

REPORT OF THE SUBCOMMITTEE ON PRIVILEGES AND ELECTIONS, TO THE COMMITTEE ON RULES AND ADMINISTRATION, RE SWEENEY AGAINST KILGORE (WEST VIRGINIA)

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JULY 28 (legislative day, JUNE 2), 1949.—Ordered to be printed

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Mr. MYERS, from the Committee on Rules and Administration, submitted the following

REPORT

(To accompany S. Res. 142)

Your Subcommittee on Privileges and Elections, to which has been referred the petition of Hon. Tom Sweeney, contesting the election on November 5, 1946, of Hon. Harley M. Kilgore, for a seat in the United States Senate representing the State of West Virginia, has had the matter under consideration and study and respectfully reports as follows:

Tom Sweeney was the candidate for the above office on the Republican ticket and Harley M. Kilgore, then a member of the United States Senate, was the candidate therefor on the Democratic ticket. The secretary of state of the State of West Virginia certified to the United States Senate that Mr. Kilgore received 273,151 votes and that Mr. Sweeney received 269,617 votes, resulting in a majority of 3,534 votes for Mr. Kilgore.

Thereupon, Harley M. Kilgore was administered the oath as a United States Senator from the State of West Virginia on January 4, 1947, and is now serving in that capacity.

On January 3, 1947, contestant filed with the United States Senate his sworn petition, setting forth the grounds of his contest. After reciting that the State of West Virginia is composed of 55 counties with a total of 2,799 voting precincts, contestant named 12 counties, to wit, Kanawha, Logan, Raleigh, Boon, Cabell, Mingo, McDowell, Wayne, Mercer, Wyoming, Monroe, and Fayette as the ones in which irregularities and fraudulent practices were prevalent and in which an investigation should be conducted.

On January 6, 1947, contestant's petition was referred, by the President pro tempore of the United States Senate, to the Committee on Rules and Administration, and subsequently, by such committee to the Subcommittee on Privileges and Elections.

On July 15, 1947, the incumbent, Harley M. Kilgore, filed his "motion to dismiss and verified answer," in which he moved that contestant's complaint be dismissed on the ground that "the same is so vague, general, and indefinite that it does not fairly advise of the matters and things therein alleged with reference to time, place, persons, or events; and on the further ground that said complaint amounts to a general attack upon the integrity of both Democrat and Republican county and election officials without factual basis or particularization, and as such is unfair to this contestee as well as such officials and the electorate and people of West Virginia."

The allegations of contestant's petition and the answers filed thereto by incumbent may be summarized as follows, with the allegations being designated by (a) and the answers by (b):

1. (a) "That there were errors, irregularities, illegalities, and fraud in said election affecting the result, which, if corrected, would show that this contestant received a majority of the votes legally cast at said election for said office."

(b) Incumbent denied that there were errors, irregularities, illegalities, and fraud, which, if corrected, would change the result of the election.

2. (a) That in all of the 12 counties, except Monroe County, at least two and in some instances three county court commissioners who controlled the appointment of precinct election officials were Democrats; that a "great number" of county commissioners, and election officials appointed by them, were intense partisans of incumbent and that "every opportunity existed" for the election officials "who were so inclined" to permit various irregularities, illegalities, and fraud in the casting, counting, and canvassing of votes and the certification of results.

(b) That the fact that in some counties a majority of commissioners of the county courts were Democrats is consistent with the constitution and laws of the State of West Virginia, that no inference of wrongdoing can arise therefrom, and that should any such official be derelict in his duties he is subject to mandamus by the courts of West Virginia. Further, that the blanket allegation that "opportunity existed" for wrongdoing is "scandalous and impertinent and a reflection by inference and innuendo upon a large number of honorable men without direct assertion or specification."

It is added that in many counties of the State the situation was reversed with a majority of the members of the county court being Republicans.

3. (a) That the registration records which are under the control of the county courts, whose employees are largely Democrats, contained thousands of names of persons who are not "legal, authorized, and qualified voters" under West Virginia law, or who changed residence from one precinct to another within the county without proper transfer of registration, or who moved out of the county but whose names were not stricken from the registration records; that, consequently, thousands of illegal votes were cast by persons not legally qualified and registered voters of the respective precincts or by persons purporting to be those persons whose names appear on the registration records, and that such illegal voting was permitted by "grossly inefficient, negligent, careless, or irregular action of precinct election officials, thereby preventing a true and correct election in such precincts and

amounted to deliberate fraud or acts in gross violation of the election laws of said State, and that of such votes so cast the contestee received the benefit."

(b) Incumbent denied that thousands of illegal votes were cast by persons not legal, qualified, and registered voters; stated that contestee is without information concerning the allegation that the registration records contained the names of many unqualified voters as well as how many of such persons, if any, voted, and which candidate, if either, received the benefit therefrom; and further denied that the election officials permitted thousands of unqualified voters to vote.

4. (a) That many ballots legally cast for contestant were "wholly rejected and thrown out and not duly and properly counted by the election officers of such precincts."

(b) Incumbent denied the above allegation and asks that contestant identify and specify any ballot or ballots in this category.

5. (a) That many ballots were cast by persons who received money to vote the Democratic ticket "and of such votes the contestee received the benefit."

