

94TH CONGRESS }
1st Session }

SENATE

REPT. No. 94-156
PART 1

SENATOR FROM NEW HAMPSHIRE

REPORT

OF THE

COMMITTEE ON
RULES AND ADMINISTRATION

together with

INDIVIDUAL VIEWS

TO ACCOMPANY

S. Res. 166

RELATING TO THE DETERMINATION OF THE CONTESTED
ELECTION FOR A SEAT IN THE UNITED STATES SENATE
FROM THE STATE OF NEW HAMPSHIRE

THE DURKIN POSITION



MAY 22, 1975.—Ordered to be printed

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Tie-vote ballots:

	<i>Miscellaneous (11)</i>	Page
No. 1.—Ballot No. 22	-----	46
No. 2.—Ballot No. 88	-----	49
No. 3.—Ballot No. 120	-----	49
No. 4.—Ballot No. 127	-----	50
No. 5.—Ballot No. 128	-----	50
No. 6.—Ballot No. 205	-----	51
No. 7.—Ballot No. 244	-----	52
No. 8.—Ballot No. 245	-----	52
No. 9.—Ballot No. 288	-----	53
No. 10.—Ballot No. 308	-----	53
No. 11.—Ballot No. 342	-----	54
	<i>Single Square Skip-Wyman (8)</i>	
No. 12.—Ballot No. 252	-----	54
No. 13.—Ballot No. 267	-----	54
No. 14.—Ballot No. 280	-----	54
No. 15.—Ballot No. 281	-----	54
No. 16.—Ballot No. 285	-----	54
No. 17.—Ballot No. 310	-----	54
No. 18.—Ballot No. 311	-----	54
No. 19.—Ballot No. 324	-----	54
	<i>More Than Single Square Skip-Wyman (4)</i>	
No. 20.—Ballot No. 256	-----	58
No. 21.—Ballot No. 279	-----	59
No. 22.—Ballot No. 305	-----	59
No. 23.—Ballot No. 314	-----	60
	<i>Skip-Durkin (1)</i>	
No. 24.—Ballot No. 322	-----	58
	<i>Masked (3)</i>	
No. 25.—Ballot No. 58	-----	60
No. 26.—Ballot No. 302	-----	60
No. 27.—Ballot No. 406	-----	60
	INDIVIDUAL VIEWS	
Individual views of Mr. Pell	-----	61

Calendar No. 150

94TH CONGRESS }
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SENATE

{ REPT. No. 94-156
PART I

SENATOR FROM NEW HAMPSHIRE

MAY 22, 1975.—Ordered to be printed

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

REPORT

together with

INDIVIDUAL VIEWS

[To accompany S. Res. 166]

INTRODUCTION

The Committee on Rules and Administration to which was referred on January 28, 1975, the contested election for a seat in the United States Senate from the state of New Hampshire, having considered the same, finds itself, due to numerous tie votes by the Committee, unable to agree upon a final report to the Senate recommending disposition of the contest. The Committee has been able to reach an agreement to file a report to the Senate on a resolution embodying 35 issues on which the Committee in each instance cast tie votes. The Committee, in reporting this resolution, is seeking Senate determination of these issues on which it is deadlocked and which stand between the Committee and a report of recommendations for final disposition of the Senatorial contest.

The Committee, after various attempts to reach a modus operandi to resolve the contest, voted unanimously on February 19, 1975, by

8 to 0, to adopt the following motion by Mr. Allen, as modified by Mr. Hatfield's amendment, to extend the scope of its investigation to:

(1) A recount of the approximately 3,500 ballots before the Ballot Law Commission in relation to the final results certified by the Ballot Law Commission,

(2) A consideration by the Committee of all of the protests made by either party at any stage of the proceedings contemplating that the Committee will take the appropriate steps on each protest to ascertain the validity of such protest and the accuracy of the count of the matter protested.

