

Floyd M. Riddick
Senate Parliamentarian, 1964-1974

Interview #11
Contested Elections: The Durkin-Wyman Case
(December 4, 1978)
Interviewed by Donald A. Ritchie



Floyd Riddick (right) with Senator Robert Griffin of Michigan

Ritchie: There's nothing more heated in Senate procedures than a disputed election. They have been occurring ever since the Senate has been in existence and we have several volumes, including one that you've worked on, of disputed election cases. I remember that you said that one of your first cases on the Senate floor was the heated debate over the New Mexico election between [Dennis Chavez](#) and Patrick Hurley, and then it came full cycle when you left as parliamentarian, your first assignment for the Rules Committee was the disputed election between [John Durkin](#) and [Louis Wyman](#) of New Hampshire. It went on, I guess, for half of 1975 and was settled finally by a reelection in September 1975. There's already been a book written on it called [Donn Tibbetts] *The Closest U.S.*

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Senate Race in History (New Hampshire, 1976). I wondered if you would comment a bit on the Durkin-Wyman case and how you got involved with it.

Riddick: It was sort of interesting to think that one of the first things that was thrown into my lap after Mr. Watkins went to the hospital, the first time that I really had the responsibility to be the parliamentarian of the Senate, was to handle the contest between Chavez and Hurley from New Mexico. It was a rather

bitter fight, and considerably political. The thing that amazed me most was that the first thing after I had resigned as parliamentarian to come over to be with the Rules Committee was that a comparable situation should occur again. It happens, as you said, that one of the best books, or the only book on it, was written by Donn Tibbetts, who was a reporter, I believe with the *Manchester Union*. He stayed with that case all the way through from the beginning to the end

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and wrote the book entitled *The Closest U.S. Senate Race in History*.

This matter was brought to the Senate's attention early in the beginning of the 94th Congress. At the beginning of that session, Mr. [Mansfield](#), on January 28, submitted the question to the Senate and by a vote of 58 to 34 Mansfield's motion was agreed to, to refer the subject matter to the Rules Committee. I think I can best give you that by reading a little section from the report here that points that out:

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 roll call vote of 8-0. That motion called for "a recount of approximately 3,500 ballots which were before the New

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Hampshire Ballot Law Commission, and for consideration of all 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. (U.S. Congress, Senate, Committee on Rules and Administration, Report, Senator From New Hampshire, The Durkin Position, 94th Congress, 1st session, 22 May 1975, Report No. 94-156, Part 1, p. 4.)

Senator Griffin. The Chair does have a point that we had not made a motion and I suppose if we are going to put the question before the committee at some place and somehow a motion has to be made. I would like to suggest this, that I move that a panel consisting of Mr. Schoener and Mr. Duffy and Dr. Floyd Riddick to be used to examine separately and behind the screen someplace the ballots that are submitted for the decision of the committee after those that have been, by agreement,

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weeded out as no longer being controversial; that that panel endeavor to mask or use a template device on every ballot reasonably possible to conceal the party or the candidate from the committee; have the ballots submitted and the committee's decision then reported to a separate auditing committee; that those ballots which are not capable of being so masked would then be shown on a large screen behind the committee here with a projector or some kind of a projection device, so that everyone in the room could see how those ballots looked and what was on the ballots that could not be masked and in those cases only counsel for the two parties be permitted a very reasonable amount of time to make an

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argument. (U.S. Congress, Senate, Committee on Rules and Administration, Hearings, Senator From New Hampshire, 94th Congress, 1st session, Part 1, 25 February 1975, pp. 308-309.)

That was the motion that he made, and after the motion was made they discussed it at great length and made some modifications to the accomplishment of what we finally began to carry out.

Ritchie: You were being put in a hot seat in this case, because Duff was the Democratic counsel and Schoener was the Republican counsel and you were going to be the non-partisan in-between person. Meaning that probably your vote was going to be the decisive one.

Riddick: Well, that was true. The thing was that they fixed it so that if we didn't get a unanimous vote, and it was a 2-1, that we would bring that conflict back to the Rules Committee for decision. As I said, they discussed it at some length, and Griffin said:

I think /it/ ought to be explained, I included Dr. Riddick for the reason that he is recently retired as the Parliamentarian of the Senate.