(b) That incumbent "does not possess information on the basis of which to admit or deny that ballots were cast by persons who received money therefor to vote the Democratic ticket; and contestee believes, avers, and charges that many ballots were cast by persons who received money therefor to vote the Republican ticket, but this contestee has not at any time had any part in or knowledge of any such practice, and deplors the use of money by either Democrats or Republicans in the purchase of votes."

6. (a) That in some precincts whisky was used by Democratic Party workers to influence votes for the Democratic ticket "and that of such votes cast the contestee received the benefit."

(b) That incumbent has no knowledge of the use of whisky by workers of either party.

7. (a) That in at least one precinct the election officials were intoxicated and illegally carried and exhibited firearms in a manner which intimidated voters who would otherwise have voted for contestant.

(b) Incumbent denied the above allegation.

8. (a) That many ballots legally voted for contestant were illegally and fraudulently marked and counted for incumbent.

(b) Incumbent denied the above allegation and said that it is beyond the knowledge of contestant to know which "x" mark was first placed on the ballot and by whom it was so placed.

9. (a) That incumbent and others in his behalf expended sums of money far in excess of those reported as required by law, and that said sums "were unconscionably used and expended by and in behalf of said contestee to influence said election, and the use of money on such an unprecedented scale affected unfairly the electorate on behalf of the said contestee and caused votes to be cast for him that otherwise would not have been so cast."

(b) Incumbent denied all allegations concerning the spending of money in excess of the sums reported as provided by law.

10. (a) "That partisan intensity was such and political power so long and deeply entrenched in many of the counties designated in subparagraph (a) preceding, that corruption became rampant and was

engaged in so flagitiously that following the said election and while a recount of the ballots was pending before the board of canvassers in one of said counties, prominent members of the Democratic Party actually were caught in the act of returning, to the courthouse safe in such county, ballots which they had stolen therefrom for the purpose of fraudulently marking them for the contestee and other local candidates, and the whereabouts of approximately 2,600 ballots, so stolen, is unknown at this time."

(b) Incumbent denied the allegations concerning fraud and the stealing of ballots and states that he is without knowledge as to what local candidates may have done or intended to do; he added that if any of the acts charged by contestant did occur such acts may have equally benefited contestant and incumbent.

11. (a) That in some precincts where the Republican election officials did not appear the vacancies were filled by Democrats and that in some precincts all of the election officials were Democrats.

(b) That if in some precincts all election officials were Democrats, it was no fault of the incumbent but the fact that the appointed Republican officials did not appear is the fault of contestant and his party, and that the substitute officials were chosen in a manner consistent with the laws of West Virginia.

12. (a) That in many precincts the election officials made and reported results without examining the poll books or verifying the number of votes cast as shown by the names of voters listed on the poll books.

(b) Incumbent denied the above allegation.

13. (a) Contestant asked for an investigation of the above allegations and, on account of the fact that the State law provides that ballots and other election records be destroyed 60 days after the election, that such ballots and other election records be ordered impounded and preserved.

Contestant further stated that under the law of West Virginia he could demand a recount but that upon such recount the body performing the same has no jurisdiction to hear and determine "matters of fraud, intimidation, coercion, gross irregularities, negligence, carelessness, and violations of law for the purpose of finding the true and correct results of an election," and that a recount of votes cast by illegal and unqualified persons or by persons other than, but purporting to be, the qualified and legally registered voters, cannot and will not materially change the results certified by the election officials. Consequently, it was stated, the United States Senate is the only "tribunal or body before whom matters of fraud and gross irregularities, carelessness, negligence, and violations of law may be heard and determined with respect to the office of United States Senator." The contestant concluded by saying that upon a fair investigation and determination of the afore-mentioned irregularities, illegalities, fraud, etc., contestant would be declared "to have been duly and lawfully elected United States Senator from the State of West Virginia."

(b) Incumbent claimed that the complaint did not state facts sufficient to justify an investigation but demanded that should an investigation be held, it include all 55 counties of the State, and also include the use of money by and for contestant, as well as contestant's failure to conform to the West Virginia Corrupt Practices Act.

Incumbent also asked that should the ballots and other election records of any counties be impounded, the same procedure be followed in respect to all counties of the State. He concluded by denying that the result of the election was affected by fraud or corruption, stated that he was legally elected as United States Senator from the State of West Virginia, and asked that contestant's complaint and the contest be dismissed.

The subcommittee, subsequent to the receipt of Mr. Sweeney's complaint and prior to April 1, 1947, decided that a preliminary investigation should be undertaken in the 12 counties designated by Mr. Sweeney, and that the ballots and election records in all counties of the State should be preserved. Consequently, appropriate action was taken to accomplish the latter objective and, on April 1, 1947, the subcommittee staff began active preliminary work on the proposed investigation.

After such preliminary investigation in Raleigh and Kanawha Counties, the subcommittee, on July 9, 1947, adopted a resolution recommending a full-scale investigation into the 12 counties designated by Mr. Sweeney. On July 16, 1947, the Committee on Rules and Administration adopted a resolution to fully investigate the 12 counties and agreed that if, after such investigation and the elimination of all fraudulent votes, Mr. Kilgore still maintained his lead in the State the committee would terminate the investigation but that if, at that time, Mr. Sweeney's total vote was greater than was that of the incumbent the investigation would be extended to all the counties of the State.

The subcommittee also agreed that this investigation did not involve a recount of votes but was concerned only with the questions of fraud and other irregularities and illegal acts which might have occurred.