Thus far the Committee has resolved to take as a base in its calculation of the election results the votes certified to the Senate for each candidate by the Ballot Law Commission of New Hampshire, which gave Mr. Louis C. Wyman a total of 110,926 and Mr. John A. Durkin a total of 110,924. The Ballot Law Commission in reaching its decision took into consideration approximately 3,500 ballots, the original count of which has been protested by one or the other of the contestants for the Senate seat.

After waivers by the said parties on ballots on which an accord could be reached, the Committee was asked to review or rule on how approximately 800 ballots should be counted. On 27 of these, the Committee by a tie vote of 4 to 4 was unable to determine how those votes should be counted, if for anyone. Hence, the committee is submitting these ballots together with various other questions and issues to the Senate for decision, as set forth in the Senate resolution.

The Committee's work on this assignment has of necessity been of a meticulous, patient, serious and enduring nature. All of the meetings of the Committee were held in open session with the contestants being present most of the time as well as being represented by able counsel at all of the meetings and who were permitted to present the positions of their respective clients. The consideration of individual ballots alone has entailed a total of 656 Committee rollcall votes, perhaps an unprecedented number by any committee on any assignment in the history of the Senate. In addition thereto, there have been 42 Committee rollcall votes on various issues and questions, of which on 11 occasions the vote was unanimous. The full Committee has held 46 sessions to reach these results.

Once the Senate has acted on this resolution in its entirety, the Committee, unless the Senate directs otherwise, will accept the directives of the Senate and proceed immediately to the consideration and disposition of any problems still unresolved with a view to reaching a final disposition of the New Hampshire Senatorial contest.

The reports on S. Res. 166 from the Committee on Rules and Administration include the positions of each of the contestants on the provisions embodied in this resolution.

THE DURKIN POSITION

HISTORY OF THE CASE

On November 5, 1974, the New Hampshire electors cast their votes for three (3) candidates for the office of United States Senator.

The candidates were: John A. Durkin, Democrat; Louis C. Wyman, Republican; and Carmen C. Chimento, American Party.

The original canvass of the votes cast, as declared by the Secretary of State, Robert L. Stark, on November 8, 1974, was as follows:

Wyman—110,716,

Durkin—110,361, and

Chimento—1,327.

Mr. Durkin demanded a recount pursuant to New Hampshire law, N.H. Revised Statutes Annotated 59:94, and, as a result, the Secretary of State declared the count to be as follows:

Durkin—110,924,

Wyman—110,914, and

Chimento—not counted.

Based upon a complete recount of all 223,000 votes cast in the New Hampshire election, the Secretary of State issued a certificate of election to Mr. Durkin on November 27, 1974. It was received and filed by the Senate on November 29, 1974.

Mr. Wyman claimed an appeal to the Ballot Law Commission which has the power, under New Hampshire law, to "consider and review all the rulings of the Secretary of State on ballots protested during the recount."

The Ballot Law Commission began its review on December 4, 1974, and concluded on December 24, 1974, with the following results:

Wyman—110,926,

Durkin—110,924, and

Chimento—not included.

Following a review of only about 400 protested ballots by the Ballot Law Commission, the Governor of New Hampshire, the Honorable Meldrim Thomson, Jr., and his Council issued a certificate of election to Mr. Louis C. Wyman on December 27, 1974, as the United States Senator from the State of New Hampshire.

Whereupon, on December 27, 1974, Mr. John A. Durkin filed with the Senate a petition asking the Senate to accept jurisdiction over the contest, pursuant to N.H. R.S.A. Chapter 68:11, and in accordance with Article I, Section 5, of the United States Constitution which states that "Each House shall be the judge of the elections, returns, and qualifications of its own Members."

On the 5th day of January 1975, Mr. Wyman filed with the Senate a response to the Durkin petition of contest.

On January 13, 1975, the Committee met to establish procedures for the conduct of its investigation.

A motion was offered by Senator Griffin to recommend to the Senate that Louis C. Wyman be seated without prejudice to Mr. Durkin's right of contest. That motion failed by a rollcall vote of 4 to 4.

