

MINUTES OF THE
TEMPORARY CREDENTIALS COMMITTEE
SIXTY-FIRST SESSION
NEVADA STATE LEGISLATURE

January 21, 1981

The Senate Temporary Credentials Committee appointed for the contest of Peggy Cavnar as to the election of William Hernstadt was called to order by the Chairman, Senator Melvin D. Close, at 10:30 a.m., Wednesday, January 21, 1981, in Room 213 of the Legislative Building, Carson City, Nevada.

COMMITTEE MEMBERS PRESENT:

Senator Melvin D. Close, Chairman
Senator Don Ashworth
Senator Jean Ford
Senator Lawrence E. Jacobsen

OTHERS PRESENT:

Peggy Cavnar
Attorney Larry Johns
William E. Hernstadt
Attorney I. R. Ashleman
Frank Daykin, Legislative Counsel

STAFF MEMBERS PRESENT:

Iris Parraguirre, Committee Secretary
Shirley LaBadie, Committee Secretary

Verbatim testimony is as follows:

SENATOR CLOSE: I call the committee to order. We apologize for starting a few moments late. I have given to the committee members the comments of Mr. Larry Johns, (attached herewith as Exhibit A) so far as the--his evidence is concerned indicating what his position was on the election and I will go through that on a per item basis. There are ten items.

The first point was the question, how is it possible that the computer can read the same punch cards twice and reach two different results?

I think that question has been pretty well answered by the testimony of the experts from the Election Department. Computer cards

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can be bent, there can be chad left on the back of the computer card and because of that, as the card goes through the machine, it is possible to read a number of cards differently on two different occasions. But so far as their testimony is concerned, it appears as though there was finally an accurate tabulation made of the cards.

The second item is: How could the computer come up with a total figure which is not the same as the total of all of the precincts?

Unfortunately, Mrs. Cavnar was given by the Election Department computer runs which were not the final act of the computer runs. There was an error made in giving to her incorrect documents and because of that, the addition which she came up with was different than the additions the Election Department came up with because, in fact, they were using a different set of figures.

SENATOR ASHWORTH: I think it should be added, Mr. Chairman, that the sheets she received were not the official sheets and that the official sheets would tally up.

SENATOR CLOSE: The official sheets did tally up but the sheets she had did not because they were not the final run on the computer.

The third point: How is it possible that a handcount in which 3 talliers all reach one result for a single precinct which differs from the computer result for the same precinct.

That again, I think, has been answered because the particular card for that precinct may or may not have been counted properly because the chad on the back of the card or because of the fact that the card had been bent and was rejected.

Number 4: What was the extent of the voter fraud in precinct Las Vegas 91? Was it only 3 voters or was it 30?

There are in question two examples of absolute voter fraud in precinct number 91 where somebody came in and signed a person's name and that person later on came to that voting place, tried to vote and was told that he had already voted but he was allowed to vote upon showing proper identification.

There was a third situation where the fellow signed the registration but for some reason backed off before actually getting the card and that card was ultimately given out to somebody else who did finally vote that particular ballot. We have--Mr. Ashworth has called several of those people whose names we were given yesterday as being potentially fraudulent situations, and he can explain this himself but he has called several of those people and each of those people did, in fact, vote. The signatures on

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the sheet were their signatures, one which particularly comes to mind is the lady who was--Alice Fears who was the employee at the precinct. That was, in fact, her signature although it did appear to be different.

SENATOR ASHWORTH: And I would point out, I did call and talk to her personally today and she said that all three signatures were, in fact, hers. The one that was on the abstract with the Registrar's Office and was compared to the signature on the blue sheet as poll worker were very close but the one that was her personal signature when she voted was very dissimilar. I asked her about it and she said she always signed different but she did vote and that was her signature.

I also talked to Mr. Gee and he wanted to know why I called him so early. I told him it was only 9:00 o'clock; he said he was a retired man and he sleeps in in the mornings. Mr. Gee also stated that that was his signature and he had, in fact, voted. I also tried to contact three or four other people but I didn't know what the husband's name was in going through the directory and I didn't want to wake up too many people at nine o'clock in Las Vegas. After I got a few that didn't answer, I gave up.

SENATOR CLOSE: I know one of the people personally whose signature was questioned and I know as a matter of fact that she did vote during the last election.