#### I. CONDUCT OF INVESTIGATION IN GENERAL

Although each county, and often, each precinct, presented its own peculiar problem, there was, in general, a uniform plan for the investigation. County officials and the county leaders of both major political parties were interviewed as were many precinct leaders, election officials, and party workers. In addition to any specific information which they may have divulged, they were also invited to name any particular places where, in their opinion, illegal or irregular practices prevailed. Such leads were investigated with the usual result that some were justified complaints while many were without factual foundation. In addition, a great number of voters, both Democrat and Republican, were interviewed. Likewise, any lines of investigation suggested by them were followed up.

It was noted by the investigators at the outset of their inquiries that the contestant had applied to the appropriate county officials in several West Virginia counties for a recount of the ballots in such counties. This action was instituted on a county level prior to the time contestant determined to file a contest before the United States Senate. It was learned that the mechanics of the recount was begun but this action was dropped or abandoned by the contestant before a recount was completed as to any county. The results of such partial recount by county authorities was not ascertained but in any event the contestant did not pursue this remedy available under State law.

Whenever practicable and possible, signed statements were obtained from the persons interviewed. In many instances, however, the witness, while perfectly willing to talk and have his views written by the investigator, would not sign the statement, and in other cases, where the witnesses refused to permit any statements, the investigators related the substance of the conversation in memoranda.

Following the decision to conduct an investigation in 12 counties, work was begun in Logan County where, of a total of 82 voting precincts, 38 were thoroughly investigated and 5 others received some attention.

In McDowell County a total of 24 of 111 precincts were investigated, and in Mingo County the same procedure was followed in 26 of 45 precincts. A less extensive investigation was conducted in 11 other precincts in Mingo County.

In Kanawha County, which includes the city of Charleston, nine precincts were thoroughly investigated and some work was done in six other precincts. In Fayette County five precincts were investigated, as were eight precincts in Raleigh County.

In addition to the precinct by precinct work, investigators of the subcommittee also examined and checked practically all of the official election records in the above-named counties, such records including poll books, certificates of oaths, certificates of election, tally sheets, etc. Also, in several counties the ballots were inspected and in all counties the registration lists were examined and compared with poll book signatures. Likewise, other matters which concerned an entire county were investigated and several investigators were engaged, to some extent, in looking into matters which were on a State-wide basis rather than confined to a county or precinct scale.

While some preliminary steps have been taken in the remaining six counties, namely, Boone, Cabell, Wayne, Mercer, Wyoming, and Monroe, no full investigation has been conducted therein. The counties selected for early investigation were those wherein it was alleged that the acts complained of had been most prevalent.

This investigation under subcommittee authorization was begun in West Virginia on May 1, 1947, after preliminary staff conferences in the Washington office during March and April of 1947, and was concluded on or about November 12, 1948. A total number of 22 field investigators were engaged in West Virginia during the period of approximately 18 months this matter was under investigation for a total of 7,006 man-days spent in conducting the field inquiries reflected in this report. The total cost of the investigation is \$121,009.

## II. RESULT OF INVESTIGATION OF SPECIFIC CHARGES

1. It is charged by contestant that there were errors, irregularities, illegalities, and fraud in the election; that the result was affected thereby; and that the result, without such errors, irregularities, illegalities, and fraud would show that contestant received a majority of the votes legally cast for the office of United States Senator. Incumbent denied the allegation.

Inasmuch as the language of this charge is sufficiently broad and general that it might readily be interpreted to include every conceivable act committed by officials, or voters, individually or in concert, which might have in any manner affected the result of the election

in any precinct of the specified counties, the subcommittee of the Eightieth Congress, under whose jurisdiction the subject investigation was conducted, elected not to consider the allegation in its entirety, but rather, to evaluate the evidence which pertains more directly to the other charges, and subsequent thereto, to consider any remaining factors which may logically fall within the scope of the first charge.

2. It is charged by contestant that in 11 of the 12 designated counties a majority of the county court commissioners, who controlled the appointment of precinct election officials, were Democrats; that a "great number" of such commissioners and the election officials appointed by them were intense partisans of incumbent, and that "every opportunity existed" for the election officials "who were so inclined" to permit various irregularities, illegalities, and fraud in the casting, counting, and canvassing of votes and the certification of results. Incumbent's answer is that the fact that in some counties a majority of commissioners are Democrats is consistent with the constitution and laws of the State of West Virginia, that no inference of wrongdoing arises therefrom, and that in many counties of the State a majority of the commissioners are Republicans.

Your subcommittee is of the opinion that incumbent's answer to this charge is sustained by both the facts and the law of the State of West Virginia. It is true that in some counties the Democratic Party controlled the county court commissioners, as it no doubt controlled the clerk's office, the sheriff's office, and many others—all by virtue of the fact that Democrats had been elected to those offices. That, however, is not to say that those officials, simply because they were elected to office as a candidate of one party or another, will ipso facto permit their political party affiliation to unduly or improperly influence their official actions. As was said by this subcommittee in its report upon the contest of the 1946 senatorial election in the State of Maryland, "The presumption of regularity and legality in the conduct of public officials cannot be overthrown except by actual proof of some fraud on their part." No such proof was discovered in this case. Certainly a mere opportunity to commit fraud is not sufficient to vitiate an election, nor to cast a cloud upon its result.