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There should be no way that this committee would know how that ballot was counted or have any information at all.

Now, how are we going to protect and be sure that is the case?

The Chairman. The suggestion that the Senator made some time ago was that we have two counsels at a table. It would be perfectly acceptable to me to have Dr. Riddick. (Ibid., 310.)

After they made these modifications, I think a little part here would be useful that gives the background of what the fight was and how they were going about it:

The Chairman. The suggestion that I made a few days ago was that we bring the ballots up here and have the two counsel with observers from both sides. I would be willing to accept Senator Griffin's suggestion that we have Dr. Riddick to work with the counsel to separate all of the ballots that were then undisputed.

Senator Griffin made the motion that they try to determine which of the remaining ballots could be masked and that those be masked and be presented to us. The ones that could not be masked would also be presented to us, but all of the identifying marks would first be removed before any ballot was presented to the committee on a ballot-by-ballot basis.

After the committee has made a decision on a ballot, it would be placed in a box and no count would be attempted until after a decision has been made on

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all ballots. Then the GAO people, if that is who we designate, could make the count of the ballots in the box.

Senator Griffin. The other two elements, Mr. Chairman, in my motion were that those ballots that could not be masked be projected on a screen and that with respect to those ballots only, the counsel for the two parties have a very limited but reasonable opportunity to make an argument.

Senator Hatfield. And we can look at them as well.

Senator Griffin. Of course.

The Chairman. I was just stating what the situation was. I would find it perfectly acceptable to place the ballots in the box. I do not have a strong feeling one way or the other on the screening, as long as the ballots are going to be here. I think the screening cannot represent an accurate reproduction of the ballot no matter how you try because ballots are not on the type of paper that was intended for screening.

Senator Hugh Scott. The ballots will be here.

Senator Robert C. Byrd. Are we then going to have a division of his multiple motion?

The Chairman. Well, the question is open for discussion now.

It is my understanding that he is willing to accept the modification of that or vice versa.

Senator Griffin. The modification having to do with putting them in a box and not counting, yes.

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We can divide the question. That is fine with me.

Senator Pell. Who would make the determination as to which ballots could be masked?

Senator Griffin. The panel of the two counsel with Dr. Riddick.

The Chairman. They would make the determination as to whether a ballot could or could not be masked.

Senator Griffin. So the deciding vote would be with Dr. Riddick and I think we all have confidence in him and if they had a serious question about it, they certainly would not mask it. (Ibid., 312.)

They continued this discussion, as I said, for some time, and one further thing that Senator Griffin said I might add here:

Senator Robert C. Byrd. Now, would the Senator repeat his motion, please?

Senator Griffin. I don't know whether I can or not.

The motion was that there would be a panel of three: Mr. Duffy, Judge Schoener, and Dr. Riddick; that this panel would look at those ballots which were still contested after the two sides had gone through the 3,500 ballots and eliminated whatever ballots they could agree upon to be separated and no longer contested; that this panel would, to the extent practicable, mask these ballots, and I think we have to

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work in here what our understanding is, if there is a divided opinion. (Ibid., 318.)

So they proceeded then until they reached a vote, and agreed to that motion by a vote of 7 yeas to 1 nay.

Ritchie: Were you caught by surprise by this debate?

Riddick: I had no foreknowledge at all that this was under discussion until Senator [Cannon](#) called me and told me they were "talking about you here in the Committee. You better come down, you might be interested in hearing what they're going to say."

Ritchie: Of all the members of the committee, Senator Griffin seemed to have argued this case the most heatedly, from what I've read, and probably from the most fiercely partisan position. It seems quite a testimonial that he would have chosen you as a person with complete confidence to sit on this panel. Obviously, it was a pretty critical position.

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Riddick: Well, the members of the Committee had been debating before this motion was presented for several days and they couldn't reach a modus operandi. Every thing they'd try to agree on they'd have a tie vote on. You see, the Committee at that time had a membership of eight, and it was three Republicans and five Democrats. One of the Democrats would frequently swing with the Republicans, and it was a four to four vote.

Ritchie: That was Senator Allen of Alabama?

Riddick: Well, there were some other variations at times, but generally speaking I think that was true. So they were trying to find some way that they could proceed. They had had a number of votes and they just couldn't reach an accord as to which way they would proceed to get the count underway. This is what Senator Griffin came up with, and it was acceptable so it was adopted and we started to work.