SENATOR ASHWORTH: I also along that line did talk to Mrs. Fears in regard to irregularities and she says the only two that she is familiar with were the two where the people had come in at a later time in the afternoon and their names had already been signed. They called the election headquarters, people came down and this matter was taken care of as far as that was concerned. So, consequently, in regard to those votes, all we are really talking about are four votes there, the maximum four, and I think probably only three and maybe two; but that's all we were talking about in that area were four from that vantage point.

SENATOR CLOSE: The next three or four questions are related and I'll read them all at one time:

5. Why wasn't the poll book for Las Vegas 91 signed and certified?
6. Were the ballots in Las Vegas 91 kept intact and sealed until they reached the computer?
7. What was the imbalance in the ballots in Las Vegas 91 referred to in the affidavit attached to poll book?

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Those particular questions seem to be answered by the fact that the individuals who were responsible for maintaining the operations in Las Vegas 91 did not follow the appropriate procedures. The poll book was not signed nor certified properly, there was an imbalance because when they got finally to the Election Department, they were counted and there was a dispute as to how many ballots actually had been given out. There was some testimony that the reason for that was because of the Savage signature which appeared to have been signed in two places. Ultimately, I think all of the ballots were accounted for though and all the signatures were finally accounted for.

SENATOR ASHWORTH: Mr. Chairman, in that regard, we were talking, as you recall, about the difference between 370 and 371 was actually the difference in the count. We found out through testimony recall that the ballots are actually being counted again at the precinct and put into another box. This did not happen in 91 so from my vantage point, the ballots in 91 were even more secure than the ballots in all of the other 289 precincts for the simple reason that those ballots are closed with a sealed lock and that seal was not broken at the precinct as it is normally the policy. They break the seal at the precinct normally, count the ballots and tally the ballot with the blue card. They did not do this. The seal was not broken and the actual seal was ultimately broken at the Registrar's Office by George Ullom. So those were never taken out and never counted until they were actually counted in the Registrar's Office and we didn't have the situation of the transition from one box into another box. As you know, when you went to vote, most of us were functioning under the false impression that once you put that ballot in there, that box was not opened until it got to the Registrar's Office. This is not the procedure. The box is opened at the precinct, counted at the precinct, put into another box and sealed again. This did not happen in 91. The original ballot box was taken and was actually opened at the precinct level.

SENATOR CLOSE: So the ballots, in fact, were kept intact and were sealed until they reached the computer although this is not the Election Department process and procedure. They should have been counted before that time and in this particular case, they were kept intact, and they were sealed until it reached the computer.

SENATOR ASHWORTH: I might also add here that that is a regulation of the--that is promulgated by the Secretary of State. That is not a law. Nevada Revised Statute does not require that changeover. That's something we can look at as a legislature for the upcoming elections, whether or not that's necessary to change those boxes.

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SENATOR CLOSE: The Secretary of State does promulgate the rules by which all elections in Nevada are held. These are not covered by statute but by regulation of the Secretary of State's office and we will review those to make sure they are properly adopted and they make some sense. At first, we thought it didn't make sense to take all the ballots out and count them and take them to the election department in a separate container but on second thought, we thought maybe it did because having all these precincts bringing all those ballots over there and counting them there would have been very, very difficult and so I am sure that the rules that they abide by have been carefully thought out, but we will review those ourselves.

NUMBER 8

Of the signatures of 87 voters in Las Vegas Precinct 31, which appear to have been written by two persons, legitimate or not, and the 87 voters were explained by the election officials.

I think that has been explained that the signatures were put in the wrong book due to inadvertence, when that was discovered, the workers at the precinct then signed the correct book in their own handwriting and for that reason, there are 87 signatures that appear to have been written in one book by two people. There is the backup of the other book which appears to have been properly signed by those persons who actually voted.

SENATOR ASHWORTH: For those individuals who might not have been here for the entire testimony in regard to that should understand that there are actually two books - there's a blue book and a buff book. The individuals who required the buff book is just used as a check. They just check off as the individual gives the name and they sign in the blue book. What happened in this circumstance was they allowed them to sign in the buff book and they didn't require them to sign in the blue book. So we did have the signatures of everybody but they were in two different books - one in the buff, one in the blue. When evidently they discovered this, they took all of the names that had been signed in the buff book and transferred those over to the blue book and like Senator Close has said, that's why we have all of the signatures appearing to be same written by two individuals because that's how that transfer was made.

SENATOR CLOSE:

Number 9

Was there a malfunctioning machine in Country Club 004 as alleged? The machines are, all as ordered, under lock and key.