3. It is charged by contestant that the registration records contained thousands of names of persons who were not qualified voters, or who had changed residence from one precinct to another within the county, without proper transfer of registration, or who moved from the country but whose names were not stricken from the registration records; that, consequently, thousands of illegal votes were cast by unqualified persons or by persons purporting to be those persons whose names appear on the registration records, and that such illegal voting was permitted "by grossly inefficient, negligent, careless, or irregular action of precinct election officials, thereby preventing a true and correct election in such precincts and amounted to deliberate fraud or acts in gross violation of the election laws of said State, and that of such votes so cast the contestee received the benefit." Incumbent, in general, denied the above allegations.

(a) After an exhaustive investigation in many localities it appears that there is merit to some of the contentions advanced by contestant. It was a recognized fact that the registration records of many counties

contained countless names of persons who had moved their residences from the precincts in which they were registered.

Contestant is also correct in his assertion that many persons who had moved from one precinct to another, or entirely out of the county, or even State, had not transferred their registrations to the precincts of their new residences.

The soundness of contestant's allegations of fact does not mean, however, that his conclusions concerning the results necessarily follow or that the election was necessarily wrought with fraud. He contends that illegal votes were cast because of the "grossly inefficient, negligent, careless, or irregular action" of precinct officials, which amounted to "deliberate fraud or acts in gross violation of the election laws," and that incumbent received the benefit of such action.

Your subcommittee reaches the conclusion that many election officials were inefficient and negligent in the handling of this problem. Undoubtedly, a large number of persons have long since removed from the precincts to nearby Kentucky areas. In the election herein questioned, 125 voters (of a total of 335) in one precinct gave their addresses as Toler, Ky., and in a nearby precinct 51 voters (of a total of 232) were residents of South Williamson, Ky. It may be noted, however, that a majority of those voters maintained their businesses in West Virginia.

In another Mingo County precinct 44 voters (of a total of 110) were actually residents of McDowell County, which adjoins Mingo. This peculiar situation was the result of the fact that about half of a large coal-mining camp was located in Mingo County while the other half was in McDowell County. The registrars of both parties from Mingo County registered any person living in that camp, regardless of which side of the boundary his residence happened to be located, and the voters have repeatedly voted where they are registered.

While your subcommittee realizes that it does not, in all probability, have information concerning all of those persons who voted in a precinct wherein they did not then reside, it nevertheless believes that the facts developed by the subject West Virginia inquiry do present a representative picture of the situation as it then existed in the counties wherein inquiry was made. It is also of the opinion that, having regard for the conditions and reasons for their existence, the total of such votes is not of such magnitude as to raise any justifiable suspicion of widespread fraud or of a fraudulent scheme. (See II, 3 (b) *infra*.)

(b) The above discussion of this question would not, of course, apply to precincts wherein the erroneous registration lists were used by party workers to work a deliberate fraud. That occurred, it appears from this investigation, in two precincts, Nos. 44 and 52, both of which are located within the city of Logan, in Logan County. In precinct No. 44 the chief of police and several numbers of the sheriff's office were instrumental in transporting "floaters" to the polls and in paying them for their services. It was definitely established that six addresses, three of which were of transient hotels, were used as addresses for fraudulent voting. It was not ascertained whether all persons voting from those addresses were actually "floaters" or whether some names were used for ballot box stuffing purposes. However, it was definitely established that at least 60 of the "names" voted were not legitimate votes and there is no reason to believe,



in view of the circumstances, that that number includes all votes in this category. The addresses which were used as registration addresses had never been the residence of a great majority of the persons whose names were voted. Because of the obvious fraud which prevailed in this precinct your subcommittee is of the opinion that the vote of the entire precinct should be rejected and that, consequently, 196 votes should be deducted from incumbent's total and 78 votes should be deducted from contestant's total.

The other precinct above referred to, No. 52, in Logan County, appears to have been dominated by the Logan fire chief and several deputy sheriffs. Considerable evidence was obtained to the effect that those persons transported large numbers of "floaters" to the polls and that they kept other voters from the polls while the "floaters" voted. The investigators were not able to establish with sufficient certainty, however, the scale of these operations and for that reason your subcommittee does not believe that the rejection of the precinct vote is thereby warranted.

4. It is charged by contestant that many ballots legally cast for contestant were "wholly rejected and thrown out and not duly and properly counted by the election officers of such precincts." Incumbent denied the allegation.

It is possible that contestant, by this charge, was indirectly asking the subcommittee to conduct a recount in the 12 specified counties. If that be so, the answer was given on July 9, 1947, when the subcommittee decided not to conduct a recount. That decision was consistent with the policy of the subcommittee to conduct no recount in any State wherein the laws of that State provide for a recount by candidates for United States Senator. The laws of the State of West Virginia contain such a provision and, in fact, as already pointed out, recounts were started in several counties, but subsequently dropped at the request of contestant.

5 and 6. It is charged by contestant that incumbent received the benefit of many ballots cast by persons who received money or whisky to vote the Democratic ticket. Incumbent answered that he had no knowledge of the use of whisky and did not possess information sufficient to enable him to admit or deny that ballots were cast by persons who received money to vote the Democratic ticket; that he believes that many persons received money to vote the Republican ticket; that if he received any benefit from such use of money it was without his knowledge; and that if any votes were purchased, the number is negligible. Incumbent added that he will willingly join with contestant in "eliminating from the returns from which either received the benefit of any and all ballots so purchased on behalf of either candidate."