Senator Robert C. Byrd then moved that the Committee recommend to the Senate that both Mr. Wyman and Mr. Durkin stand aside and that the Senate refer the matter to the Committee for review and further judgment. That motion also failed by a rollcall vote of 4 to 4.

Thereafter, Senator Byrd moved that the Committee report to the Senate its actions (of January 13, 1975), the result of the two motions, and leave the matter to the judgment of the Senate. That motion was carried on a rollcall vote of 8 to 0.

The Senate, on January 28, 1975, approved by a vote of 58 to 34 a motion offered by Senator Mansfield that the credentials of Louis C. Wyman and John A. Durkin, and all papers on file with the Senate relating to same, be referred to the Committee on Rules and Administration for recommendations.

Several meetings of the Committee were devoted to study and discussion of the scope of the investigation necessary to arrive at an understanding of the New Hampshire dispute, and on February 19, 1975, a motion offered by Senator Allen, as amended by Senator Hatfield, was adopted by a rollcall vote of 8-0. That motion called for "a recount of approximately 3,500 ballots which were before the New Hampshire Ballot Law Commission, and for consideration of all of the protests made by either party at any stage of the proceedings contemplating that the Committee would take appropriate steps on each protest to ascertain the validity of such protest and the accuracy of the count of the matter protested."

Acting upon that motion, the Committee created a three-man panel consisting of Dr. Floyd Riddick, James H. Duffy and James F. Schoener, all professional staff members of the Committee or of its Subcommittees, to examine those ballots to determine whether they could be masked so as to conceal from Committee members anything, except the vote marking on the face of the ballot, which could identify the candidate, the political party, or otherwise influence the Committee.

The majority and minority counsel, James H. Duffy and James F. Schoener, and the Senate Sergeant-at-Arms, Mr. William Wannall, were sent to New Hampshire to bring back to the Senate all of the paper ballots, check lists, tally sheets and other relevant materials.

The protested ballots, about 3,500, which were before the Ballot Law Commission, had been locked in the New Hampshire State Police security vault at Concord, N.H. The remaining ballots and other materials were stored in the National Guard Armory storage bins, also located at Concord, N.H.

Security over the 3,500 ballots was continuing and positive, but the approximate 185,000 ballots in the National Guard storage bins were not under continuing protective security.

In response to a request by Senator Pell for a check of the security of all of the ballots cast at the November 5, 1974, election in New Hampshire, Mr. Victor Cardosi, United States Marshal for the Dis-

trict of New Hampshire, stated in his report of January 22, 1975, in pertinent part as follows:

We inspected the ballots at the New Hampshire State National Guard Armory in Concord. According to the figures given to us by Mr. Duffy, there were about 185,000 ballots there. These ballots are stored in bays 8 and 9 of a 10-bay garage with overhead doors at each end. The key is under the control of Richard K. Collins, Business Administrator, Albert Couture, Chairman, and John Fraser who is now working for the Secretary of State of New Hampshire and who was the Clerk of the Ballot Law Commission.

Major General McSwiney told us that in accepting these ballots, he would not take the responsibility for anything over and above normal security. There is only one night watchman/custodian who is also assigned janitorial work.

One of the overhead doors was not locked. We were told that it did not matter as the door was frozen and could not be opened. The day of our inspection, it was very cold and we found this to be true. However, between the time the ballots were placed there (January 3rd) and the day of our inspection (January 17th) there were several warm days when we feel that if the door was not locked, it could have been opened.

The partitions between the bays consist of chicken wire, 8 feet high, and it would not be too difficult to gain access to bays 8 and 9 from the other bays.

The method of sealing the cardboard boxes and the heavily wrapped packages leaves much to be desired. We were told by John Fraser that some of the checklists used in the November election were never received, also some were returned, as requested, to town officials; therefore, not all of the checklists are now in storage.