Ritchie: And they called this the "Riddick Committee?"

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Riddick: Yes, the "Riddick Panel." After this motion was adopted, as soon as we could get the ballots together in rooms down in the basement of the Russell Building, we started our work. We had all of the ballots in the room; we had to separate them. We had them all behind lock and key, with Schoener having one key and Duffy having another key. They wouldn't go into any room and look at anything unless I was present. It was a most tight security placed on everything, to be sure that there was no suspicion that anybody was taking advantage of anybody else. It's the first experience I had had in this regard, so it was most interesting to me, but it was tiring and one of the hardest assignments I had had since I'd been to the Senate.

To give you some background, some of the involvements and how they were trying to break up the conflict or resolve the situation, I thought that to read some sections from

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the reports would be enlightening. The reports were filed in two parts, one was called the "Durkin Position," that was part 1, and part 2 was called the "Wyman Position"; the "Wyman Position" being prepared by the Republican staff, and the "Durkin Position" being prepared by the Democratic staff. Well, at page 9 of the report of the minority, they wrote this:

In a further attempt to eliminate ballots from the mix, the parties were asked to review *all* the protested ballots from the Ballot Law Commission and to waive those no longer being contested. To supervise this process, the so-called "Riddick panel" was organized. This three-member panel consisted of Dr. Floyd Riddick, Parliamentarian-Emeritus of the Senate, James Duffy, Subcommittee Majority Counsel, and James Schoener, Subcommittee Minority Counsel. The panel first convened on February 26, 1975, and completed its initial task on March 10, 1975. As a result of waivers by representatives of both Mr. Wyman and Mr. Durkin, approximately 1,000 out of the 3,500-odd ballots which had been before the Ballot Law Commission remained for presentation to the Committee.

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During the course of these proceedings before the Riddick panel, however, two situations developed which were later to pose problems for the Committee. On the one hand, 38 ballots from the town of Troy and Dover, Ward 3, which were recorded on the official Secretary of

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State's tally sheets as having been protested, *were not found* among the 3,500-odd ballots in the Ballot Law Commission envelopes. On the other hand, 37 ballots from the towns of Derry, North Hampton, and Salem *were found* in those envelopes which did not have any indication on them as to whether or not they had been protested or counted and, if counted, for whom. Since the Committee had determined in phase I of its review not to recount the whole State, but only those ballots having been protested to the Ballot Law Commission, the absence of some ballots and the presence of extra ballots represented a matter of some concern. No action on these problems, however, was taken by the Committee at that time. (U.S. Congress, Senate, Committee on Rules and Administration, Report, Senator from New Hampshire, The Wyman Position, 94th Congress, 1st session ' 22 114y 1975, S. Rep. No. 94-156, part 2 pp. 9-10.)

Two other paragraphs here:

Mr. Durkin had continuously objected to the masking procedure during the Committee debates.

Ritchie: Excuse me. The masking procedures were in effect taking the lines which said Senate race, and masking out all of the other lines?

Riddick: Well, we had the "skip Louie" vote concept; they had all kinds of variations. As I will show you when we get through with this little aspect here, I will call your attention to

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the drafting of the resolution which presented some of these problems when the committee decided how they were going to present it to the Senate. Carrying on further there, as I said, Mr. Durkin refused to participate until the committee had again considered the matter shown in the committee staff transcript.

The committee did reaffirm its decision to mask, but this time by a 4-3 vote, Senators Cannon, Pell, and Williams dissenting . . .

The Riddick panel thereafter resumed its work on the afternoon of March 12.

You see, we had gone back to get a reaffirmal because Senator Durkin didn't want to take any part in it.

Sessions were conducted on March 13, 14, and 17, with the panel completing the separation process on the 18th. The panel then tallied the ballots in each category and, after making several errors . . .

That is, the panel actually made errors in its tabulation.

. . .and being required to conduct its own mini-recount, the panel announced that it had unanimously agreed that 426 ballots were capable of being masked in a template exposing only the voting squares. (Ibid., 14.)
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What had happened, we had put them into various categories and each had counted, but on some of these categories we couldn't get a comparable tally, in counting through them again, so that's why we made errors in retabulating. It was in one hell of a mess, to be honest with you, and it was rather difficult to get three parties in tabulating as to how they had counted so that they could reach an accord. But finally we did reach that accord unanimously.

