Senator Schall directly with this bootlegging business; and when he came before us under oath he said that he not only did not know of Senator Schall being connected with it, but Captain Townsend unequivocally and unconditionally declared that he had never known of Senator Schall violating any law or obstructing the enforcement of any law.

Mr. HUGHES. Senator, you will recall that Corneaby testified——

Senator NEELY. No; it was Townsend you were discussing, and he was certainly a very reliable witness.

Mr. HUGHES. A very reliable man; there is no question of that.

Now, with reference to Mr. Qvale, director of prohibition for Minnesota, there was some slight variance between what we claimed he would testify to and what he did testify to; but we are not so much concerned with what we claimed they would testify to, but with what they were permitted to testify to here; and the same remains true as to Qvale, who is a reliable man, and as to Townsend and as to Silvermann; they all said that this man Jacobs made it his business to come there and speak to him during the Schall campaign concerning, I think in some 12 cases, if not more, asking to have continuances granted in those cases, and an effort was made—I do not recall whether or not it came out, but an effort was made—to show, and I think the testimony did show, that the matter became of such concern that Mr. Qvale and Mr. French, the United States district attorney, had a meeting concerning this matter; and we attempted to show by Mr. Qvale that he made a report to the Department of Justice, to Mr. Harney, concerning it, it became so notorious.

This man Jacobs, what motive could he have——

Senator GOFF. Was there ever any evidence in your possession that Mr. French, the United States attorney, considered that any laws of the United States had been violated, obstructed, or interfered with in their enforcement by any of these people?

Mr. HUGHES. I can answer that in this way. This matter came to the attention of my brother first in regard to his clients. It was worked on his clients and on Senator Devoe's clients, and they took the matter directly to Judge McGee and reported this bootlegger business; and my brother, as I recall, stated that Mr. French did not think that any crime had been committed against the United States Government, for the reason that he was satisfied that there were no Government officials involved in this fraud; that if any crime had been committed it might be under the State law, obtaining money through false pretenses; and I am inclined to think that Mr. French was right, because we have never claimed, nor do we claim now, that these agents were in any way mixed up with these people. When Captain Townsend, as he testified, called there at the Schall headquarters, they inveigled him in there, and I think it was a part of their scheme to get this money, saying to these bootleggers, "There is Captain Townsend, who comes in"; and they would go over, and I can see where they would use Senator Schall's name to great advantage over there with these directors. An election was on in a Republican State. Senator Schall would probably be elected, would be carried in with the landslide that was inevitable in Minnesota for two or three weeks before election, and I presume that was capitalized and used, attempted to be used, to get these cases continued. But you saw Mr. Qvale here; you saw the type of man he was. He suspected that something was wrong, and took it up, as he stated, with the department—as I stated in my letter, with Mr. Harney—and he said to his department that something was wrong. Something was vitally wrong.

As regards Corneaby, in our first letter as I recall I do not think we claim to vouch for Mr. Corneaby. We got a message saying that he would probably be hostile or unreliable; but, as stated in our offer of proof, he did come here, and I am stating now what I said in my offer of proof, he stated certain things there in the police court, there in the hall one morning, and stated what he told Mr. Cosgrove was true, and that he had consulted or had talked with Senator Schall about the things that he told Mr. Cosgrove.

Relying upon that—and we would give him no money; I would have nothing to do with him when he came to my office. I said, "If you are subpœnaed down there I am willing to advance your railroad fare." He said something about being hard up. I said "Well, we would be willing probably to advance you something for your family, and to have it taken out from your mileage fees here." He did not come back. He claimed to be greatly frightened. Then he showed up here. I never talked to him after he came to Washington. We put him upon the stand and he denied, more or less, some of these things.

Senator NEELY. He denied all of the things that you said he would state. He did not make the statements that you said he would make, did he, Mr. Hughes?

Mr. HUGHES. He took refuge behind the Constitution, refusing to testify to certain things on the ground that it might incriminate him. He denied that he was around with Senator Schall or had anything to do with him. In other words, he cleared Senator Schall.

Now, this is in the record. There is a telegram now in the record.

Senator NEELY. You, of course, do not consider that you made out any case against Mr. Schall by Corneaby's testimony, do you?

Mr. HUGHES. Except that he came in here and refused to testify as to any relation with bootleggers on the ground that it might incriminate him, which would show that he had a guilty conscience; would show that he was not frank, free, and open about the matter. If Corneaby was as innocent and as free from any connection with the Schall headquarters as he tried in his testimony before this committee to make them believe, would he have sat there and have said, "I refuse to testify on the ground that it may incriminate me, or have a tendency to do so?" And upon direct examination he was loath, and would say little.

Upon cross-examination you must have noticed how friendly he was to the other side. It was very apparent in his whole attitude, in his manner; and at least it now appears in the record that after he was a witness here a telegram was received, after we had excused him, stating that he appeared shortly before leaving for Washington, with a large amount of money, with $1,000. His landlord stated, and it is an indisputed fact, that he had no money when he left—was hard up. He came into my office and said, "How will my family live when I am gone?" He is not a man who could borrow anything. He has no credit; and that is a matter that I asked to have the committee look into. Here was a witness who had been subpœnaed here and had led the contestant to believe that he would testify in a certain way on these matters; and I do not believe that this committee believes for a moment that I would put in writing what I believed he would testify to unless it was true. I would not be that foolish. There would be no object for me to bring him down here unless I did believe that he would testify to what he told me; and suddenly here he appears, before leaving home for Washington, with this sum of money, about $1,000. It seems to me a witness has been tampered with before this committee, a matter this committee should look into.

Senator NEELY. It does not. It may seem that way to you; but of course, there is no evidence anywhere before the committee that he was tampered with at all. There is this single circumstance, according to your statement—and I do not question your right to make it—and that statement amounts to this, that the man had no money before he left up there, and he was later seen with money, and you apparently want the committee to draw the conclusion that the only way in the world the man could have gotten that money was by some improper relationship with Senator Schall. Personally, I do not think that that follows, and I do not think anybody on this committee would draw such a conclusion.

Mr. HUGHES. He was a man without a position. I spent half a day trying to find out what he did and what he worked at, but to no avail.

Senator NEELY. You put him on the witness stand as your witness without obtaining any better results.

Mr. HUGHES. Of course.

Senator NEELY. And apparently you want this committee to convict Senator Schall on what he refused to testify. He did not give any testimony against Senator Schall.

Mr. HUGHES. I agree with you that he took refuge behind the Constitution, as he had a right to do.

Senator NEELY. You have stated you are a criminal lawyer. If a witness for the Government, or a witness for the State, if it be in a

State case, is put on the stand to testify against an accused, and that witness says, "I can not testify against him without incriminating myself," and the matter ends there, do you think, as a criminal lawyer, the accused should be found guilty on that, without any evidence, on the bare supposition that if that witness had not protected himself by claiming his constitutional privilege, he might have testified to something that would have convicted the person who was on trial? In other words, the committee, in so far as Corneaby's testimony is concerned, is without evidence.

Mr. HUGHES. Except that——

Senator NEELY. Well, except nothing. He made a broad, a sweeping statement that Senator Schall had no connection so far as he knew, and that Senator Schall had had no connection with these matters which you claimed he was responsible for. Corneaby said that Schall himself knew nothing about it.

Mr. HUGHES. That is the reason of our wanting to call these other witnesses.

Senator NEELY. To show why the first witnesses you brought here did not give the testimony you expected them to give?

Mr. HUGHES. Perhaps I do not agree with you and the committee, but I can not conceive that in an investigation, in an election contest, in a senatorial investigation, the same rules prevail that do in a court. Here lay minds are sitting upon the tribunal to get the facts. In reading over the record in the Lorimer case and the record in the Newberry case, I can not see that that rule or that method of procedure prevailing in courts was followed at all. Even in a court——

Senator NEELY. We might as well give short shrift to that matter. Those rules do prevail with this committee as it is now constituted, and I feel quite sure, while the personnel of the committee is the personnel that now exists, that no one will be able to deprive one of his seat in the Senate without having adduced some evidence showing that the accused is guilty of some improper conduct; and that evidence, in my judgment, will have to be adduced under the ordinary rules of procedure in courts of justice. In other words, I do not believe the committee as it is now constituted ought to or can find anybody guilty of anything on gossip and rumor and report in the State of Minnesota, which your witnesses under oath repudiate when they come before us.

Mr. HUGHES. The only witness that repudiated us, of course, was this man Corneaby.

Senator NEELY. Did they not all repudiate the statements that you made to the committee as to what they would testify to, in so far as their testimony was pledged to connect Senator Schall with the commission of any offense?

Mr. HUGHES. I think that in the main, in substance, if you will read the testimony of the other witnesses and read the statements we made as to what they would testify, you will find that in substance they more or less coincide. The fact remains that Schall talked to Townsend. The bold fact remains that Jacobs talked to all three of the prohibition agents, and that in every case except in the case of Qvale, he mentioned, "Tom;" he wanted these things for "Tom." How much time have I left, Mr. Chairman?

Senator DENEEN. I think you have occupied just half an hour.

Senator NEELY. I will not interrupt Mr. Hughes any more, Mr. Chairman, and I ask that he be given as much additional time as I have consumed in my colloquy with him.

Senator DENEEN. Do you want to reserve any of your time?

Mr. HUGHES. For rebuttal?

Senator DENEEN. Yes.

Mr. HUGHES. I would like to continue for a few minutes, if I may.

Senator NEELY. Let him be given as least as much time in addition as I have consumed, Mr. Chairman, in my colloquy with him.

Mr. HUGHES. I want to pass on from the bootlegger matter to the corrupt practices. The law on that I will not discuss. Mr. Edgerton left with you an able brief on the law of that subject.

I want to call attention to the testimony of Mr. Llewellyn. Mr. Llewellyn is a high-grade gentleman, a Republican, and a member of, or employed by the State of Minnesota, in the fire marshal's office; an old citizen there. Previous to that he was in the Postal Service as an inspector. He is a man whose integrity and whose word no one would question, nor does anyone question it. He relates that he was present, I believe it was in St. Paul, at some political speech in which Senator Schall went on and made a statement that a man came to him with a highly perfumed cigar, and asked him how he stood on the World Court, and I believe the object of his statement was to leave the impression that Senator Schall turned the man down; that he offered him $25,000. Later on it seems that former Senator Johnson came out favorable to the World Court, and I believe Mr. Llewellyn testified here in substance, that Senator Schall said, "I wonder if the man with the highly perfumed cigar and the $25,000 saw Senator Johnson." Of course he was in the campaign there for Senator.