In Washington, the Riddick panel began the process of examining boxes of ballots and exhibits taken from the State Police vault and, in the presence of representatives of the contestants, determined which ballots could be masked and which ballots should be seen by the Committee without masking because of legal issues not apparent on the face of the ballots or because markings were not contained within appropriate party circles or candidate squares.

During that process, additional ballots were withdrawn from further consideration by the Committee or the Senate because of prior stipulations or agreements by the parties. Ballots marked in red ink or green ink, or with a check mark (✓) instead of a cross (x) were determined to be no longer in dispute if not otherwise protested.

When the panel reported its findings to the Committee, it was decided that the unmasked ballots would be counted first and that in casting its votes, all members of the Committee should be present, but if at least six members were present, votes could be taken on individual ballots. And if a ballot was voted 4-2 or in any other manner less than 5 to 1, it was set aside for later consideration when all members were present.

The Committee began to vote on the unmasked ballots first, and then proceeded to the masked ballots, in open forum. Approximately 656

roll call votes were taken by the Committee, and each was publicly announced as cast, along with the result.

New Hampshire law states in Chapter 59 of the Revised Statutes Annotated (1974), section 59:58, that "on receipt of his ballot, the voter shall prepare his ballot by marking a cross (x) in the circle if he desires to vote a straight ticket. If he desires to vote for a candidate whose name is not printed under the circle in which he has marked he shall erase or cancel the name of the candidate in such column for whom he refuses to vote, and may vote for the candidate of his choice by marking a cross (x) in the square opposite the name of such candidate, or by writing in the name of the person for whom he desires to vote in the right hand column prepared for the purpose."

Section 59:59 states that "A voter may omit to mark in any circle and may vote for one or more candidates by marking a cross, (x) in the square opposite the names, or he may insert the names of the candidates of his choice in the blank or right hand column, and such votes shall be counted."

It was apparent in New Hampshire during the canvass of the votes on election night, during the state-wide recount conducted by the Secretary of State, and during the review of certain protested ballots reviewed by the Ballot Law Commission that, notwithstanding the law, voters used many other methods in marking ballots, including large crosses (X), double crosses (XX), large checks (✓), double checks (✓✓), pens and ball point pens, as well as pencils, red ink, green ink and other variations not spelled out in law.

New Hampshire law encourages the enfranchisement of voters, unless it is impossible to ascertain the intent of the voter. Although there is a presumption that the voter cast a ballot, there is no presumption that the voter intended to vote in every race. In other words, not all voters intended to vote in the race for the U.S. Senate. This intent, not to vote in the race for the U.S. Senate must also be honored.

When the Committee began to vote on the ballots, each Senator present was given a personal Committee ballot on which he could vote for the U.S. Senate candidate for whom he believed the New Hampshire voter intended to cast his ballot, i.e., the Republican, Louis C. Wyman; the Democrat, John A. Durkin; or the American Party candidate, Carmen C. Chimento; or if the voter's intent could not be ascertained, the Committee member could declare the ballot as a No Vote.

Prior ruling slips of the New Hampshire Secretary of State and the New Hampshire Ballot Law Commission were removed from the ballot so that no Committee member could know how a particular ballot had been called by New Hampshire officials. This made it impossible for anyone to know how the call by the Committee on a particular ballot would affect the vote total for either candidate.

Senators marked their Committee ballots individually but when the roll was called, each Senator publicly declared how he voted on each of the New Hampshire ballots.

This procedure was followed in counting the unmasked ballots which were viewed in the entirety, and was also followed in counting the masked ballots, except that masked ballots were viewed through a metal template. Ballots were folded so as to fit within a template resembling a bookcover with cutouts on the front and back covers, exposing only the squares beside the names of candidates for U.S. Senate—

Durkin and Wyman—but not Mr. Chimento, since a three-sided template could not be practically designed, and since Mr. Chimento was not a serious party to the dispute.