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Evidently there were two instances where there were persons complaining of not being able to vote properly in County Club 004 and that was due to a stylus that was not working properly. The evidence is that the stylus was changed and the individual who had given Mrs. Cavnar an affidavit was thereafter allowed to vote with a stylus that did work. I believe the Election Department had another complaint on that same voting machine and the stylus was changed and there appears to be no particular problem because if somebody couldn't have voted, they couldn't have voted for anybody, not just for Mrs. Cavnar, and those people who could not vote for anyone because because of the broken stylus made a complaint and their complaint was satisfied in that a new stylus was put into the punch and they were allowed then to vote properly.

The last position was Number 10 and the question is: Do 5% of the electorate vote illegally in Clark County and if so, is that not clear and convincing evidence that this contest was decided by only 3/100th of one percent of the electorate cannot be guaranteed to be accurate.

There were 175 affidavits given by people to Mrs. Cavnar who testified they voted in the precinct--I don't recall what precinct it was--

SENATOR ASHWORTH: All over.

SENATOR CLOSE: These are all over throughout Clark County in Senate District No. 3 who had moved from their residence more than 30 days prior to the date of the election. The statute is clear that those people who have moved 30 days prior to the date of the election should not be allowed to vote in that election.

SENATOR ASHWORTH: Should not be allowed to vote in that precinct.

SENATOR CLOSE: Not in that election because they have not registered to vote so they should not be allowed to vote in that election. In fact, they did go back to their precinct where they had registered previously and did vote. This is the most troubling, possibly of all of the complaints that have been raised by Mrs. Cavnar, and the one that is not explainable due to some particular explanation. There were, in the entire Clark County election, at least in District No. 3, at least 175 people who should not have voted. The question now comes down to whether or not those 175 people, if they had not voted, would have changed the balance of the election. We have two positions on that. Mr. Daykin has given us his position and we will ask him to go over that position again. He has the New York case which indicated that due to the fact that the election was close,

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is not itself an indication that the fact that there were illegal votes should overturn a particular election. And in the New York case, the burden of proof to show that the outcome of the election would be changed is on the contestant. There is a Hawaii case which indicates that because of the nearness of that particular election of two votes that the election was held to be improper and the contest was allowed. Mr. Daykin, do you want to go over once again your legal recommendation to us relative to the fact that there are at least 175 people in District No. 3 in Clark County who voted in a precinct in which they were not properly registered and, therefore, their vote was, in fact, illegal.

MR DAYKIN: You have quoted with such accuracy the conclusion that I stated to you yesterday that there's no point repeating it. What I would like to point out is the reason for that conclusion taking it as an established fact that 175 persons voted who should not have voted. Your committee does not know for whom they voted as it relates to this particular contest. They might have--any particular one of those might have voted for the contestant, in which case her or his vote is excluded, the margin is widened. They might have voted for the defendant in which case the margin is narrowed. They might in that field have voted for neither one in which case that--the exclusion of that vote would have no affect on the outcome of this particular contest. The New York Court reasoned that unless it could be shown what effect the exclusion of the votes in question would have had upon the contest, the contestant had not met his burden of showing that the outcome would have been different if those votes were excluded.

SENATOR CLOSE: I might also point out that we have been in touch with the District Attorney of Clark County, we have made him aware verbally of what we have found during the hearings we have been conducting. We will provide to him what additional information we have and he has indicated that he will continue to pursue the matter. Mr. Ullom made the statement that he had some idea as to who may have been culpable in the two instances of voting problems that we are absolutely sure of and so he has assured us that he will continue following up on that and should be in contact, as a matter of fact today, with Mr. Ullom.

SENATOR ASHWORTH: He already has. He contacted Mr. Ullom this morning and got the information--I talked to the D.A. earlier this morning and they got the information, however, nothing really of any substance is there in so far as the substance of the situation is concerned and they are certainly going to check it out but from the information that was obtained from Mr. Ullom, additional information, District Attorney Bob Miller is still of the opinion there would be no change in that regard but they are certainly going to investigate it.

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SENATOR CLOSE: Let me ask the members of the committee if I have stated the evidence accurately and if they have anything that they would like to add to that which I have said.