Senator NEELY. Is it unlawful in Minnesota for a man to make a statement of that kind.

Mr. HUGHES. Yes; under the corrupt practices law. It is both a civil and a criminal offense. And the remarkable part of it is that Mr. Schall never interrupted him; that he did not resort to his usual assertion of "liar," as he has done to me on several occasions. Nor did he, when the opportunity was given him to be sworn, go on the stand and deny it; so that that statement stands undisputed.

Senator NEELY. Was there any effort made to prosecute Senator Schall for having made this slanderous remark about Magnus Johnson, to which you have referred, in Minnesota?

Mr. HUGHES. There was not.

Senator NEELY. Why did you not take the matter before your State court?

Mr. HUGHES. I was of the impression——

Senator NEELY. It was a State statute that he violated, if he violated any law at all.

Mr. HUGHES. Possibly. Now since he has remained silent after this statement is made, I will advise Senator Johnson to swear to a criminal complaint against Senator Schall.

Senator NEELY. I am not interested in what you do in the future, but I am just wondering why you did not prosecute him in the State court, where that law ought alone to be enforced, if it is to be enforced at all.

Mr. HUGHES. It could be enforced to-day in the criminal court of Minnesota. The matter was recently discussed——

Senator NEELY. But my question is, Why did you not enforce it? I am trying to find out, and I am asking you, why you are asking the United States Senate to enforce a State statute of Minnesota that you have made no effort to enforce in your own court?

Mr. HUGHES. We were inclined to think that it was more a matter properly for the Senate than for the criminal courts of the State; so that we preferred to carry it out in a gentlemanly way and bring it in the form of a contest. It was not Senator Johnson's intention to prosecute anybody, or to go around swearing out criminal complaints, unless it was as a last resort. He did in one instance swear out a criminal complaint against Mr. Jacobs, in a case where a low libel was circulated against former Senator Johnson, very shortly after this contest started, and Jacobs was found guilty, and since we have been here the matter has been to the supreme court and has been affirmed.

Senator NEELY. Yes; we all received notice of that.

Senator GOFF. Yes. Do you people out in Minnesota consider a man justified who would resort to a criminal statute because of a sarcastic remark like that in public debate in a political campaign?

Mr. HUGHES. I think that was even more than a sarcastic remark. That was charging a man with bribery, and there was so much rumor about the World Court in Minnesota the people there were excited about it.

Senator GOFF. Has that ever been established as not conflicting with the provision as to free speech in the Constitution of the United States?

Mr. HUGHES. Yes; I think that was established in the case of Hawley *v.* Welsh, in which Hawley was referred to in slanderous language.

Senator GOFF. Do you know of any other case under that statute?

Mr. HUGHES. There is a case in another State. I ran across a decision in some other State some time ago, and I can get it; I have it at home in my file. That was in a former election contest. I was engaged in a criminal case at the time, and we had to look up the law. Some other States have those statutes, although very few States have a corrupt practices act. I think Michigan has a corrupt practices act. I noticed in the Newberry case somewhat similar matter, but I do not know of any State in the United States that has a corrupt practices act quite as strong as ours is in regard to statements made. The theory of our law on that is that any statements that have a tendency to injure the candidate are grounds for contest, or he may be indicted. We have never, in Minnesota, had a criminal case under the corrupt practices act go to the supreme court. As I recall, they were all civil cases. There was a criminal case tried in Minneapolis last fall, but the jury disposed of it in favor of the defendant, and, of course, it was not appealed, in which this very question was discussed, although it was not a question at issue in that case.

Senator GOFF. If it was decided in favor of the defendant, you could not appeal it, unless you have some special statute.

Mr. HUGHES. No. I presume my time has expired.

Senator DENEEN. Now, which of you gentlemen will argue the case?

Mr. REES. If the committee please, I undertand that I am to address myself to the merits of this case, and not to the motion that I understood was before the committee.

Judges who try cases always have appearing before them persons who confuse and cover up the real issues, the real questions, so it is not new. It ought to be the purpose of any sound argument to throw light upon the particular question, or to get as nearly as possible to the truth of any particular issue.

It seems to us that this committee, all men of wide experience in political matters and in matters of affairs of the world, that this committee sees much further into this case now, sees deeper back into this case now, than anybody connected with it on either side of this table. A good chemist adds no ingredient to the substance analyzed; he merely ascertains what the substance is, and reports it back.

A good judge does the same thing. He does not decide upon prejudice, upon hearsay, upon rumor, upon manufactured propaganda such as this case is full of; but a good judge, like a good chemist, decides upon the evidence before him. Upon the evidence here there is nothing that can be done except to dismiss this proceeding—I would use the word "dismiss" if I was before a court—because there is no evidence here; chemistry shows no evidence here. There is nothing in the evidence here that shows either that Senator Schall was connected with anything that was objectionable there, directly or indirectly; there is not one single bit of evidence that any law at all was violated in the way of putting any money into the Schall campaign. In all of the evidence here, taking it all, there is not a word of either of those two things.

Now, what have we got here? I am not going to take up the language and the words of each of these various witnesses, but every member of this committee no doubt remembers that there is not a single thing here that connects Senator Schall with any offense, or that Senator Schall's campaign profited 1 cent by any wrongdoing of anybody.

We do have here, it seems to me, almost a diseased disposition to misrepresent what the testimony would be. Counsel seems to share the same spirit as Cosgrove when he said he despised Senator Schall. If, in all the experience of any of you gentlemen in the practice of the law, you have heard so much bitterness on the part of any lawyer toward anybody that he appeared against, as Mr. Hughes has shown in this case, I shall be surprised. I think it will stand first in malice, in destruction.

Counsel has assembled here, and is asking to assemble more, malice, something that will sustain one or more of the hundred claims that he has made in arguing his matter, in presenting his matter to this committee. But that is only the spirit of the other side of this table. I can not conceive that this committee will share that spirit at all. What shall lead, here? Is malice going to lead this committee, or the Senate, or is enlightened civilization going to lead it? This committee is going to follow, it seems to me, the law; the law of conspiracy, the law of corpus delicti, the

law of agency, the law of hearsay, and judge this case upon those matters. It is not going to follow malice and misrepresentation.

If we take stock here, just what have we got? This is not a contest, but somebody whose soul is full of malice has filed charges here which they have wholly failed to sustain, and we are only asking that these civilized matters, these scientific matters, that have been determined, that afford everybody charged with crime, protection, that guard his rights—we are only asking that they be enforced to protect a member of the great United States Senate.

This committee is fully aware of the portent of this case—what it means. They are asking the committee to finance the malice and the misrepresentation of Senator Schall's enemies, to destroy him here, and if you do that, of course you invite destruction from the enemies of all Senators. Of course it will not be done. Ignorance and hate are twins. They travel together. The enlightened are seldom persons of hate. Ignorance misrepresented what they were going to show. Their petition is untrue, so far as their evidence goes.

The statement of the testimony offered was untrue, maybe not intentionally so; but a distorted imagination, an ignorance that distorted judgment, that was willing to conceal truth, that was willing to destroy a United States Senator because he is the choice of the people of our State. They have in their ignorance been willing to misrepresent; they have misrepresented; they have attempted to destroy. Maybe they have succeeded, but I can not believe it. Red-blooded men and women in Minnesota, white-minded people of Minnesota, will resent this, and they are resenting it now.

For centuries Minnesota was the battle ground of ignorance and hate. The Sioux and the Chippewas tomahawked and scalped each other; always in the night—in the night by cunning. This is a hangover from the days of savagery. Those poor Indians massacred each other without any special reason, just because hate was their background—revenge. And now, after centuries, there are people in Minnesota that have gone out into the night with their tomahawks and their scalping knives, to do death. They have gone into a night that is eternal, into which no real light will ever come, to strike down, to murder. Assassinations are of two kinds; one that strikes the heart and the other that strikes the soul. Ignorance and malice will not hesitate to strike the soul, as they have done in this case.

Senator DENEEN. Do you care to reply, Mr. Hughes?

Mr. HUGHES. I just want to reply with my report as to Mr. Rahn. I have been telephoning and I find that he stops at the Congressional Country Club. I was mistaken in stating that it was the Congressional Club. I am unfamiliar with the clubs here. It seems that that club is out in the rural district somewhere. They said at the telephone exchange that he would be there around 6 o'clock, so that evidently he is staying there.

I have not anything to say in rebuttal. Mr. Rees in my judgment did not go into the merits of the case at all. He spent most of his time talking about enmity. I will not discuss that, because I feel that I have not done anything here that was not fit and proper.

Senator DENEEN. Will you submit this telegram to these gentlemen and then we will proceed on it.

(A telegram was here examined by Mr. Rees and Mr. Smith.)

Senator DENEEN. Upon these matters that have been presented this afternoon the committee in executive session has determined that you can bring Mr. Rahn in here at 2 o'clock to-morrow and we will hear him.

As to this gentleman whose telegram you have produced here, we can hear him at 9 o'clock Monday morning.

Mr. HUGHES. At 9 o'clock?

Senator DENEEN. But he will have to be brought here at your expense. The committee does not feel that you have made a showing that would justify the Government in going to the expense of bringing him here, because the telegram is worded in a general way. But if you bring him here we will hear his testimony on Monday morning at 9 o'clock.

Mr. HUGHES. And Mr. Rahn you will hear at 2 o'clock to-morrow afternoon?

Senator DENEEN. At 2 o'clock.

Mr. HUGHES. You will attend to the subpœnaing of Mr. Rahn?

Senator DENEEN. Yes; we will subpœna him.

Mr. HUGHES. He is at the Congressional Country Club.

Senator DENEEN. I understand he is at the Congressional Country Club, and we will have him subpœnaed.

Mr. HUGHES. Now I want to get this right in regard to the Plagman matter. You will hear him at 9 o'clock Monday morning?

Senator DENEEN. Monday morning.

Mr. HUGHES. Of course if anything should happen that his train did not get in.

Senator DENEEN. He can get here Saturday morning at 9 o'clock if he wants to. He could leave there to-night and be here Saturday morning at 9 o'clock, and we are setting Monday morning at 9 o'clock for hearing him. We are giving you two days extra, so that he will have plenty of time to come.

Mr. HUGHES. This telegram, may that be printed in the record?

Senator DENEEN. If he is going to testify, it ought not to be printed now.

Mr. HUGHES. Then I presume I should preserve the telegram, or I can leave it with the committee.

Senator DENEEN. Yes. I read the telegram of Mr. Casserly. I have here a telegram from Mr. Knutson which was also received this morning, and I am going to ask both sides to have all their exhibits here on Monday afternoon.