When the maskable ballots were folded for the template, each was placed into the template out of view of the Committee members, and a letter A was stamped on one side of the ballot through a cutout at the lower center of the template, and a letter B was similarly stamped on the opposite side.

Thus, when Committee members cast their individual ballots indicating how the New Hampshire ballot was cast, they designated either A or B or No Vote. These results were also publicly announced during the calling of the roll.

After each ballot was counted, whether masked or unmasked, the individual slips taken from each Senator showing how he voted on the ballot were attached to the ballot and deposited in a large, locked wooden box for totalling after all the ballots were counted by the Committee.

Additionally, for proper tracking and identification, to each ballot was reattached any prior ruling by the Secretary of State or the Ballot Law Commission so that when the final tallying is accomplished, the Committee will know how any given ballot was counted or recounted or reviewed from the day of the election until the final counting by the Committee.

During the course of the counting of the ballots, the Committee cast tie votes of 4-4 on 24 unmasked ballots and 3 masked ballots. Those tie-vote ballots have been submitted to the Senate for determination. Discussion of tie-vote ballots appears later in this report.

The Committee did agree to requests by Mr. Wyman to open and examine a Manchester absentee ballot, and an Amherst absentee ballot, neither of which had previously been counted on election night or during the Secretary of State's recount, and the Ballot Law Commission refused to review those ballots.

In both cases, those ballots were counted by the Committee for Mr. Wyman.

Additionally, the Committee agreed, as requested by Mr. Wyman, to search for a Portsmouth Ward No. 3 ballot which had not been considered by the Ballot Law Commission, but was found during the search for New Hampshire constitutional issue ballots. The Portsmouth ballot was also counted by the Committee.

And the Committee did agree to Mr. Wyman's request to test 12 Manchester voting machines to determine if they accurately recorded the votes cast for candidates for the United States Senate.

Further, the Committee did agree to investigate the circumstances surrounding the casting of an absentee ballot in Nashua, as requested by Mr. Wyman.

Finally, the Committee is asking the Senate to decide how ballots shall be counted, if at all, where the Committee is deadlocked in tie votes. Article I, Section 5, of the Constitution of the United States, states in pertinent part that "Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members . . ."

In addition to the presence, as observers, of Subcommittee Counsel for majority and minority during the Secretary of State's recount

and the Ballot Law Commission's review, the Committee on Rules and Administration has held at least 46 sessions since January 7, 1975. Over 200 hours have been devoted to hearings, briefings, study, discussion of issues and voting on ballots and issues.

It deliberated on a total of 796 ballots and 33 issues and other questions to date in the Wyman/Durkin contest.

The Committee, consisting of five Democrats and three Republicans, has been able to resolve the vast majority of its votes unanimously in trying to settle the challenge regarding the narrowest race for any United States Senate seat in history.

The Committee, by vote of 6-2, denied the Wyman request to invalidate the election because allegedly fewer people were checked off the check list than there were total ballots cast throughout the State.

In a 5-3 vote, the Committee denied the Wyman request to conduct an investigation of the alleged discrepancy between the total number of voters checked off the check list on a statewide basis, and the total number of ballots cast on a statewide basis. The Committee felt that the Wyman allegation was without foundation and unsupported by credible evidence.

Wyman's figures, regarding the number of people checked off the check list, are based upon figures compiled by employees of the Attorney General's office, under circumstances substantially less than ideal. The numbers were hastily compiled from a review of only one of the two sets of check lists maintained. In the report of the U.S. Marshall, cited above, the person who was in charge of the check list count stated that not all the check lists from each of the 299 precincts were present.

Consequently, the checklist figures compiled in the manner cited above, and the sole basis for the Wyman allegation, are totally unreliable.

Wyman's chief attorney conceded that "the checklist will virtually never give you a direct comparison to validate the count." BLC Transcript, Dec. 11, 1974, p. 64.

Failure to check people off check lists is commonplace. No election can be invalidated on this basis. No fraud being alleged, the ballots are the best evidence and cannot be impeached by a collateral attack of doubtful validity, which is unsupported by credible evidence.