The use of money and whisky as a possible influencing factor in the election are considered together because of the fact that, while the use of money was perhaps more pronounced, they were often used together and the explanation and discussion of one will be equally applicable to the other.

It clearly appears that a substantial amount of money was paid to individual voters in three of the counties investigated, to wit: Logan, Mingo, and some precincts of Kanawha. On the other hand there was little or no evidence of such expenditures in McDowell, Fayette, and Raleigh Counties.

Neither Democrats nor Republicans appear to have had a monopoly on the practice of paying voters. In the great majority of precincts where money was used it was handled in the open, outside the polling place, apparently with no attempt made to conceal the fact that it was available. In some instances (precincts Nos. 56 and 86, Logan County) party workers of both parties bid openly for votes, or at least for what they thought were votes. In many instances the drivers of automobiles used to transport voters to the polls carried and paid the money to those whom they transported.

It is not possible to arrive with accuracy at the amount of money spent in this manner or of the number of voters who received money. In some precincts the voters were inclined to boast about having been paid while the suspected payers refused to talk to investigators; in other places the payers willingly revealed what they knew—and often more—but the voters refused to verify the allegations that they were paid. In some precincts everybody refused to talk.

Although it has been impossible to determine with any degree of accuracy the number of voters paid in any particular precinct, a few examples of the type of evidence obtained follows:

(a) In precinct No. 86, Logan County, the Democrat precinct captain said that he spent approximately \$1,000 and paid \$20 each for the last two votes of the day. The Republican captain said he had \$400 and paid not less than \$5 per vote.

(b) In precinct No. 83, Logan County, it was estimated by one witness that the Democrats spent \$1,000 and that the Republicans paid for every vote cast for their ticket. In a joint statement a Democrat party worker and the Republican receiving Commissioner named 63 persons who were paid.

(c) In precinct No. 41, Mingo County, a Democrat worker stated that one Democrat faction paid 75 voters and the other faction paid 40.

(d) In precinct No. 44, Mingo County, the Democrat leader said that he paid 90 percent of his voters and that the Republicans paid 90 percent of theirs.

(e) In precinct No. 45, Mingo County, where the vote was 70 to 65, favoring incumbent, the Democrats said that they paid 50 voters and the Republicans admitted paying 46.

(f) In precinct No. 2, Mingo County, the leader of one Democrat faction stated that he always figures that there are 150 voters he will have to pay.

Assuming that many of the statements concerning the amount of money spent and number of voters who received it are reasonably accurate, still, no conclusion as to the number of votes actually bought can be drawn therefrom. In fact, it may be doubted that a great many votes were changed by the payments made. In most instances it seems that the Democrats paid the Democrats and the Republicans paid the Republicans.

It appears that the payment was more in the nature of a subsidy for the physical act of appearing at the polls and voting than it was for voting in any particular manner or for a candidate of a particular party. According to several political leaders of both parties the custom of paying voters is of long standing and is referred to as paying the voter "for his day." They say that the custom has prevailed for so many years that a large number of persons absolutely refuse to go to the polls unless they are promised pay "for their day," and investi-

gators for the subcommittee have obtained statements from voters verifying that contention. In other words, the voters refuse to vote, and perhaps lose a part or all of their normal day's pay, unless they are reimbursed for such loss of pay. Some voters displayed emphatic disgust because they received only \$2 or \$3 while their neighbors were paid \$5 or \$10 and others have said that in their opinion there should be a law requiring that every voter get paid a like amount.

In the other two counties where money was used extensively, it is likewise impossible to even estimate how many votes were bought—as distinguished from how many were paid for. And this is especially true as applicable to the present contest. The really bitter conflicts in most of the precincts in Logan County were purely local, with any benefit to State and national candidates, because of local organization activities, being purely coincidental. Some workers probably attempted to influence voters, with money, for particular candidates or for a particular party, but there is no evidence that anyone offered to pay or paid voters to vote for either contestant or incumbent. Their benefits, or injury if any, were the consequence of being on the ticket. Neither is there any evidence that contestant or incumbent furnished any of the money so used, was instrumental in obtaining it, encouraged its use, or knew that it was being used to pay voters.

Your subcommittee is fully aware that continuation of such a system and widespread practice is a distinct threat to the sanctity of the elective system—a threat which, unrestrained, could eventually become the one dominant factor in any election within the State. It is therefore urged that the proper State authorities, as well as the political party leaders and individual voters, take whatever corrective measures may be necessary to eliminate this danger to free elections.

7. It is charged by contestant that in at least one precinct the election officials were intoxicated and illegally carried and exhibited firearms in a manner which intimidated voters who would otherwise have voted for contestant. Incumbent denied the allegation.

In one precinct several election officials were intoxicated and one of them did carry and exhibit a pistol. It is also possible that some few persons refrained from voting because of those facts. However, the evidence shows that a family feud was one—if not the principal—cause of the entire affair. Some members of the family were Democrats and others were Republicans. In any event so few, if any, potential voters remained away from the polls because of the situation that any attempt to alter the official returns on that basis would be entirely arbitrary and unjustified. Furthermore, the precinct in which this occurred is one which contained gross irregularities, much more important and decisive, and which will be discussed separately. (See III, 2, *infra*.)

8. It is charged by contestant that many ballots legally voted for him were illegally and fraudulently marked and counted for incumbent. Incumbent denied the allegation.