Mr. HUGHES. These telegrams were all in the record?

Mr. REES. I am in doubt whether that newspaper, the Harpoon, was received in evidence. My thought has always been that it was not received in evidence.

Mr. HUGHES. As I recall, it was received.

Senator DENEEN. It was offered, and I do not know whether it was received or not.

Senator GOFF. The record will show.

Senator DENEEN. The record is in my office and you may examine it there.

Senator NEELY. I move that we adjourn until to-morrow at 2 o'clock.

Senator DENEEN. We will adjourn until to-morrow at 2 o'clock.

Mr. HUGHES. Then I will not have to bother about Mr. Rahn?

Senator DENEEN. No; we will attend to having him subpœnaed.

The telegram referred to by Senator Deneen, from Mr. Knutson, is as follows:

[Telegram]

MINNEAPOLIS, MINN., *February 22, 1926.*

Hon. CHARLES S. DENEEN,
United States Senator, Senate Office Building,
Washington, D. C.

I saw in Sunday's Journal my name turned in as a witness for Magnus Johnson. If you are depending on me for information that will help this unfair contest against Senator Schall I know of nothing that will help Johnson's case in any way.

MARTIN R. KNUTSON.

(Thereupon, at 4.30 o'clock p. m., the subcommittee adjourned until to-morrow, Friday, March 5, 1926, at 2 o'clock p. m.)

SENATOR FROM MINNESOTA

FRIDAY, MARCH 5, 1926

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON
PRIVILEGES AND ELECTIONS,
Washington, D. C.

The subcommittee met, pursuant to adjournment, at 2.30 o'clock p. m., in the room of the Committee on Privileges and Elections, Capitol Building, Senator Charles S. Deneen presiding.

Present: Senators Deneen (chairman), Goff, and Neely.

Present also: Senator Thomas D. Schall, and Messrs. Rees and Smith, counsel for Senator Schall; and Messrs. Hughes and Edgerton, representing the contestant.

Senator DENEEN. The committee will come to order. Mr. Rahn is present.

TESTIMONY OF ANDREW A. D. RAHN

(The witness was sworn by Senator Deneen.)

Mr. HUGHES. I presume that I had better proceed with the examination of Mr. Rahn now. There is something else I want to take up, but I can take that up afterwards.

Senator DENEEN. Yes; proceed with the examination.

By Mr. HUGHES:

Q. Mr. Rahn, what is your full name?—A. Andrew A. D. Rahn.

Q. Where do you live?—A. Crystal Bay, Lake Minnetonka, Minn.

Q. Is that your home?—A. That is my legal residence.

Q. As a matter of fact, you are really residing in St. Paul?—A. No, sir; that is not my legal residence.

Q. You do have a home and residence in St. Paul?—A. I do; in the outskirts of St. Paul.

Q. What is the number there?—A. No. 2343 Carter Avenue.

Q. That is where you reside most of the time?—A. No; I am away a great deal.

Q. That is where your family stay?—A. Part of the time. My children go to school, and during the school months they live there.

Q. In St. Paul?—A. Yes, sir.

Q. What is your business?—A. My business is farm implements, mortgages, bonds and loans, and the lumber business.

Q. What is the name of the lumber company?—A. Shevlin-Carpenter-Clark, Minneapolis.

Q. Minneapolis?—A. Yes.

Q. And are you acquainted with Senator Schall?—A. Yes.

Q. How long have you been acquainted with him?—A. It goes away back to boyhood days.

Q. Some number of years?—A. Possibly 26 or 28 years; somewhere along there—30 years.

Q. You have been in contact with him more or less since that time?—A. Off and on; yes.

Q. Are you holding any appointment, any party appointment?—A. Yes; I am a member of the State Central Committee.

Q. What is your position on that?—A. A member of the committee.

Q. By whom were you appointed?—A. I was appointed by all the nominees of the Republican Party of the State of Minnesota, on the State ticket.

Q. Were you appointed to anything there by Senator Schall?—A. No, sir.

Q. Did any particular one of the nominees recommend your appointment?—A. That I can not answer. I was not there when that appointment was made. There may have been one or a half a dozen. I have been a member of that committee for many years.

Q. I presume you saw a good deal of Senator Schall during the last Senatorial election?—A. I saw him occasionally.

Q. How often?—A. I can not answer that question.

Q. Did you know where the Schall headquarters was located in Minneapolis?—A. What do you mean by the Schall headquarters?

Q. The headquarters commonly known as the "Schall for Senator" headquarters?—A. There were several, possibly.

Q. Do you know of more than one?—A. Yes.

Q. Will you relate where the different ones were?—A. There was one, I believe, by some woman's organization. I can not just give the name of the building; possibly the Seitz Block. The name escapes me. They were termed the Schall headquarters. Then there was the one that was termed the Schall headquarters in the West Hotel. They were independent headquarters.

Q. The West Hotel; that is in Minneapolis?—A. Yes.

Q. When did you first learn of the Schall headquarters in the West Hotel?—A. After they were opened.

Q. Whom did you learn of them from?—A. That I can not answer. It was called to my attention by someone, but it is so long ago that I do not remember.

Q. Was it before or after the primary in 1924?—A. I can not answer that question.

Q. Do you recall being in that headquarters along in May, 1924?—A. I do not.

Q. Would you say you were not in there during that month?—A. I would not say, but I doubt very much whether I was there.

Q. You are familiar with a paper called the Harpoon?—A. Yes; I know of it.

Q. Did you see a copy of it during the primary of 1924?—A. I may have. I doubt whether I read it.

Q. Do you recall whereabouts you were when you saw that paper?—A. No; I do not.

Q. Do you recall the particular edition in which there was an advertisement featuring Mr. B. B. Oleson for governor on the Farmer-Labor ticket, and Judge Hamp for office as justice of the superior court? Do you recall that edition?—A. I do not.

Q. Do you recall having a talk there with Mr. Jacobs with reference to that particular edition?—A. I do not.

Q. Would you say you did or did not have a talk with him?—A. I would not say, because I do not recall the incident.

Q. You would not deny but what you had a talk with him?—A. I might have, but I doubt it.

Q. Can you tell us about how many times you went in that headquarters at the West Hotel?—A. Very few.

Q. Well, were you there half a dozen times?—A. No, sir.

Q. A dozen times?—A. The only recollection I have is one time.

Q. One time?—A. One time.

Q. You want to swear you were there only once?—A. I swear that I was there that one time, that is——

Q. When was that?—A. That was when Martin Madden spoke there. I have forgotten the date. It was in the regular campaign. It was in the evening.

Q. Was that before or after the October term of the United States court?—A. I can not answer that question. It was on the date of Martin Madden's meeting there, and I just looked in.

Q. Were you familiar with the telephone number there at the headquarters?—A. I was not.

Q. Did you ever call up the headquarters?—A. I may have.

Q. To what extent?—A. That I can not answer.

Q. Whom did you talk with?—A. I may have talked to different persons there if I called them. I do not recall. I only called them on one or two occasions.

Q. Do you remember what the occasion was that you called on?—A. Well, I wanted the headquarters closed.

Q. You wanted the headquarters closed?—A. Yes.

Q. In the West Hotel?—A. Yes.

Q. By what right or authority did you want or claim to have the right to close those headquarters?—A. As a member of the Republican State central committee that maintained separate and legal headquarters, you might put it.

Q. About when was this that you wanted the headquarters closed?—A. It was along in, right after the—it is so long ago, and being so——

Q. Do you recall the October term of the United States court when Judge McGee was presiding?—A. No.

Q. Does that help to refresh your memory in any way?—A. No; that would not. It was shortly after the headquarters was opened in the West Hotel.

Q. Shortly after they were opened?—A. Yes; after the primary.

Q. After the primary?—A. Yes.

Q. Can you state why you wanted those headquarters closed?—A. Yes.

Q. State.—A. Because there was no occasion for committees overlapping. There was an objection on the part of the members of the State central committee to having independent headquarters.

Q. Did you take this matter up with Senator Schall, then Mr. Schall?—A. I do not recollect that. I presume I did.

Q. Did you have any talk with him about it?—A. I may have, but it was clearly on my own responsibility as a member of the State

central committee which was conducting, as a committee, the campaign for Senator Schall.

Q. What was that talk, do you remember?—A. I do not.

Q. Are you not able to give us the substance of it?—A. The substance of it was that I wanted the headquarters closed.

Q. Where did you make that statement to Senator Schall?—A. I am not referring to Senator Schall now. I thought you had in mind any conversation that I might have had at the West Hotel.

Q. No; I asked you if you had any talk with Mr. Schall himself during the campaign.—A. I may have, but I do not recall it.

Q. Did you ever, yourself, go to Mr. Schall and state your grievance in regard to the headquarters?—A. I may have, but I have not any recollection of that. I naturally discussed many problems with him as a member of the State central committee.

Q. With reference to his campaign?—A. In reference to his campaign, and the entire ticket, coordinating.

Q. Can you not tell us the substance of any talks you had with Mr. Schall in regard to closing the headquarters at the West Hotel?—A. Well, Mr. Chairman, it happened a long time ago, and I can not go into the details of the conversations, except that I was very insistent on the closing of those headquarters.

Q. That is what I wanted to find out. Did you tell that to Mr. Schall?—A. I may have.

Q. Do you recall what he said in response?—A. I do not.

Q. The substance?—A. As to what Mr. Schall said at the time; no.

Q. Where did you have these talks with Mr. Schall?—A. That I can not say. It might have been in his office and it might have been at the Republican headquarters. It might have been in my office. I do not know.

Q. You used to go over to Mr. Schall's law office quite often?—A. Occasionally; not often.

Q. How often?—A. I might say, not over once possibly in two or three weeks. Possibly I might have gone there twice in a day. It is hard for me to say at this time.

Q. Hard to say?—A. Yes. Arrangements for meetings were made by the State central committee.

Q. When you went to see Mr. Schall, was it as the representative of the State central committee?—A. Yes.

Q. And in no other capacity?—A. No other capacity.

Q. Did you have anything to do with the raising of the campaign funds for Mr. Schall?—A. No, sir.

Q. Did you receive from any person any contribution to Mr. Schall's campaign?—A. No, sir.

Q. You received from no one any contribution?—A. No, sir.

Q. Did you disburse any money in behalf of the said campaign?—A. No, sir.

Q. You state that under oath?—A. Yes, sir.

Q. You disbursed no money?

Senator GOFF. He is testifying under oath, so that whatever he states is under oath.

Mr. HUGHES. Yes.

The WITNESS. I might add, as a member of the State central committee for the entire ticket, I have in mind possibly O. K. ing bills or something of that kind.