Sixty-one percent of the precincts, where fewer people were allegedly checked off the check list than the total of ballots cast, were controlled by Republican election officials. Certainly, Wyman did not suffer from this alleged discrepancy.

Evidence before the Committee indicates that a statewide total of 235,585 ballots were cast. According to the hastily compiled and unreliable figures of the statewide total of people checked off the check list, 234,428 people were checked off the check list—an indicated discrepancy of 1,157. The final report of the New Hampshire Ballot Law Commission indicated that the total vote in the U.S. Senate race was 223,363.

In the U.S. Senate race, even according to Wyman's unreliable figures, over 11,000 more people were checked off the statewide total check list than voted for all candidates in the U.S. Senate race.

Finally, Wyman failed to pursue and exhaust his State remedies. No request was made by Wyman of the New Hampshire Attorney General to investigate under the almost unlimited power conferred by N.H.R.S.A. 7:6-c.

The Committee voted 8-0 to deny Wyman's request to invalidate the entire election because of the alleged unavailability of some machine write-in rolls of paper from Manchester, Portsmouth, and Nashua.

In a 5-3 vote, the Committee denied the Wyman request to conduct a further investigation of the machine write-in rolls of paper because of the uncontroverted testimony of Manchester, Portsmouth, and Nashua election officials that there were no write-in votes for U.S. Senator on any of the unavailable rolls.

The Committee voted 5-3 to deny the Wyman request to investigate 52 ballots from North Hampton, Derry, and Salem, which had no Secretary of State protest slips attached, because the protests of these ballots had not been pursued and therefore the presence of absence of the Secretary of State's protest slips was irrelevant.

SHOULD THE MICHAUD BALLOT BE COUNTED AS CAST?

The Committee voted 5 to 3 that the Michaud ballots should be counted as cast.

There are three Michauds in Nashua:

1. *Albert W. Michaud*, 52 years old, of 123 West Pearl St. He voted in person, by voting machine, in the November 5, 1974, election. His vote was legally cast and legally counted; and there is no question whatsoever surrounding his vote.

2. *Bertha Michaud*, of 46 Whitney St. She is the wife of the third Michaud (Albert J.—age 77), and she voted by absentee ballot in the November 5, 1974, election. Her name appears on the checklist, her ballot was legally cast and legally counted; and there is also no question regarding the validity of her vote.

3. *Albert J. Michaud*, 77 years old, of 46 Whitney St. He, along with his wife, Bertha, voted by absentee ballot in the November 5, 1974, election. Due to clerical error, however, his name was not on the checklist. His ballot, which was properly cast and properly counted is the only Nashua absentee ballot subjected to investigation by vote of the Rules Committee.

Albert J. Michaud was dropped from the checklist because of clerical error on the part of Nashua election officials.

The maintenance of a checklist is a continuing process and involves constant corrections, deletions, and additions. Some time between the November 1970 election (when the 1970 checklist was printed) and the beginning of the re-registration drive in March 1971, Albert J. Michaud was dropped from the checklist. He had been incorrectly listed as "Albert W. Michaud, 46 Whitney St." As Albert W. Michaud, of 123 West Pearl St., was correctly listed on that checklist, the clerical error involving Albert J. Michaud's middle initial created an apparent duplication. This was discovered during the ongoing process of amending the checklist, and Albert J. Michaud was dropped from the checklist due to an error by Nashua election officials.

In 1971, the city of Nashua began a re-registration drive that was completed in 1973. As part of the drive, letters were sent to all persons whose names appeared on the 1970 checklist, as it stood amended in March of 1971.

In June of 1972, and again in April of 1973, second and third letters were sent to all voters who had not yet responded to the previous mail-

ings. All voters who failed to respond to any of the three letters were finally eliminated from the voting rolls in August of 1973. It should be noted that no names were stricken prior to August of 1973 for failure to re-register.