SENATOR ASHWORTH: I do. Let me just say in regard to Item No. 10, the challenge and the 175 votes. I have given that a lot of thought. I have looked at the affidavits. I am of the opinion, personally, in reading the statute - Nevada Revised Statute in regard to challenge, and reviewing the statute in regard to the responsibility of this body that the conclusion that has been reached by Mr. Daykin in regard to the 175 votes is not correct, and I believe that the-- and I might state, I want to make sure that both individuals understand this--that this has no--I wouldn't care who was sitting there --that personalities are not involved as far as I'm concerned. All I'm doing is looking at the facts from an objective vantage point and I hope both of you understand that because this is basically the way I feel. That in looking at the circumstances of the 175 votes, I definitely feel that the contestant in this matter has carried the burden of proof and has basically shifted the burden now over to Mr. Hernstadt in regard to that and that this election should be void in regard to this point here. Now let me also state that then the question might be asked, well, what about the other three candidates who were elected from said Senate District 3 in Clark County area. We have Senator Keith Ashworth, we have Senator Floyd Lamb and we have Senator James Bilbray. The reason from a legalistic vantage point that this challenge would have no effect upon them is because there was no challenge. Nobody came forth within the time period and challenged their election. However, somebody did come forth and challenge Senator Hernstadt. And so, consequently, that time is lapsed, nobody can come forward now and say, well, if it applies to Senator Hernstadt, it also applies to the other three Senators. I say that is not correct. My opinion is it does apply to this election because a contest has been raised, it has been raised timely, this is the forum where it should be heard, and I'm going to have to take the position on the floor that the election should be void as far as these two candidates are concerned.

SENATOR CLOSE: Any comments?

SENATOR JACOBSEN: Mr. Chairman, I have a question for Mr. Daykin. Realizing that the burden of proof was with the contestant and that some of the information was not available to her, is the state liable in any manner for the \$6,000 that she expended to try to obtain the required information to carry forth this contest?

MR. DAYKIN: I know of no basis for liability on the part of the state.

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SENATOR FORD: In that regard was it not brought out that there could have been the use of the courts for the obtaining of the information even though the courts are not adequate for hearing the case?

MR. DAYKIN: It was my curbstome opinion on which I stand that an extraordinary writ might have been sought and granted for that purpose even though the court not, of course, have determined the contest.

SENATOR ASHWORTH: I think in answer to maybe the question that you are posing, Senator Ford, that would not have alleviated the financial burden.

SENATOR FORD: Oh no, but I mean the information part was available.

SENATOR JACOBSEN: Mr. Chairman, do I understand Senator Ashworth to the point then that neither member would be seated, in your opinion?

SENATOR ASHWORTH: That's correct.

SENATOR JACOBSEN: Mr. Chairman, I have wrestled with this issue over the last couple of nights, trying to make a determination that I think has to be forthcoming from this body in order for this session to proceed. I admit to the irregularities to the fraud; I think that was very plain and clear that it did exist during this election. I also think back to a number of years ago when we had a similar problem between Senator Cannon and now Senator Laxalt which was never resolved either. I think it behooves us to make a move. I sincerely hope that what we do is correct.

In analyzing the testimony, I cannot feel in my heart that the irregularities would have any effect on the final outcome because we know not whether they were for either the defendant or the contestant. I think it certainly has set the stage for some additional review of the election laws to try to cover some of these irregularities. But we cannot perform after the fact so at this time, Mr. Chairman, I would move that the contest be dismissed and that Mr. Hernstadt be seated as the Senator from District 3.

SENATOR FORD: Mr. Chairman, I second the motion.

SENATOR CLOSE: Is there any further discussion. Vote all in favor.

SENATORS FORD, JACOBSEN, CLOSE: Aye.

SENATOR ASHWORTH: No.

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SENATOR CLOSE: The motion is carried. The contest is dismissed.
We will make our recommendation to the body of the Senate for
their determination.

MEETING ADJOURNED: 10:55 a.m.

Respectfully submitted by:

Iris Parraguirre, Secretary

APPROVED BY:

Senator Melvin D. Close, Chairman

DATE: _____

ATTENDANCE ROSTER FORM

COMMITTEE MEETINGS

SENATE COMMITTEE ON _____

DATE: 1-21-81

EXHIBIT A

PLEASE PRINT NAME	PLEASE PRINT ORGANIZATION & ADDRESS	PLEASE PRINT TELEPHONE
ROD JACKSON	KTNV-TV	
Mitch Fox	KLVX-TV	
Richard Wheat	Clark County Electric Dist.	
Bob Mearns	Clark County Water Processing	
Gudy Hubbard		
R.A. Reese		
Bill Baker		
Lance Frank	KTNV-TV	
Don Downey	KLAS-TV	
Bruce McKinley	KLAS-TV	
John Schubert		
MIKE COOL	City of Las Vegas	
Man Stewart		