By Mr. HUGHES:

Q. Does the State central committee keep any records?—A. They do, and they are the best records going.

Q. Where are those records?—A. In St. Paul; in the proper accredited offices, possibly.

Q. Who would that be?—A. I do not know. The chairman of that was Mr. William Sievright and the secretary is Mr. Ray, and there are different departments there; and their record would disclose.

Q. Did Mr. Schall refer people to you to have them reimbursed for campaign expenditures?—A. Well, I don't know. He would send people to me; I can not say to reimburse them. He naturally would send them over to the headquarters.

Q. To what headquarters?—A. To the State central committee headquarters.

Q. Other than as a member of the State central committee, did not Senator Schall in several instances send people to you personally to be reimbursed for the money or labor expended in his campaign?—A. Not to my knowledge.

Q. Not to your knowledge?—A. No, sir.

Q. Do you recall a Mrs. James Coleman calling on you in reference to certain expenditures or disbursements that she claimed the Schall campaign owed her?—A. Yes; but that just happened about a month and a half ago.

Q. She gave you at the time a letter from Senator Schall recommending her to come to you?

Mr. REES. I think I will object to that. It is away subsequent to the election, and it is going far afield.

Senator DENEEN. What is the purpose of the question?

Mr. HUGHES. It is to show that Senator Schall recommended her to Mr. Rahn as having some connection with the campaign other than that of the State central committee. I have not the letter here, it is at the hotel, in which Mr. Schall directed Mrs. Coleman to go to see Mr. Rahn about her services for working for him in the campaign.

Senator DENEEN. Do you not think that the letter itself would be the best evidence, so that the committee might examine it and see whether it is proper?

Mr. HUGHES. Oh, yes; but I asked him if he received such a letter.

Senator DENEEN. He can state whether he received the letter, but for you to examine him upon the contents of the letter would be improper.

Senator GOFF. Of course, that would be improper.

The WITNESS. Shall I answer?

Senator NEELY. Did you pay her any money?

The WITNESS. I did not.

Senator NEELY. I think that disposes of it.

Senator DENEEN. Yes; that disposes of it.

By Mr. HUGHES:

Q. Aside from any connection you may have had with the State central committee, you want us to understand that you had nothing to do with collecting, and that you received no money on behalf of the Schall campaign?—A. Not on behalf of the Schall campaign.

Q. And you want to state that you had nothing to do with the headquarters in the West Hotel?—A. Positively not.

Q. And you were not in any way in charge of those headquarters?—A. No, sir; I had nothing to do with them.

Q. Do you know Arthur N. Jacobs?—A. I do.

Q. How long have you known him?—A. Possibly 12 or 14 years; I can not say the exact time; along about that.

Q. You, of course, are familiar with his connection with Senator Schall in his various campaigns, and for the United States Senate?—A. Only to the extent of a newspaper publisher.

Q. That is the only extent?—A. Yes.

Q. How often did you see Arthur N. Jacobs during the campaign?—A. I could not answer that. I ran across him on the street, or he might run into my office.

Q. Do you want to leave the impression here that your acquaintance with him with reference to the Schall matter was only casual and not otherwise?—A. It would be merely an acquaintance with one as, taking part in the campaign, a man comes in to see you. I could not say how often.

Q. Is it not a fact that you and Arthur Jacobs together carried on the Schall campaign and operated that headquarters there in the West Hotel?—A. Positively not.

Q. You deny that you had anything to do with it?—A. Absolutely; no; not that I had anything to do. I met Jacobs, but I had nothing to do with the campaign headquarters at the West Hotel.

Q. What were your relations with Jacobs in regard to it?—A. Merely conferring with him when he called me on the phone and asked for some information, or something of that kind.

Q. You say he called you on the phone. Where would that be?—A. In my office, possibly; any one of them.

Q. Did you have any special number on which to reach you there?—A. I had different numbers.

Q. I understand that you have certain numbers that you give to people that desire to reach you; is that true?—A. Yes, sir.

Q. Mr. Jacobs in calling you simply called through the office?—A. He called through the regular exchange in my office.

Q. During the campaign he called you in that way; did he?—A. I presume so; if he got me.

Q. Do you not know?—A. He must have; if he got me.

Q. What I am getting at is, you talked with him on the phone?—A. Yes.

Q. And it was in regard to this campaign?—A. I can not answer as to that. It may have been on personal matters.

Q. It might have been personal matters?—A. Yes.

Q. Do you want to state to this committee that you had no talk with Jacobs on the phone there in regard to the "Schall for Senate" campaign?—A. I have already said that I have discussed with him on the telephone matters pertaining to the political situation for the whole ticket, and for possibly Mr. Schall.

Q. As a matter of fact you were not very much concerned with Governor Christianson or anybody else on the ticket, aside from Tom Schall; were you?—A. I want to say here emphatically that I was for the entire Republican ticket from top to bottom.

Q. Did you make any speeches for the ticket?—A. I am not a speech maker.

Senator NEELY. Oh, Mr. Chairman, I do not see how any question of that kind is going to throw any light on this issue. What has that to do with it? Let us get to the question of some of the charges in this case, something on the issues.

Mr. HUGHES. That is what I told you, that I expected this would be off.

By Mr. HUGHES:

Q. Now, you say you had talks with Jacobs on the telephone in regard to the campaign. I would like to have you tell us what the substance of the talks was.—A. I could not tell you what the substance would be. It might have been over some little, trivial matters of some kind. I have no recollection of any particular thing.

Q. Did he discuss with you anything about the bootlegger matters?—A. No, sir.

Q. When did you first learn that the Schall headquarters was out collecting money from the bootleggers?

Senator DENEEN. You have assumed a matter here, in that question. This is not cross-examination. You have subpœnaed this gentleman and he is your witness. He has not been asked about that.

Mr. HUGHES. I know that.

Senator DENEEN. Your questions are all framed in the nature of cross-examination.

Senator NEELY. I am in favor of ruling that question out, Mr. Chairman. If he wants to ask him if he knew anything about that matter, that would be all right; if he asked if he knew whether Senator Schall had any connection with those matters, that would be proper; but he is assuming in this question that this witness has said something that he has not said and I think it is not fair to him, and it is the duty of the committee to protect the witness from that kind of thing.

Senator DENEEN. The question will be overruled.

By Mr. HUGHES:

Q. Did you know anything about money being collected in the Schall headquarters from people who were charged with violation of the United States liquor laws?—A. I knew nothing.

Q. You did not?—A. No, sir.

Q. Did you ever hear of that practice being carried on in the Schall headquarters?—A. Rumors have come to me to that effect; not only there, but other headquarters.

Q. When did these rumors first come to you with reference to the Schall headquarters?—A. I do not recall. It was shortly before the election. I can not give you the exact date.

Q. Did you ever have any discussion with Mr. Jacobs about those rumors?—A. I think I called him. I do not just remember. I simply told him—possibly there might have been some criticsim coming in; and he denied any knowledge of anything. I just happen to remember, now. I do not remember when that was. It was some time before election.

Q. How long before?—A. I could not answer that question.

Q. It was in the fall?—A. Yes; it was in the fall.

Q. Did you ever take this matter up with Mr. Schall?—A. I did not.

Q. You never took it up with Mr. Schall?—A. No, sir.

Q. Did you take it up with the State central committee?—A. I did not.

Q. You did not? How did you come to take it up with Mr. Jacobs?—A. Because I had heard the report, there, and I simply called up—I don't recall just now.

Q. Can you give us any better explanation than that?—A. No; I can not.

Q. Were you taking it up as the representative of the State central committee?—A. I was taking it up as the representative of the Republican Party and the State central committee, and in the interests of the Republican Party as I have taken up many rumors of other kinds that came to me at that time.

Q. You did not take this up, though, with Mr. Sievright or any other member of the State central committee?—A. I do not recall. I may have.

Q. As a matter of fact, then, you assumed to act on your own behalf in regard to the rumors concerning these headquarters?—A. There were not very many of them at that time. There was no evidence brought forth that any of that stuff was being done at that time.

Q. Did you make an investigation?—A. No; we were pretty busy, and in my business, etc., and it was not up to me to find out or cause investigation to be made.

Q. Do you recall who it was that you first learned from concerning these rumors?—A. Oh, there were rumors, different rumors, not only of that headquarters, but others.

Q. You mean other Schall headquarters?—A. No; others of other interests.

Q. We are only concerned now with the Schall headquarters. Did you take it up at all with anybody else outside of Mr. Jacobs?—A. I may have.

Q. Did you take it up with any of the Federal judges?—A. No.

Q. Did you, during the Schall campaign and particularly during the October term of the court in 1924, consult or talk with any Federal judge in Minneapolis, or Federal judges, concerning these rumors?—A. No, sir.

Q. Or did you talk with Mr. French, the district attorney?—A. I may have talked to French. I think, however, it was after the election.

Q. It was in reference to these matters—these rumors?—A. In general; yes.

Q. Did you talk with Mr. Townsend?—A. I did not.

Q. Or Mr. Qvale?—A. I may have talked to Mr. Qvale.

Q. Was that before the election or after, as you recall?—A. As I recall it, I think it was after election—and once before election; a day or so before the election.

Q. That is pertaining to these rumors?—A. Yes.

Q. Did you receive authority from the State central committee or anybody of that kind to take this matter up?—A. I did not.

Q. How did you come to take it up?—A. Well, these rumors were coming in, and I just simply happened to be down there and I talked to Mr. Qvale about it.

Q. You happened to be in the building?—A. I happened to be going by there; yes.

Q. Do you happen to remember what the circumstances were?—A. No, sir; I do not.

Q. You do not remember what the happen chance was, that you happened to be going by the Federal building?—A. No; not at this time.

Q. As a matter of fact you went down there, did you not, especially on that?—A. I would not say so.

Q. You would not say so?—A. No.

Q. Did you, after the election, take this matter up with Senator Schall?

Mr. REES. I think I will object to that as incompetent, irrelevant, and immaterial. I have refrained from making objections heretofore. The real issue is whether Senator Schall is responsible for anything that may have happened over there. This seems to be going entirely to what Mr. Rahn may have done. There is no connection between Mr. Rahn and Mr. Schall established here.

(At this point the members of the subcommittee went upon the floor of the Senate to answer to a roll call. At the expiration of 10 minutes the subcommittee resumed its session. The last preceding question was read by the stenographer, as follows:)

Q. Did you, after the election, take this matter up with Senator Schall?

Senator DENEEN. I do not think that is proper, but he may answer.

The WITNESS. I do not think I took it up with the Senator right after election. The Senator was a sick man, very sick, and I refrained from discussing any rumors of that type.