During the recount in one precinct of Logan County, counsel for contestant made an allegation very similar to the one here made by contestant. It was there contended that markings, impressions on ballots, etc., clearly indicated that someone had tampered with the ballots, all to the detriment of contestant.

Your subcommittee is of the opinion that due to the flexibility of the election laws of the State of West Virginia, and the latitude

afforded voters in the manner and style of marking their ballots, as well as the liberal view taken upon such matters by the Supreme Court of West Virginia, it is practically impossible, in the absence of other evidence, to determine whether the actual voter, or some other person, made particular marks upon a ballot. It is further of the opinion that any decision it might make upon that question would, in the usual case, be purely guesswork and of no more considered judgment than the decisions already made by those officials of West Virginia whose duty it was to decide such questions. For that reason and for the further reason that the number of ballots questioned in this precinct is by no means of such magnitude as to change the results of this contest, the subcommittee has not seen fit to personally examine these ballots.

Aside from that one precinct, there are two others within this charge may have been appropriate but due to the fact that in both of the precincts considerable evidence of other serious irregularities was revealed, discussion of them will be deferred until later in this report. (See III, *infra*.)

9. It is charged by contestant that incumbent and others in his behalf expended sums of money far in excess of those reported as required by law, and that said sums "were unconscionably used and expended by and in behalf" of incumbent to influence the election. Incumbent denied the allegation.

There is no evidence to support this charge.

That various local Democratic organizations as well as some local candidates, and their supporters, did spend large amounts of money is not denied by anyone, but its use was not by incumbent and only indirectly, if at all, for his benefit.

10. It is charged by contestant that while a recount was pending in one of the counties complained of (Raleigh) prominent members of the Democratic Party were caught in the act of returning to the courthouse ballots which they had stolen therefrom for the purpose of fraudulently marking them for the incumbent and other local candidates, and that the whereabouts of approximately 2,600 ballots, so stolen, is now unknown. Incumbent denied the allegations, stated that he is without knowledge of what local candidates may have done or intended to do, and added that if such acts, as alleged, did occur, they may have equally benefited contestant and incumbent.

The facts developed as to this allegation are as follows: Between the time of the canvass of the votes and the scheduled recount in Raleigh County approximately 2,300 ballots, representing those of 7 precincts, were stolen from the courthouse; they were never recovered. Three persons were indicted for the theft; two, including a candidate for local office, were acquitted and a courthouse janitor was convicted and sentenced to from 1 to 10 years in prison. However, he was later released on bail pending appeal. Before the theft the ballots had been counted and on the recount—which was discontinued before completed—the certificates of the original canvass were accepted as the correct vote. Therefore, although it may have been the intention of the thief to alter the ballots before the recount, it is apparent that neither party to this contest gained or lost because of the theft. The fact, if true as alleged, that most of the stolen ballots were from predominately Republican strongholds does not change that result. The Federal Bureau of Investigation also made an investigation of

the theft. Your subcommittee does not believe that contestant was in any manner prejudiced by the theft, and there is no evidence even remotely connecting incumbent with the act or tending to show that he had knowledge of it until after its completion and after it became common knowledge.

11. It is charged by contestant that in some precincts where the Republican election officials did not appear the vacancies were filled by Democrats and that in some precincts all of the election officials were Democrats. Incumbent answered that if the charge is true it was the fault of contestant's party and not the fault of incumbent and that the substitute officials were chosen according to the laws of West Virginia.

Your subcommittee believes that while contestant's contention may be true in fact it is of no decisive consequence because the answer of incumbent is likewise based upon the facts as they existed. In a few precincts Republican officials failed to appear and, when replacements of their own political faith were unavailable, Democrat substitutes were chosen so that the election might proceed. Such is not only in accord with the laws and decisions of the State of West Virginia but is also consistent with logical conduct. To hold otherwise would be to provide a method whereby the minority party in any precinct could prevent the holding of an election simply by influencing its designated election officials and possible substitutes to remain away from the polling place.

12. It is charged by contestant that in many precincts the election officials made and reported results without examining the poll books or verifying the number of votes cast as shown by the names of voters listed on the poll books. Incumbent denied the allegation.

As will be hereinafter pointed out, the irregularity charged was one of many which pervaded the 1946 election in numerous precincts of West Virginia. But, conceding its existence, your subcommittee has found nothing to indicate that it in any way prejudiced contestant's position. The votes had been cast before any such examination of the poll book or voters' list would have been made and the records, while they do show some discrepancies, reveal only minor differences. It is not possible to establish any such differences as having favored one candidate over the other.

### III. RESULT OF INVESTIGATION IN SPECIFIC COUNTIES WHERE FRAUD WAS PREVALENT

#### 1. Precinct No. 25, Logan County

The investigation revealed that 18 poll-slip signatures were definite forgeries and in 7 other instances the persons whose names appear on the poll slips had never resided at the addresses given. The name of at least 1 dead person was voted and 16 other persons who did not live in the precinct—or their names—were voted.

The alleged illegal ballot markings pointed out by contestant's counsel during the recount have not been verified since the subcommittee did not inspect the ballots. However, it is known that although the official total, as certified, gave contestant 25 votes, investigators of this subcommittee obtained 53 positive statements from persons who voted straight Republican.