Ritchie: Tell me, with the three parties, did you have any difficulties with Duffy and Schoener?

Riddick: Oh, no. It turned to be a grand panel. We had no conflict. The problem was that we had these 3,500 ballots all piled in a bulk. First we had to get them out of the proper ballot boxes, because they were scattered in these huge bunches of boxes. I forget, there were 166,000 ballots or something like that we had to take

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care of, but anyhow it was a big number of ballots that we had. Then what we were concerned with, because the committee had voted to do that, were these 3,500 ballots that were the so-called contested ballots. Our assignment really was to take these 3,500 ballots, go through them first, and if the panel with the legal counsel for Durkin and the counsel for Wyman, sitting at these tables with us, would take one of the 3,500 and if all could agree -- they'd say "That's a Durkin vote," "That's a Wyman vote, no question" -- we'd throw that out because we didn't want to bother the committee with voting on each of these if nobody had a question, when there were so many involved there, and all interested parties being well represented. So we went through every one that way, and when the panel could unanimously agree as to what we were going to do about a particular ballot, we would likewise put

that in a category. When the panel had a 2-1 vote we would set that ballot aside to bring back to the committee for them to decide what to do.

The first group that the committee was going to run through was this group that the panel completely agreed on how they should be counted. So we'd rapidly go through those before the committee; they had no questions, they voted with us. I don't think they changed any of our votes in that regard. Now, I gave you, in the discussion above, the point of view of this panel's operation from the minority report. I'd like to read the majority section so that there will be no political assignment here either.

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 the process, additional ballots were withdrawn from further consideration by the Committee or the Senate because of prior stipulation or agreements by the parties. Ballots were marked in red or green ink, or with a check mark instead of a cross 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 unmarked 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 results.

So you can see it was a real assignment.

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, double crosses, large checks, double checks, pen and ball point pens, as well as pencils, red ink, green ink, and other variations not spelled out

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in the law. (U.S. Congress, Senate) Committee on Rules and Administration, Report, Senator from New Hampshire, The Durkin Position, 94th Congress, 1st session, S. Rep. No. 94-156, part 1, 22 May 1975, pp. 5-6.)

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 . . .

He was the third candidate and he had so few they weren't concerned.

. . . 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 out on the opposite side.

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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. (Ibid., 6-7.)

This was also briefly but completely discussed by Mr. Tibbetts in his book, *The Closest U.S. Senate Race in History*, at pages 256 through 263.

During our examination of these ballots to do the job thoroughly, the committee authorized us to go to New Hampshire for an examination of various details, particularly to check Manchester voting machines, which we proceeded to do on May 4. This also presented quite a political thing, because since I had been named the chairman of the panel, all three members of the panel, including a staff member named Peggy Parrish, went up to make this observation. But when we went up they presented a different picture. I'm reading from Tibbetts' book, in which he said:

No sooner did the group check-in and sit down in the cocktail lounge and informally begin to discuss their task when tempers flew.

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We walked into the lounge as the controversy, focused on a staff memo issued by Chairman Cannon, began boiling into a storm of controversy. Cannon had used the memo to appoint Majority Counsel, Attorney James Duffy, "in charge" of the team. Cannon directed that if any dispute arose he could be reached by telephone but "in the event you cannot reach me, Mr. Duffy is authorized to make decisions."

The Cannon edict did not set well with Minority Counsel, Judge James Schoener, counsel for the Committee's three Republican senators.

Dr. Floyd Riddick, Senate Parliamentarian Emeritus, had been chairman of the three man team screening ballots, but suddenly the Cannon memo had erased him from that position even though he was on the trip.

Peggy Parrish, Committee secretary, was also along on the trip and she added fuel to the argument. We had observed her in action in Washington and she was a domineering "take charge" female who sometimes made reporters frankly wonder if Senator Cannon were running the Conimittee or Miss Parrish. (Tibbetts, 102103.)

Ritchie: Is that an accurate description of the controversy there?