Because Mr. Albert J. Michaud had, however, been improperly dropped from the 1970 checklist due to clerical error, and because his name was deleted, due to clerical error, prior to the commencement of the re-registration drive, he, in all likelihood, never received the three re-registration notices. This conclusion is further supported by the fact that Albert J. Michaud's name does not appear on the list of voters who were stricken from the checklist in 1973, due to their failure to re-register. Further evidence of this is the fact that the wife of Albert J. Michaud, Bertha Michaud, was duly re-registered and retained on the checklist of August 1973. This indicates that Albert J. Michaud never re-registered because he was improperly dropped from the 1971 checklist due to clerical error and, as the result of that clerical error, was never notified by the Nashua election officials that he had to re-register.

The testimony of Lionel Guilbert, city clerk in Nashua, before the staff panel of the Senate Rules Committee, on May 6, 1975, addresses this point. (May 6, 1975, transcript, pp. 29 & 30). He states, "at every election, we have some voters that, through clerical error, or through printer's error, a name has been deleted from the checklist."

On three separate occasions, testimony has been received that Albert J. Michaud did in fact vote by absentee ballot in the November 5, 1975, election.

Mr. Walter Stanium, in sworn testimony before the staff panel of the Rules Committee (May 6, 1975, transcript, p. 115), has stated that his relative, Albert J. Michaud did, in fact, vote by absentee ballot in the November 5, 1975, election.

Newton Kershaw, in a sworn statement to the Rules Committee has stated that in a telephone conversation on April 29, 1975, with Albert J. Michaud, Michaud indicated that he did, in fact, cast an absentee ballot in the election of November 5, 1974.

In addition, in a previous telephone conversation with James Gilroy in December 1974, Mr. Michaud indicated that he did, in fact, cast an absentee ballot in the election of November 5, 1974.

In testimony before the staff panel, on May 6, 1975, in Nashua, Albert J. Michaud indicated, however, that he did not cast an absentee ballot in the election of November 5, 1974. This testimony, coming as it does, more than six months after the election, is clearly the testimony of a confused and frightened witness.

It is not possible to determine who Albert J. Michaud voted for in the U.S. Senate race, if indeed he voted for any of the three Senate candidates. Mr. Stanium, who brought the ballots to Mr. and Mrs. Michaud, testified that he could not see how Albert Michaud marked his ballot. In his conversation with Newton Kershaw, Mr. Michaud was unable to remember which U.S. Senate candidate, if any, he had voted for. In the conversation between Mr. Michaud and Mr. Gilroy, this question was not answered. It does not, then, prejudice the case of either Mr. Wyman or Mr. Durkin to count this ballot as it was cast and as it was incorporated into totals during the Secretary of State's recount.

The ballot that Mr. Albert J. Michaud cast in the November 5, 1974, election cannot be identified, as is the case with all other ballots cast. The numerous safeguards which protect the privacy of each voter's ballot prevent such identification.

In conclusion, because of some clerical error on the part of either the city clerk's office or the Board of Registrars, Albert J. Michaud was dropped from the 1971 checklist and was never informed of this erroneous deletion. He apparently did not attempt to vote again until 1974. Albert J. Michaud had no chance to learn that he had been improperly dropped from the checklist, due to that clerical error. He cast his absentee ballot in a proper fashion. Any controversy surrounding his ballot is the result of error on the part of election officials; Mr. Michaud was entitled to vote and his ballot must be counted as determined by the recount conducted by the Secretary of State.

The votes in his ward must also be counted, as determined by the recount conducted by the Secretary of State. These absentee ballots were all cast in proper fashion by registered New Hampshire voters. Not to count these ballots would disenfranchise close to 100 voters, who took great pains to exercise their Constitutional right to vote in the election of November 5, 1974.

Affidavit

I, Albert Michaud, being duly sworn, depose and say = . . .