By Mr. HUGHES:

Q. Did you visit him shortly after election?—A. I visited him right—I can not answer that question, because I think I went West right after the election.

Q. You think what?—A. I think I went West right after the election. I am away a great deal.

Q. Within a month or two after the election?—A. Oh, yes.

Q. You visited him more than once, I take it?—A. Oh, yes.

Q. Whereabouts?—A. In his home.

Q. Where was he living?—A. Out on Portland Avenue.

Q. That would be in the fifth congressional district?—A. Yes.

Q. That was his home?—A. That is where he was stopping. He had a sister there that was keeping house for him and lived with him. I think it is a sister. I have forgotten the name.

Q. His legal residence also, like yours, was in the tenth district, was it? Do you know where Mr. Schall's legal residence was?—A. I think it is at Excelsior, where he has a home, there.

Q. It is a summer resort?—A. It is a winter resort also.

Senator NEELY. Does the place where they were staying have anything to do with these charges of bribery and bootlegging?

Mr. HUGHES. It may have, later.

Senator NEELY. I was hoping that it would have. If there is no purpose in it, we ought not to be wandering all over here. We ought some time to come to the point, I should think.

By Mr. HUGHES:

Q. When you were undertaking to see Mr. Schall after the election in regard to these rumors, were you doing it on your own behalf or as

a member of the State central committee?—A. I said on account of his sickness I refrained from discussing those rumors. He was a very sick man.

Q. Can you say whether before the election you discussed these rumors with him?—A. I do not think I did.

Q. Why did you not?—A. Because I did not see enough of him——

Senator DENEEN. Why he did not do it can not have anything to do with the matter—that is, his mental operations.

Mr. HUGHES. It is important.

By Mr. HUGHES:

Q. Can you assign any reason for your failure to discuss these rumors with Senator Schall?—A. Yes; because I had no knowledge of that stuff going on.

Q. You had no knowledge?—A. No.

Q. Did you acquire knowledge of it later?—A. Just by rumors.

Q. By rumors?—A. Yes.

Q. Do you know Frank Corneaby?—A. I have met him.

Q. Where?—A. Well, the last time, in my office a year ago—oh, away back a year and a half ago; away back before the election. I can not say just the time.

Q. Before the election of 1924?—A. Yes; away before.

Q. Did you see him during the campaign of 1924?—A. I have seen him around at the meetings, but never talked with him.

Q. At what meetings?—A. Meetings I used to go to occasionally.

Q. What were they?—A. Republican gatherings.

Q. Republican gatherings in Minneapolis?—A. Yes.

Q. In which Senator Schall was present?—A. I can not say I saw Senator Schall.

Q. Did Corneaby seem to be regularly at these meetings?—A. That I can not answer.

Q. You can not answer?—A. No; only that when I was there I met him.

Q. Did you ever see him in Tom Schall's law office?—A. I don't recall ever seeing him there.

Q. You are sure you did not see him in Schall's law office?—A. No; I will not say I did not, but I have no recollection of ever seeing him in Schall's law office.

Q. Did you ever see Art Jacobs in Schall's law office?—A. I may have seen him there.

Q. During the campaign?—A. Yes; but I do not recall any particular incident.

Q. Not any particular incident?—A. No.

Q. Did you ever see Art Jacobs around Schall's law office before the campaign?—A. What do you mean by "before the campaign"?

Q. Before the 1924 senatorial campaign.—A. I can not answer that question, because I was not over there.

Q. What we want to find out is, you claim not to be very well acquainted with Jacobs, or otherwise?—A. I know Jacobs.

Q. Sir?—A. I know Jacobs.

Q. You know him intimately, do you not? You know him very well?—A. I know him as I know a great many people.

Q. You know him better than you do the average person?—A. No, sir.

Q. I will ask you as a matter of fact did not you and Jacobs often meet in Schall's law office both before and after the campaign of 1924?—A. No, sir.

Q. You deny that?—A. Yes.

Q. Do you know Frank Corneaby's brother?—A. No, sir.

Q. Do you know Ed Jennings?—A. Yes.

Q. How long have you known Ed Jennings?—A. I have known the Jennings family for 30 years.

Q. During the campaign of 1924 did you see Ed Jennings any, around in that campaign?—A. I may have.

Q. Whereabouts did you see him?—A. I can not answer that. I do not recall.

Q. At the meetings?—A. I don't recall. I have seen him around the city.

Q. Have you seen him in the Schall headquarters?—A. No; not to my recollection.

Q. Have you ever seen him in Schall's law office?—A. No.

Q. Either before or after the election?—A. No.

Q. Would you say you have not seen him there?—A. I do not remember, but I am quite positive that I never saw him there.

Q. Did you ever see Ed or Mike Jennings in Schall's home?—A. Not that I recollect.

Q. When you were present? Would you say you had not seen them?—A. They may have been there, but I have never seen them.

Q. Have you ever seen Frank Corneaby in Schall's home?—A. That I can not answer. I do not recall.

Q. You do not recall?—A. No.

Q. Do you recall when and where it was you saw Frank Corneaby last?—A. Yes; in my office; that is, to speak to him.

Q. When was that?—A. That was some time right after the primaries, during the election year, he came into my outer office as I went out.

Q. Did you talk with him?—A. About a minute.

Q. Mr. Mike Jennings has been in your office, has he?—A. I can not answer that.

Q. Ed Jennings?—A. I can not answer that.

Q. Do you know Mr. Gale Plagman?—A. Yes.

Q. How long have you known him?—A. Just during the period of the election.

Q. During the 1924 campaign of Schall?—A. Yes; that is, not the Schall campaign. In the regular campaign conducted by the Republican committee.

Q. Where did you meet Mr. Plagman?—A. I do not recall. I may have met him at Schall's house or may have met him downtown, somewhere. I do not recollect.

Q. Do you know Dan Moriarty?—A. I do not.

Q. You are not acquainted with him?—A. I never knew him.

Q. Do you know Leo Blickmann?—A. I do not.

Q. Were you present at Senator Schall's house on election night?—A. No, sir.

Q. As I understand you to say, where was it you met Mr. Plagman?—A. I can not answer that.

Q. Do you recall meeting him in the West Hotel?—A. I may have, but I doubt that it was at the West Hotel, because I very seldom went into the West Hotel.

Q. Was Mr. Art Jacobs in your office during the Schall campaign of 1924?—A. He may have been.

Q. Do you not know?—A. No.

Q. Is your recollection rather hazy on all of this?—A. It is a long time ago, and I am pretty busy.

Q. You are pretty busy?—A. Yes.

Q. So that it is quite hazy, all. Now, you want us to understand that you personally had nothing to do with the Schall campaign; nothing to do with the management of it?—A. Only as a member of the State central committee which managed the campaign for every candidate on the Republican ticket, the State candidates in the State of Minnesota; and as a friend and a supporter of his, as a Republican.

Q. Did you consult Mr. Theodore Christianson during the campaign of 1924?—A. Yes.

Q. How often?—A. Well, that I can not answer. As we were thrown together.

Q. Did you ever go to his office during the campaign?—A. Yes.

Q. And talk with him regarding the campaign?—A. In a general way; yes, sir.

Q. Did you ever, on your own volition, without first consulting the State central committee, take up any activities in behalf of Mr. Christianson?—A. My theory as a party man is and always was that it was not necessary to consult in such matters.

Q. Your activities pertained to Mr. Schall, and particularly your investigation with reference to rumors was more of a personal nature, was it not?—A. Just in a passing way.

Q. You and Senator Schall are very close friends?—A. We have been very good friends over many years.

Q. For many years?—A. Yes.

Q. And you have always been very actively interested in his candidacy—while he was a Congressman?—A. Not always.

Q. From the tenth district?—A. Not always.

Q. As I recall, back there you used to preside at caucuses and meetings there in his behalf?—A. I have presided at district conventions.

Q. Yes; at district conventions; and you were there always espousing the cause of Mr. Schall.—A. I was his friend.

Q. And I presume since this contest you have had talks with Mr. Schall in regard to the thing?—A. I might say that very slightly. I do not suppose I have talked with him over three minutes in regard to the contest all the way through.

Q. Not over three minutes?—A. I have been here on three different occasions, and you could have subpœnaed me any time. I have been in this town and out of it several times and never have tried to conceal it in any way, shape, or manner, and I have been in this town when I did not consult with Mr. Schall or see him at all.

Q. Have you seen Mr. Schall since you were here at this present time?—A. Yes; I have.

Mr. HUGHES. Oh, I think that is all, Mr. Rahn.

Senator DENEEN. Is there any further examination?

Mr. HUGHES. No, sir.

Senator DENEEN. Mr. Rees?

Mr. REES. Nothing occurs to us.

Senator DENEEN. All right; we will adjourn until 9 o'clock Monday morning.

Mr. HUGHES. Senator, I have a telegram that I want to take up with you. It is in reference to Mr. Plagman. It seems that there is what is known as a contest committee in Minnesota that is composed of various people that are interested in this contest, and Mr. Tiegan wires me—I would just as soon read the telegram.

Mr. REES. Why need it be made public? Why not pass it to the committee?

Mr. HUGHES. There is nothing here to hurt you.

Mr. REES. Well, I do not know about it.

Mr. HUGHES. Oh, very well [handing telegram to Senator Deneen]. I would have submitted that at the beginning of this session, Senator, but Mr. Rahn was here to be examined.

Senator DENEEN. Yes; I understand that.

(The telegram referred to was here examined by members of the committee and by counsel for Senator Schall, and was subsequently ordered to be printed in the record at this point. It is as follows:)

MINNEAPOLIS, MINN., *March 5, 1926.*

DONALD G. HUGHES,
Raleigh Hotel, Washington, D. C.:

Contest committee deems its duty completed with furnishing Senate information as to what witnesses will testify to. Will not spend money for expenses of witnesses. Suggest taking depositions here. Have Casserly, Coleman, Walker signatures to telegrams. Pressure being brought to bear on witnesses.

TIEGAN.

Mr. HUGHES. While we are waiting for counsel to examine that telegram, there is one more question I would like to ask Mr. Rahn.