It is believed, from the facts disclosed by this investigation, that whatever fraud was practiced in this precinct was done through the collaboration of the election officials of both parties. Each official, when interviewed, denied such participation, but several admitted that others must have done so. For example, the Republican receiving commissioner said: "I know something went wrong at this precinct during the election, but I do not know just what it was or who is responsible for it." However, the poll slip under which he voted was in the midst, numerically, of several others which are believed to be forged, and his son, who was the Republican receiving clerk, refused to challenge voters who were known, by Republican workers, to be voting illegally. Furthermore, both the Republican and Democrat receiving clerks were personally acquainted with several persons who did not vote but whose names were voted.

The Democrat receiving commissioner stated that he heard that "everything was fixed" to see that the precinct went heavily Democratic but he refused to disclose the source of his information. He said that he "shut his eyes" or "turned his head" when anything did not look good to him. It is his opinion that the poll clerks filled in the names on the poll book, marked the ballots and deposited them in the ballot boxes, and that few, if any, "floaters" were used.

Because of the above, your subcommittee recommends that the entire precinct vote be rejected, and, that, consequently 310 votes should be deducted from incumbent's total and 25 votes should be deducted from contestant's total.

## *2. Precinct No. 80, Logan County*

Your subcommittee is of the opinion that because of the obvious fraudulent and irregular practices and acts, and the reasonable inferences to be drawn from other evidence, there is no method by which it is possible to determine what the result of an honest election would have been and that, therefore, the vote of this precinct should be rejected in its entirety.

This conclusion is based upon the following factors:

(a) Forty-six persons whose names appear on poll slips have signed statements that they did not vote.

(b) Seven persons whose names appear on poll slips were not available for interviews but members of their families made statements that they did not vote.

(c) Four other persons whose names appear on poll slips were not available for interview, but their neighbors made statements that they did not live at the addresses on the poll slips, indicating that the poll slip signatures may have been forgeries.

(d) Four names on poll slips are not the names of registered voters. However, they are similar to the names of residents of the precinct, three of whom are registered. In all instances it appears that the names on the poll slips were intended to be the names of the precinct residents, all of whom stated that they did not vote.

(e) In addition to the above, eight persons, or their "names," were voted from addresses at which the persons named on the poll slips had not lived for a considerable period of time.

(f) The names of eight persons who were dead on election day appear on poll slips as having voted.

(g) The names of 29 persons who lived outside the precinct but were registered therein appear on poll slips.

(h) According to the official vote count contestant received two votes. However, six persons stated that they voted straight Republican and one other person said that he voted for contestant.

(i) According to the official records, 206 poll slips were executed. However, one voter, whose name appears on poll slip No. 164, stated that she voted as the polls were closing.

(j) It was in this precinct that one of the election officials was intoxicated and armed. It is alleged by contestant, and appears to be true, that the official intimidated several persons and that as a result thereof they did not vote.

Because of the above, your subcommittee recommends that the entire precinct vote be rejected, and that, consequently, 201 votes should be deducted from incumbent's total and 2 votes should be deducted from contestant's total.

### 3. Precinct No. 56, Logan County

In this precinct there appears to have been a variety of illegal practices by both Republicans and Democrats. A former deputy sheriff (Democrat) stated that through an agreement with the Democrat county clerk he illegally registered many persons in their homes, several of them less than 30 days before the election. The records of the latter were predated so that it would appear that they had been registered prior to October 6, 1946, and that, thus, the registrant was eligible to vote on November 5, 1946. The same deputy sheriff said that other deputies and Democratic party workers were similarly engaged but the county clerk denied participation in these activities. It is not known how many of the persons so registered voted.

Also, on the Democratic side, another former deputy sheriff said that he transported 8 or 10 "floaters"—from the county jail—to this precinct to vote, and the deputy referred to above said that he spent \$1,000 and paid at least 65 persons to vote.

On the other hand the Republican precinct captain stated that he spent \$400 and paid from \$3 to \$5 per vote, and that he bid against the Democrat deputy sheriff for votes. The estimates of voters who were paid varied from 60 to 80 percent.

Pursuant to an agreement, the Republican counting commissioner, during the counting of the ballots, marked numerous ballots—estimated at 50 by the Republican counting clerk—for contestant. Some marks were on straight Democratic ballots and others were in blank spaces. In return, the Democratic officials marked ballots for local candidates.

The official vote count in this precinct was 188 for incumbent and 164 for contestant.

Under these circumstances it would appear appropriate to reject the entire vote of a precinct wherein such a diversity of fraud and irregularity had occurred, but here other factors seem to indicate a different course. How many illegal votes were cast in favor of incumbent is unknown, but it is fairly definite that approximately 50 such votes were counted for contestant and at least a part of that number not counted for incumbent, although originally cast for him. Since it is not possible to add or deduct any specific number of votes to or from the totals of either party the only alternative is to accept the vote as certified. That, your subcommittee respectfully recommends.

IV. RESULT OF INVESTIGATION OF ERRORS AND IRREGULARITIES IN GENERAL. WHERE NO FRAUD EXISTED AND WHICH ARE NOT SPECIFICALLY CHARGED BY CONTESTANT EXCEPT IN THE GENERAL LANGUAGE OF CHARGE 1

1. *In several precincts all of most of the poll slips were signed by the election officials rather than by the individual voters*

The statute of West Virginia provides that "any person offering to vote in any election shall sign his name in the space marked 'signature of voter' on the poll book prescribed in section 12 of this article before being given a ballot, and after such person shall have so signed the poll book a ballot shall be given him by the poll clerks. \* \* \*"

Although the obvious purpose of this provision is that comparison may be made between the poll-slip signature and the signature on the registration card bearing the voter's name, the statute does not say that the failure of the voter to personally sign the poll book shall render his ballot invalid—as does the statute which provides for the signing of ballots by poll clerks.