I reside at 123 W. Pearl Street apartment 35, Nashua, New Hampshire. On election day I voted by going to the polls at St. Patrick's Center and voted in a voting machine. I did not vote by absentee ballot. I have no knowledge of anyone else voting an absentee ballot on my behalf. I voted for Durkin in the senate race.

Signed Albert J. Michaud

Sworn to before me this 5th day of December, 1974.

*A. David McLaughlin
Justice of the Peace*

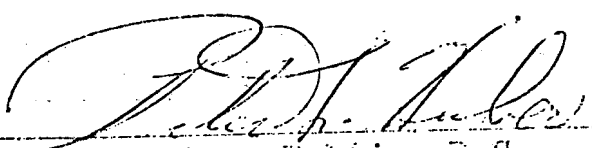
I, James T. Gilroy, of Francestown, New Hampshire, hereby depose and swear that:

In late December 1974, I spoke by telephone with Mr. Albert J. Michaud of 46 Whitney St., Nashua, New Hampshire. In that conversation, Mr. Michaud asserted that he and his wife, Bertha Michaud, had both voted by absentee ballot for the November 5, 1974, election.

Mr. Michaud told me that a friend of his (or relative—I can't remember which) brought the absentee application forms to be filled out, took them to the city clerk's office, and then returned with the ballots. Mr. Michaud emphatically stated that he and his wife each marked their own ballots. His friend then returned the ballots to the city clerk's office.

I did not ask Mr. Michaud whom he had voted for, and he did not volunteer that information to me.

JAMES T. GILROY.

<p>Subscribed and sworn to, before</p> <p>me, this <u>8th</u> day of <u>May</u>, 19<u>75</u></p> <p></p> <p>Notary Public, D.C.</p> <p>My Commission Expires <u>May</u>, 19<u>78</u></p>
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AFFIDAVIT

I, Newton H. Kershaw, Jr., of Manchester, Hillsborough County, New Hampshire, being duly sworn, depose and say as follows:

1. On April 29, 1975, I spoke by telephone to Albert Michaud, who lives at 46 Whitney Street in Nashua, New Hampshire. In my discussion with Mr. Michaud of last November's election, he informed me of the following things:

a. That absentee voting materials were brought to his home by his brother's nephew, so that he and his wife, who was ill, could vote by absentee ballot.

b. He marked his ballot.

c. He does not remember for whom he voted in the United States Senate race, and he does not remember whether he voted in the United States Senate race at all.

d. He did not vote in person in the election; he only voted by absentee ballot.

e. His brother's nephew returned the ballots for him and his wife.

2. On April 29, 1975, I spoke by telephone with Lionel Guilbert, Nashua City Clerk. I questioned Mr. Guilbert regarding the Michaud situation, and he indicated to me that he assumed what must have happened was as follows:

a. Albert Michaud, currently of Whitney Street, has always been on the checklist as far as he knows, and he specifically investigated and discovered that Mr. Michaud was, in fact, on the checklist in the last Presidential election year.

b. He assumes that the omission of Mr. Michaud's name from the checklist in the November 1974 election must have been due to a clerical error.

c. He assumed that Mr. Michaud's absentee ballot was received in Ward 3, and that when Mr. Michaud's name could not be found on the list, that the election officials sent the ballot to Ward 4 where there was an Albert Michaud (Albert W., on West Pearl Street) on the list.

d. Mr. Michaud's ballot was counted in Ward 4, and Albert W.'s name was checked off the checklist.

e. Mr. Michaud's wife was properly on the Ward 3 checklist.

f. One of Mr. Guilbert's employees specifically found that Mr. Michaud was on the 1972 Presidential election checklist.

g. Mr. Brown's statement that Mr. Michaud had not been on the checklist for several years is not true to the extent that it implies that Mr. Michaud had not in the recent past been a qualified voter, in view of the fact that Mr. Michaud was on the Presidential election checklist.

NEWTON H. KERSHAW, JR.

On May 15, 1975, the Committee, by a vote of 5 to 3, agreed that the Michaud ballot should be counted as cast.