(By order of the committee of March 8, 1926, the Plagman affidavit telegram is printed in full at this point in the record:)

MINNEAPOLIS, MINN., *March 4, 1926.*

DONALD HUGHES,
Care Senate room Privileges and Elections, Washington, D. C.:

Following verbatim statement of Gale A. Plagman: "I, Gale A. Plagman, am a resident of Minneapolis, Hennipen County, Minn. During the campaign of 1924 I was in constant touch with Thomas D. Schall, who was that time a candidate for United States Senator on the Republican ticket. He employed me as his authorized speaker and I accompanied him on speaking trips. I was to receive from Mr. Schall $150 per week salary and expenses incurred on speaking trips. I did receive all the pay agreed upon except $280. Mr. Schall in my presence authorized Mr. A. N. Jacobs, his manager, to establish headquarters at the West Hotel and to solicit funds in any manner that he saw fit to employ. A few days later Mr. Jacobs engaged rooms at the West Hotel and opened headquarters. Prior to this time the campaign in behalf of Mr. Schall had been conducted from Schall's law office in the Security Building. Mr. Jacobs had complete charge of Schall's campaign and advanced me money for work as a State speaker throughout the State. He arranged Mr. Schall's speaking itinerary over the State and he also arranged my speaking dates and places. Jacobs paid for the printing of bills and the postage required to mail them out. Through the Schall headquarters money was collected from indicted bootleggers on the promise that protection and immunity from prosecution would be given them through the influence of Mr. Schall. I was present at Schall's home one night when Schall and Jacobs got into a dispute over the amount of money the latter had collected at the headquarters."

HENRY G. TIEGAN.

Senator DENEEN. Very well; Mr. Rahn will take the stand again.

Senator NEELY. Was that telegram about Plagman exhibited to the committee? Was it read to the committee?

Senator DENEEN. Yes. I have just received a telegram, addressed to me as chairman of the Committee on Privileges and Elections, which reads as follows:

MINNEAPOLIS, MINN., *March 5, 1926.*

Senator CHARLES S. DENEEN,
Chairman Committee on Elections and Privileges,
Senate Office Building, Washington, D. C.:

Morning press dispatches indicate party known as Plagman has made affidavit to your committee. The undersigned police detectives of the city of Minneapolis for the past 15 years have known J. L. Plagman over that period and each of us has arrested him many times on different charges, including blindpigging, drunkenness, nonsupport. His reputation is such that he would make any statement or do most anything because he is always under the influence of liquor. He has now left and owes $12, representing one month's lodging at Alden Hotel, 425 Washington Avenue south. We are now looking for him, but was told he left for some place in southern Minnesota. We have never known him to work outside of running blind pigs. Such is the reputation of the affiant and is being sent you for your information.

JOHN P. STAPLES, *City Detective.*
CHARLES KELSO, *City Detective.*
J. C. RHOADES, *City Detective.*

Senator NEELY. Now, if the Senator will pardon me, I think his telegram should now be read into the record, since that has been read.

Senator DENEEN. This telegram?

Senator NEELY. No; Mr. Plagman's telegram. This man Plagman was supposed to be coming here as a witness, and of course if he was coming here it would have been improper; but now I am in favor of that telegram going in so that we will have the two together; so that it may be seen the kind of witness they were going to bring here to prove their case.

Senator DENEEN. Senator Goff, you have seen this telegram?

Senator GOFF. Yes; I saw the other yesterday and I have seen this and heard you read it.

Senator DENEEN. Are there any further questions?

Mr. HUGHES. Yes; I wanted to ask Mr. Rahn a question.

By Mr. HUGHES:

Q. Mr. Rahn, you recall, probably, that you were in Minneapolis in August, 1924—as far as you can recollect?—A. I may have been there and may not.

Q. Did you know a Mister—I think his name is—J. M. Anderson, formerly of the Equity Exchange?—A. Yes.

Q. Did you see him during the summer there, of 1924?—A. Yes.

Q. Where was it that you saw him, do you recall?—A. He came to my office.

Q. Did he come alone or was there somebody with him?—A. I do not recollect.

Q. Had you met him before that?—A. Yes; I had met him around the State at different times, over a period of years.

Q. Did you send for him before he came there?—A. No, sir.

Q. He came there himself?—A. I think he did.

Q. Was it in reference to the Schall campaign?—A. Yes.

Q. And in reference to Magnus Johnson and certain alleged matters concerning the Equity Exchange?—A. Yes.

Q. And you had a talk there with Mr. Anderson concerning that matter, did you?—A. Yes.

Q. Was there anybody present at that talk?—A. I do not recall. I do not think there was.

Q. When you were interviewing Mr. Anderson, were you acting as a member of the State central committee, or in whose behalf or in what capacity?—A. I was acting as one of the members of the State central committee on a proposition that he came to me to submit.

Q. Did you ever report back your interview with him to the State central committee?—A. I do not recollect. I think it was under discussion. It had been used the previous year in the J. E. D. Price campaign for governor—the matter which he had submitted to me—and that was on the matter of the Equity Exchange.

Q. Did you ever talk with Mr. Anderson about that before?—A. I may have on different occasions over a period of time.

Q. Was any money paid to Mr. Anderson at that time or later?—A. I do not recollect.

Q. Would you say there was or was not?—A. I do not think there was.

Q. Are you willing to state to this committee that you paid no money?—A. I am.

Q. To Mr. Anderson?—A. The committee may have done it. If so, it was done through the committee.

Q. No; I am asking you if you paid any money yourself to him?—A. No.

Q. Do you not know?—A. No; I am positive I did not pay him any money, nor in my presence. It may have been done in that way.

Q. Was any money paid him under your direction?—A. No; it may have been——

Q. Can you not tell us?—A. No; because I have been subpœnaed here without anything to check with, and I would necessarily have to refer to the records of the State central committee.

Q. You would have records, would you?—A. Not at all, but the State central committee would.

Q. The State central committee, so that your recollection is now that the State central committee probably paid him?—A. They may have, because it was a matter under discussion.

Q. Did I understand you to say that you are not sure yourself whether you paid him any money or not?—A. No; I did not personally.

Q. You did not personally?—A. I may have recommended it; I do not recollect.

Q. To whom would that recommendation be made?—A. It would just be a general O. K. on a publicity matter.

Q. Did you have any talk, or take up in conference this matter, with either Senator Schall or Arthur Jacobs?—A. I do not recall about Jacobs. I did not with Senator Schall.

Q. What was that?—A. I did not with Senator Schall.

Q. But you think you did with Jacobs?—A. I don't know. I do not have any recollection of it. As I recall it, Mr. Anderson came to me with this. He 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, or in the campaign previous, and it was used in the Price campaign. Now, that is all that I know regarding J. M. Anderson.

Q. Of course when he called on you this was during the Schall campaign?—A. Yes.

Q. Do you recall whether any of this evidence that he had, or whatever it was, was used by the State central committee in any way?—A. I don't know. I think he went to work for the State central committee for a short period of time. The records would show. He was out speaking for the entire time.

Q. You do recall that some of this was used in the Harpoon, do you?—A. I know some of it was used in the Harpoon.

Q. When did you first learn that it was used in the Harpoon?—A. It was called to my attention.

Q. Who called it to your attention?—A. I do not recall now.

Q. You are certain that you had nothing to do with that being used in the Harpoon?—A. Yes.

Q. You did not advise Mr. Jacobs to use that in the Harpoon?—A. No, sir.

Q. And you did not pay Anderson any money at all?—A. I do not recall that I did.

Q. Will you say that you did or did not. I want a denial out of you or an assertion that you did.—A. I did not.

Mr. REES. I think he has said that two or three times.

Senator DENEEN. He denied it, all right.

By Mr. HUGHES:

Q. Did you ask Jacobs to pay him any money?—

Mr. REES. I think that question has been answered two or three times.

The WITNESS. I did not.

By Mr. HUGHES:

Q. Did Mr. Jacobs in any way represent the State central committee?

Senator NEELY. What is that?

Mr. HUGHES. Did Mr. Jacobs in any way represent the State central committee?

Senator NEELY. It does not make any difference whom he represented, unless he represented Schall.

The WITNESS. Mr. Jacobs represented his newspaper which he had been publishing in the State of Minnesota for 10 or 12 years.

By Mr. HUGHES:

Q. What was that paper?—A. It was called the Harpoon. That was one of them. He had two or three.

Q. He also had one called the Scandal?—A. I don't know.

Q. You are not familiar with that at all?—A. No, sir.

Senator NEELY. He would naturally have had plenty of material for a paper of that sort, according to the evidence that we have here.

Mr. HUGHES. Mr. Jacobs at the present time is in the workhouse, serving a criminal sentence. I think that is all.

The WITNESS. Am I excused now?

Senator DENEEN. Yes; you are excused.

Mr. HUGHES. That is all.

Senator DENEEN. Is there anything further now?

Mr. HUGHES. I think not, except with reference to this telegram.

Senator DENEEN. The committee has ruled that in view of what has been submitted to it, it will not subpœna Mr. Plagman.

Mr. HUGHES. I want to state in regard to that, that is from the Leech faction of the Republican Party, and also affiliated with the Schall faction, fighting the Christiansen faction, and I am not a bit surprised that you have received from the members of the Minneappolis police force, under the domination of Mayor Leech, a telegram of that kind. It is just the kind of thing that I would expect from them; Leech and Schall are allies. They were friendly in the Republican campaign——

Senator DENEEN. Then you will not have him here Monday?

Mr. HUGHES. The point is that we have come to this committee and presented a telegram signed by Plagman containing a statement in which he has made most serious charges, in which he directly has connected Senator Schall with the bootlegger funds and Jacobs. We have supplied this committee now with the thing they have talked about time and again, that they have asked us for.

Senator NEELY. No; you have not done that at all, and I will not let that statement stand on the record uncontradicted.

Mr. HUGHES. We have brought here this statement.

Senator NEELY. Yes; from an outlaw and a bootlegger; "a blind-pigger," to use the term in the telegram.

Mr. HUGHES. That statement we have presented.

Senator NEELY. You have not supplied us what we asked for or what you promised fifty times to furnish us—that is, clean-cut, definite information on the issues.

Mr. HUGHES. I have brought here a telegram that connects Schall. Now comes another telegram from the Leech faction—from Leech, who is the head of the underworld in the city of Minneapolis, mayor of Minnespolis; the candidate always of the bootleggers, and Schall likewise a bootlegger candidate; and it is a likely thing, it would be natural to see the fusion. I speak plainly, and I state the facts. I ask that this witness be given an opportunity to come here, and that the Government should pay for it.

Senator NEELY. This committee is not going to do that. You are wasting time on that. You want this witness to come here and testify but you have not enough confidence to bring him down here yourself. I would like to have him on the witness stand. I would like to cross-examine him myself, because I think he would turn out like the other witnesses that we brought here for you. From the information this telegram furnishes us, I think that he would turn out to be about like Corneaby and the others that we brought here for you. But if you do not want to bring him here, we have unanimously decided that the Government is not going to pay his expenses. If you do not want to bring him here on Monday, that is your business.