In 1942 the Supreme Court of West Virginia held that signing a poll slip was not a prerequisite to the right to vote (see *Funkhouser v. Landfried et al.*, 124 S. Va., 654, 22 S. E. (2d) 353), and in 1943 the legislature amended the pertinent statute, but, as in the former act, it made no provision concerning the validity or invalidity of ballots cast by voters who did not sign a poll slip.

3. *Some ballots were clearly void*

(a) In precinct No. 113, McDowell County, none of the ballots were personally signed by both clerks. All ballots bore the names of both clerks but they each stated that they alternated in signing the ballots—one clerk writing both names thereon. According to the law of West Virginia those ballots are clearly void and should not be counted. Therefore, 83 votes should be deducted from incumbent's total and 154 votes should be deducted from contestant's total.

(b) In precinct No. 1, Mingo County, the Republican receiving clerk was called home because of illness in her family. In her absence, several other persons, neither appointed nor sworn as receiving clerks, signed her name on the ballots. In the presence of subcommittee investigators the regular clerk identified the ballots which contained her signature. Of the 217 signed by other persons, 146 were voted for incumbent, 67 were voted for contestant, and 4 were not voted for United States Senator. All of these ballots are clearly void according to the law of West Virginia. Therefore, 146 votes should be deducted from incumbent's total and 67 votes should be deducted from contestant's total.

(c) In precinct No. 62, Logan County, the Republican receiving clerk left the polls on business. Before leaving he asked a person, neither appointed nor sworn to act, to sign the ballots and substitute for him as clerk. The other person did so. She stated that during the time she was substituting a minimum of 100 persons voted. The ballots signed by the substitute are void under the laws of West Virginia. However, the ballots of Logan County were not examined by subcommittee investigators and it is not known exactly how many ballots are in this category or for whom they were voted. It is, therefore, impossible to adjust the respective total vote accordingly. The vote in this precinct was 215 for incumbent and 103 for contestant.



(d) In precinct No. 87, Logan County, one of the receiving clerks was late in arriving at the polls and until his arrival an election commissioner signed the ballots. Such ballots are void under the West Virginia law. However, the ballots of Logan County were not examined by subcommittee investigators and it is not known exactly how many ballots are in this category or for whom they were voted. It is, therefore, impossible to adjust the respective total vote accordingly. The vote in this precinct was 97 for incumbent and 117 for contestant.

#### 5. *Miscellaneous irregularities*

(a) Incompletely executed certificates of oaths, certificates of returns, and tally sheets.

(b) Certificates of returns and tally sheets were signed by the election officials during the day, before the polls were closed or the votes counted.

(c) All or part of the official certificates were not with the election records.

(d) Election officials rendered assistance to voters who were not illiterate or physically handicapped.

(e) The identity of the clerk who signed the poll slips for illiterate or physically handicapped voters was not shown on the poll slips.

(f) The voters' registration numbers were not shown on the poll slips.

(g) A single clerk or commissioner assisted illiterate and physically handicapped voters.

(h) A clerk administered a part or all of the oaths of office.

(i) Outside party workers were permitted inside the polling place.

(j) The vote count was given out during the day.

(k) The names of persons who voted by absentee ballot were not placed in the poll book.

(l) Election officials engaged in electioneering.

#### CONCLUSIONS

After due and careful consideration of the charges made by the contestant and the allegations of the incumbent and of all the evidence at hand, your subcommittee respectfully reports and recommends as follows:

(1) The subcommittee investigation was conducted over a period of approximately 18 months by 22 field investigators, working for a total of 7,006 man-days. This exhaustive investigation failed to develop any indication whatsoever of any general plan to defraud or of any general pattern of irregularities or violations. Although numerous instances of gross irregularities and violations of election laws as cited above were discovered by this investigation, it appears that such irregularities and violations as took place were a series of isolated acts of local officials not specifically directed to the election herein contested. In any event, it is clear that neither the contestant or incumbent were aware of such irregularities or violations, or were a party to such conduct or in anywise condoned any of the illegalities or irregularities set forth herewith.

(2) All of the irregularities and violations which were discovered by this investigation appear to have been indulged in by both Republicans

and Democrats. This finding is inescapable despite the fact that the investigation was confined to counties and precincts cited by the contestant and in which the Democratic majorities prevailed. Contestant did not cite counties and precincts in which Republican majorities prevailed, although the inference is clear from the evidence before your subcommittee that the types of irregularities discovered in the counties and precincts cited by the contestant probably did also occur in other counties and precincts where the vote favored contestant. After adjusting the total vote count as hereinabove indicated, the result is 272,215 votes for incumbent and 269,291 votes for contestant. This result, however, is based, as hereinabove indicated, on an investigation confined to counties and precincts in which the vote favored incumbent. The evidence, however, does not warrant any further investigations, inasmuch as they would not change the conclusions and ultimate result therein.

(3) That Harley M. Kilgore be declared the duly elected United States Senator from the State of West Virginia for a term of 6 years, commencing on the 3d day of January 1947.

Respectfully submitted.

FRANCIS J. MYERS,  
*Chairman.*  
GUY M. GILLETTE.  
WILLIAM F. KNOWLAND.

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