Mr. HUGHES. It seems to place a hardship on the contestant to force him to pay the expenses of bringing this witness here.

Senator NEELY. You would like to have everybody in Minnesota brought here to testify, and have the Government pay for it, and have their statements in the record.

Senator DENEEN. As I say, you can not have him here——

Mr. HUGHES. I will have him here and I will pay for it myself. I will carry this contest on.

Senator DENEEN. Very well; 9 o'clock Monday morning.

Mr. HUGHES. He will be here.

(Thereupon, at 3.15 o'clock p. m., the subcommittee adjourned until Monday, March 8, 1926, at 9 o'clock a. m.)

SENATOR FROM MINNESOTA

MONDAY, MARCH 8, 1926

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE
ON PRIVILEGES AND ELECTIONS,
Washington, D. C.

The subcommittee met, pursuant to adjournment, at 9 o'clock a. m., in the room of the Committee on Privileges and Elections, Capitol Building, Senator Charles S. Deneen presiding.

Present: Senators Deneen (chairman), Goff, and Neely.

Present also: Senator Thomas D. Schall, and Messrs. Rees and Smith, counsel for Senator Schall; and Messrs. Hughes and Edgerton, representing the contestant.

Senator DENEEN. The committee will come to order. Mr. Hughes, have you your witness here?

Mr. HUGHES. I would like to make this statement, Senators. After the meeting Friday I got in touch with Mr. Tiegan on the telephone Friday night, and instructed him to make arrangements to have Mr. Plagman here so that we could have him by Monday morning. Mr. Tiegan stated that he would endeavor to get Mr. Plagman here, but that he understood that Mr. Plagman at the time was drinking; but that an effort would be made, notwithstanding that, to have him come on and testify, and, if necessary, they would send somebody with him. I told him that I would stand the expense, whatever it was—that the committee had declined to pay the expense.

Yesterday morning I received a telegram to the effect that Mr. Plagman was drinking, and that a night letter would follow.

Along toward 11 last night, not having received any message, I undertook to long-distance Mr. Tiegan, but there has been a severe storm in Minnesota, one of our March blizzards, and it was nearly 3 o'clock before I was able to get him; I waited up until I got him.

In the telephone conversation that I had with Mr. Tiegan, he stated that Mr. Plagman had been taken by friends of Senator Schall to the Murray Institute. As I recall, the Murray Institute in Minneapolis is a sanitarium where people are treated who are suffering from the results of liquor. He said he was in that institute and that at this time it would be impossible to deliver him here—to produce him here.

He also sent me a telegram which I have received this morning, in the nature of a night letter. Before going into that night letter I also want to state that Mr. Tiegan on the telephone stated that a daily newspaper in Minneapolis known as the Star—we have three daily papers, the Journal, the Tribune, and the Star—had published—that there had appeared in the Star, and he had mailed me a copy, but, I have not received it yet—what purported to be, as near as I could get it on the telephone—and it was hard to get everything, on account of

the bad connection—some correspondence between Senator Schall and Mr. Plagman, and as near as I could get it from the conversation it was something about a position that was to be promised him, and that the correspondence was of a very friendly nature, and it was after the election; and Mr. Tiegan has mailed me a copy of that correspondence.

Now, as I say, I received a telegram this morning, or a night letter, from Mr. Tiegan, in which he states:

That a man named Chisholm, whom he promised a job to, took Plagman from the rooming house Friday evening. Informed that Saturday Schall's crowd—

That is the way he puts it—

filled Plagman with booze and threatened him. Rhoades—

Rhoades is one of the city detectives who signed this telegram which your committee had on Saturday—

Staples and Kelso—

They are the other detectives—

accompanied by—

It looks like C-o-r-r-e-b-y—

Correby—

Which probably means Corneaby—

Thursday evening, trying to locate Plagman; threatened to arrest him. Police trial assistance may enable Schall to stall through for a time.

H. G. TIEGAN.

I would like to have this telegram put in the record, the telegram from Tiegan.

As I recall, at the last meeting, Friday, it was ordered that the Plagman telegram be printed in the record; that is the telegram from Tiegan concerning the testimony of Plagman, which has been referred to as the Plagman telegram. The transcript of the record is not here. I asked the reporter, Mr. Johnson, whether that was so, and he was not sure. To refresh your recollection, if you recall, Senator Deneen had this telegram from the police officers, and that was read and put in the record, and then I think this telegram was ordered to be put in the record.

Senator NEELY. That was ordered, and that was to precede the telegram that Senator Deneen put in from the police department. It is understood that was the order of the committee, that your telegram with reference to this man be put in, and be followed immediately by the telegram to Senator Deneen showing the character of the witness that your telegram referred to.

Mr. HUGHES. I have brought that up because the reporter, Mr. Johnson, was not clear as to that, this morning.

Upon this showing made here this morning I ask that this matter be continued until such a time as we can produce Plagman here. I consider that Plagman is a valuable witness. I consider that this man Plagman directly connects Senator Schall with these bootlegger funds. It can not be denied but what he was in the Schall headquarters. Before concluding, I am going to ask and request that Senator Schall produce now to this committee the correspondence that he has had with Gale Plagman. I think we are entitled to that. If I had a copy of the daily Star here—that may be now in my box at the hotel. I understand it has been printed there in Minneapolis.

Senator GOFF. When could it reach here?

Mr. HUGHES. It ought to be here some time to-day. Mr. Tiegan said that he mailed it Saturday.

Senator GOFF. Suppose the committee adjourns until 2 o'clock, will you have it then?

Mr. HUGHES. I think so. I will go to the post office if it is not at my hotel, and see if it could be in the mail there, or have the hotel trace it up.

Senator GOFF. Could you not buy a copy of it on the street here or in your hotel?

Mr. HUGHES. No; it is a paper printed in Minneapolis, the daily Star.

Senator GOFF. I know, but there are news agencies that deal in papers printed in other cities.

Mr. HUGHES. We might go and see if they have a copy anywhere. I do not presume a dealer would have it any quicker than this copy that was mailed to me, though. I will make every effort to get it here by 2 o'clock. It purports to relate certain correspondence, and with that I could probably then be able to more intelligently inform Senator Schall's lawyers as to what I want.

Senator DENEEN. Then you suggest that we adjourn over until 2 o'clock?

Mr. HUGHES. Yes, sir.

(At 9.50 o'clock a. m. the subcommittee took a recess until 2 o'clock p. m.)

AFTERNOON SESSION

The subcommittee reconvened at 2 o'clock p. m., Senator Charles S. Deneen presiding.

Present: Senators Deneen (chairman), Goff, and Neely.

Senator DENEEN: The committee will come to order. Have you those papers, Mr. Hughes?

Mr. HUGHES. I got these papers that were mailed to me by Mr. Tiegan—the articles in the Star. They were in my box when I got back to the hotel.

This is an article here from the newspaper in Minneapolis known as the Daily Star, and it purports to recite in here——

Senator NEELY. Had we not just better have it read; and then we can determine whether it should go in the record or not?

Mr. HUGHES. I will read these letters. That is what the committee wants.

Senator NEELY. Whatever it was that you said in that paper you wanted the committee to consider.

Mr. HUGHES. It will not take long. They are short letters. These purport to be copies of the Schall letters. [Reading:]

UNITED STATES SENATE,
COMMITTEE ON POST OFFICES AND POST ROADS,
December 9, 1925.

Mr. GALEN H. PLAGMEN,
Hawkins, Wis.

MY DEAR GALEN: Was awfully glad to get your letter.

Been worrying where you were and how you were. Inquired of the boys when home but none of them seemed to know.

Do I understand that you want to get on during the holiday rush at Minneapolis or St. Paul post offices? If this is it, here is a couple of letters.

While you are in the cities go over and see Schumacker at St. Paul. He is the civil service commission there, and find out reference anything there you are qualified to do, and be sure to take examination so that will get you on eligible list.

If you once get on it I might be able to get you hooked up to something of what you want.

If you are not too old think it would be a good plan for you to take examination for mail carrier. You know those jobs are good ones under the new raise but you have to have civil service status.

I heard the other day that there was a custodian job up for civil service examination for the old Federal building there in Minneapolis.

I don't know what it pays but it might be a good thing for you to look into.

Senate opened yesterday. We are pretty busy, however, I am never too busy to be delighted with a letter or visit from you.

Cordially yours,

THOS. D. SCHALL.

Senator DENEEN. What date was that?

Mr. HUGHES. December 9, 1925.

Senator NEELY. Now, Mr. Hughes, in your opinion of what does that convict or have a tendency to convict Senator Schall?

Mr. HUGHES. It would show that he was acquainted with this man Plagman, and that there must be some pretty close relationship.

Senator NEELY. It would show that there was the relationship of a constituent to a Member of the Senate, would it not?

Mr. HUGHES. Yes; but there is another letter there also.

Senator NEELY. Yes; you are going to be allowed to read them; but I was just wondering why you wanted that in the record. I suppose every Senator and Member of Congress writes letters similar to that almost every day, to his constituents, and I was just wondering whether we were all violating some law that we knew nothing about in sending communications of that kind.

Mr. HUGHES. Of course, it has this significance, that we have introduced a telegram here in which this man Plagman made a statement, in which he claimed that he was very close to Senator Schall, and he was present when Senator Schall and Jacobs had discussed the bootlegger money; there was some dispute between Jacobs and Schall as to dividing the bootlegger money; and he was around the Schall headquarters; and we also stated in our petition—I do not know that we charged that this was the man, but I understand he is the man—that he was supposed to have impersonated Judge McGee in the Schall headquarters.

Senator NEELY. Of course, I understand that; but there is nothing in this letter that you have just read referring to any impersonation.

Mr. HUGHES. Oh, nothing at all.

Senator NEELY. All right; go on with the next.

Mr. HUGHES. The letter below is to Postmaster Moos, of St. Paul, and this article says that Plagman says an identical letter was sent to Postmaster Coleman, of Minneapolis. [Reading:]

DECEMBER 9, 1925.

Mr. CHARLES J. MOOS,
Postmaster, St. Paul, Minn.

MY DEAR MOOS: This will introduce to you, if you do not already know him, Gale Plagman, who was a good booster for Coolidge, Christianson, and myself last election. He is my friend.

If you can do anything along the way of giving him employment, it will be personally appreciated.

Best wishes.

Cordially yours,

THOS. D. SCHALL.

Senator NEELY. Do you think that Senator Schall was guilty of any impropriety in writing that letter?

Mr. HUGHES. Not in writing the letter; but I think it is all corroborative and tends strongly to connect him with Mr. Plagman. I do not believe any Congressman or Senator would be recommending anybody unless he knew something about him.

Senator DENEEN. How many more letters have you?

Mr. HUGHES. One more, Senator. [Reading:]

JANUARY 12, 1926.

Mr. GALE A. PLAGMAN,
Minneapolis, Minn.

MY DEAR GALE: Yours of January 9 reached me this morning.

I expect this so-called contest, better known as protest, will be over some time this month. Just as soon as it is you write me. Meanwhile, keep looking about. If you can't locate something that you could get into. Several months ago, I don't know what has been done about it, the custodian for the old post office was up for examination. You might go over and see Postmaster Moos, of St. Paul. Maybe he could make some helpful suggestions; anyway, I would get over and see him and you can show him this letter, and I will write him one direct, telling him that you are going to call.

With kind personal regards, I am, cordially yours,

THOS. D. SCHALL.

Then it recites in this newspaper article that he did secure a position during the holiday rush.

Mr. REES. What might be stated in a newspaper article I think would be improper.

Senator NEELY. But what difference does it make? I suppose every Member of Congress is recommending from one to a dozen of his constituents every day of the world, for some job. Has not a Member of Congress a right to do that? I think it is generally recognized down here that it is one of the duties that no Member of Congress can escape. I have had two calls of that kind this morning.

Senator GOFF. In other words, you can not be director general of an employment bureau, and not write such letters.

Senator DENEEN. Is there anything else?

Mr. HUGHES. That is all on the charges.

Senator DENEEN. What statement do you have to make? I am asking you to expedite matters, because we have to surrender this room at half past 2 o'clock.

Mr. HUGHES. The statement I have to make, Senator Deneen and members of the committee, inasmuch as Mr. Plagman is sick, and inasmuch as it does appear from the telegrams that he has been gotten drunk by somebody and gotten in there, and in addition to the statement that he made, it tends very strongly to connect Senator Schall and Jacobs and the bootlegger money up, along with these letters that Senator Schall has written to him, although you say that they are only letters such as one might write to a constituent, although these are all addressed "My dear Gale," addressing him by his first name, which would seem to indicate that Senator Schall is very well acquainted with this man, and Senator Schall at the time was willing to recommend him, until when he appeared here or was about to appear as a witness, and then he has attacked him; now I wish, and would ask that this is important enough so that we should be entitled to a continuance of at least two weeks so that I can go back and investigate and arrange to have Mr. Plagman brought out.

Senator NEELY. May I interrupt you there for a question?

Mr. HUGHES. Yes.

Senator NEELY. First, are you willing to say to the committee that if such a continuance were granted to you, you believe, upon your responsibility as a practicing attorney before this body, that Plagman's testimony, if it were adduced here under oath, would convict or tend to convict Senator Schall of a violation of law, or of such moral turpitude as would render him disqualified to hold a seat in the Senate?

Mr. HUGHES. Senator, I most certainly would, according to the statement in the telegram.

Senator NEELY. I do not want you to qualify it. If you are going to vouch for him I want you to do it unconditionally, because the committee does not know this man.

Mr. HUGHES. I want to be frank with the Senator——

Senator NEELY. I am asking you if you are willing on your responsibility as an attorney, here in behalf of your client, to say that you do believe that he would give such testimony before this committee?

Mr. HUGHES. I want to state that personally, as I said before, I am not acquainted with Mr. Plagman. I do not know as I ever saw him, or talked with him.

Senator NEELY. Upon your information and belief, do you?

Mr. HUGHES. Upon information and belief, I would be willing to say that.

Senator NEELY. Just one other question: Are you willing to say on information and belief that in your opinion, from what you have learned of this man Plagman, he would be worthy of belief if he were to appear here and testify under oath, or if he were to reduce what he has to say about the matter to the form of an affidavit?

Mr. HUGHES. I do not know that I just catch that.

Senator NEELY. I say, are you willing to say on the same responsibility mentioned above—that is, the responsibility of a practicing attorney before this body—that in your opinion, and basing the opinion on what you have learned about Plagman by hearsay, that he would be worthy of belief by the committee if he were to come here and adduce the kind of evidence that you have indicated you believe he might adduce?

Mr. HUGHES. I believe so. I did attempt to inquire in Washington, but I found no one who knew him.

Senator NEELY. I wanted to ask those two questions, because there is an affidavit here from Mr. Plagman, and I think it ought to be read into the record.

Senator DENEEN. I received that after the adjournment for luncheon to-day. That is this affidavit. [Reading:]

AFFIDAVIT

STATE OF MINNESOTA,
County of Hennepin, ss:

Gale A. Plagman, being first duly sworn, deposes and says that on the 5th day of March, 1926, he saw his name linked with a supposed statement made by him in behalf of Magnus Johnson in the Schall-Johnson contest. That affiant never did authorize any such statement, nor did he ever sign it; that at no time did Senator Schall pay him for speaking at any campaign; that at no time did affiant hear Senator Schall authorize A. N. Jacobs to establish headquarters at the West Hotel or to solicit funds in any manner that he saw fit; that Jacobs did not pay affiant for speaking or arrange his itinerary; that affiant knows nothing

about money being collected from bootleggers, and that he never heard any dispute at Schall's house about money Jacobs had collected. Further affiant sayeth not, except that this affidavit is given to dispute any purported statement coming from this affiant.

GALE A. PLAGMAN.

Witnessed by—
WM. A. CHISHOLM.
J. J. HANNAN.

Subscribed and sworn to before me this 5th day of March, 1926.

[SEAL.] WM. A. CHISHOLM,
Notary Public, Hennepin County, Minn.

My commission expires May 23, 1931.

This came in to me this morning after we had adjourned for luncheon.

Mr. HUGHES. Chisholm is one of the names mentioned in the Tiegan telegram of the man into whose hands Plagman had fallen.

Senator DENEEN. Yes; well there is his affidavit.

Senator NEELY. Mr. Chairman, I move that we have a brief executive session.

Senator DENEEN. This affidavit should be marked, and also the envelope.

Now, I have here some telegrams, which I will read. Here is one signed by John P. Staples, city detective; Charles Kelso, city detective; and J. C. Rhoades, city detective, dated March 5, 1926. That is already in the record.

Here is one from F. W. Brunskill, superintendent of police. [Reading:]

[Western Union telegram]

Senator CHAS. DENEEN, MINNEAPOLIS, MINN., *March 5, 1926.*
Washington, D. C.:

Gale A. Plagman, who has made affidavit your committee has been and out of our department on various charges for years and is now wanted by the probation officer, who has a commitment for nonsupport since November 10 last year. If you have positive knowledge as to his address, please advise.

F. W. BRUNKSKILL,
Superintendent of Police.

Here is a telegram from Mr. Francis Casserly. [Reading:]

[Western Union telegram]

MINNEAPOLIS, MINN.

CHARLES S. DENEEN,
United States Senator, Washington, D. C.:

In recent issue of Farmer-Labor Advocate, newspaper, published in Minnesota, I saw a reprint of telegram sent to Donald Hughes by me. I know nothing about Senator Schall and Frank Corneaby riding around together. I did not authorize sending this telegram and know nothing that will help Johnson's case. I have made affidavit to this effect.

FRANCIS CASSERLY.

Here is another telegram from Martin R. Knutson, dated February 21, which reads as follows:

[Western Union telegram]

MINNEAPOLIS, MINN.

Hon. CHARLES S. DENEEN,
United States Senator, Senate Office Building, Washington, D. C.:

I saw in Sunday's Journal my name turned in as a witness for Magnus Johnson. If you are depending on me for information that will help this unfair contest against Senator Schall, I know of nothing of that will help Johnson case in any way.

MARTIN R. KNUTSON.

Here is also a telegram from Mr. Julius J. Reiter. [Reading:]

[Western Union telegram]

ROCHESTER, MINN.

Senator CHAS. S. DENEEN,
Washington, D. C.:

Regarding Plagman, who will appear before your committee. I was Farmer-Labor nominee for Congress, first congressional district, Minnesota, last election. Plagman urged I hire him to campaign for me $50 weekly and expenses. Turned him down. Shortly after announced himself for Schall. Asked how he could be such a hypocrite, he answered that his sympathy was with Farmer-Labor Party but needed money badly and had his price for turning traitor and Schall met the price.

JULIUS J. REITER.

Those are the telegrams I have received. Then there was one of this morning?

Mr. HUGHES. Yes; I had one that I read, from Mr. Tiegan.

Senator DENEEN. Here is one addressed to you, the one that I had last Saturday. Those are all, I think.

Mr. HUGHES. Have you the Casserly affidavit?

Senator DENEEN. I do not think so. That is referred to, but I do not recall it.

Mr. REES. In our papers, mixed up with them, is one from Casserly. That seems to be from Casserly [handing paper to the chairman].

Senator DENEEN. Here is an affidavit signed Francis Casserly. It reads as follows:

STATE OF MINNESOTA,
County of Hennepin:

Frank Casserly, being first duly sworn, deposes and says that in a recent issue of the Farmer-Labor Advocate, a newspaper published in Minnesota, he saw a reprint of a telegram sent to Donald Hughes by affiant. Affiant further states that he knows nothing about Senator Schall and Frank Corneaby riding around together. That he did not authorize the sending of this telegram and that he knows nothing that will help Johnson's case.

FRANCIS CASSERLY.

Subscribed and sworn to before me this 2d day of March, 1926.

[SEAL.] ORELL R. LEEN,
Notary Public, Hennepin County, Minn.

My commission expires March 9, 1931.

Those are all the papers that I have.

Senator GOFF. Senator Neely has moved that we have an executive session. I second the motion. Let us have it.

Senator DENEEN. Mr. Rees wants to make a statement about Mr. Leach, of Minneapolis.

Senator GOFF. Why can you not just give that statement in writing to the reporter?

Mr. REES. I will be glad to do so if I am permitted to do so.

Senator GOFF. You can introduce it in writing and let Mr. Hughes see it, and then I suppose the newspaper men will want to see it, and then the reporter will take it and put it in the record.

(Thereupon, at 2.30 o'clock p. m., the subcommittee went into executive session.)

(The matter submitted by Mr. Rees is here printed in the record as follows:)

RECORD OF COL. GEORGE LEACH

Was in every major offensive; 284 days in front line; wounded in action.

Decorated by us with distinguished-service cross and distinguished-service medal.

Decorated by France with Legion of Honor and croix de guerre with three palms and a star.

Recommended for promotion to the rank of brigadier general on the battle field by General McArthur.

Elected mayor of Minneapolis three times, each time with the largest majority ever given under similar circumstances.