Riddick: Well, that is what occurred, but it doesn't give the whole picture, as few statements in print do, because it was a different assignment really. When we went up there we were concerned

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with politics again. Politics in the count as to whether we should accept this, or not accept this, or if the whole sheet in the voting machine was dependable or not, that was sort of a political issue. Personally, I had talked with Senator Cannon and told him I didn't care to be in charge of this, because a lot of the

things were concerned with the New Hampshire law too. Judge Schoener and Jim Duffy had been working with this for a long period of time, because as you remember the subcommittee on Privileges and Elections had held hearings on this before it was thrown before the full committee, and they were familiar with a lot of these details and I really didn't care to be burdened with that assignment. But it gave them a chance again to bring politics into it. It suited me very much that Senator Cannon had put Duffy in charge. There really weren't many decisions made that made any difference anyhow.

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Ritchie: Did it stay that way, with Duffy in charge?

Riddick: Oh, no, it was only for that trip, just for that trip.

Ritchie: But it stayed that way, with Duffy in charge, for that trip.

Riddick: That's right. And we were only there for two days. We made examinations, and the report that was made back to the committee, as far as I was concerned, was very appropriately done. I didn't see anything wrong with it at all.

Ritchie: Was Tibbett's description of Peggy Parrish an accurate one also?

Riddick: Well, I'll tell you, that's something I just would rather stay out of. There isn't anything gained by taking sides anyway, and to agree or not to agree would just place me in an embarrassing situation. I might say, I like Peggy very much. But you see, they drafted a report, which gave them another argument, of course, that night with some ballot

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experts who had come up. They made the machines and so-on. They had come up, I forget from what part of the country, different places, to be advisory to us as to whether this was in accordance with expectations, if the machines were accurate, and so on and so forth. The experts were meeting with Mr. Duffy and Peggy, she is a secretarial person and was assisting in the secretarial work, and they were in the room drafting a report, and Judge Schoener and I were not present at that time; this is what caused a lot of debate and consternation in the Senate. It gave another loophole, so to speak, for them to raise an issue about. And when you're in a ball game you do all you can to win, so each side picked up every advantage they could in arguing their case. I didn't get disturbed about it one way or the other. As I said, I didn't think it was a completely objective statement. In the first

instance, I didn't want the assignment, and secondly, I thought it was a completely different task. So I didn't feel one way or the other about it, but likewise I wasn't coming back before the Committee and state that I had been slighted or had not been slighted, because I wanted to keep out of the political aspects. My whole role in the Senate has always been non-political. This did give them, as Tibbetts says, another political issue, and here is how he recounted that:

Minority Committee leader Hatfield attacked Chairman Cannon's decision to appoint Attorney Duffy head of the team sent to New Hampshire and said that heretofore the Committee "had tried to maintain an impartial objective stance" by electing parliamentarian Riddick chairman of the Rules Committee staff panel.

Cannon acknowledged that he had made the decision that Duffy, not Riddick, head the team that went to New Hampshire.

Under questioning by Senator Hatfield, Duffy denied he had assisted the two Committee voting machine experts in preparing their affidavits, but

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minority counsel, Schoener claimed that he found Duffy, the two experts and Committee secretary Parrish "in her room at the Sheraton-Wayfarer starting to write down their affidavits." Schoener said, I feel badly I have to mention this but I was astounded!"

Duffy maintained that the experts carried out the job the committee hired them to do and he was adamant that he did not try to curtail the experts examination of the machines. Duffy admitted he had invited the experts to Miss Parrish's room to "provide any assistance, but not to dictate the affidavits."

Hatfield asked Duffy if he left messages for Judge Schoener and Dr. Riddick as he had for the two experts inviting them to the room. "I don't recall if I did," Duffy responded.

Duffy acknowledged that the Riddick panel was established during the screening of the protested ballots "so Dr. Riddick could act as a mediator between Judge Schoener and myself, but the Manchester investigation was completely different." (Tibbetts, 107-108.)

Ritchie: And you would agree with that?

Riddick: I agree with that completely.

Ritchie: On this Tibbetts book in general, did you find it to be an accurate portrayal of the whole controversy?

Riddick: Oh, I think so; of course, anybody observing gets their petty likes

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and dislikes about particular events. He perhaps felt that some were interfering when they shouldn't, or participating when they shouldn't have, and just have been sitting by and listening. So I think that some of these things that he attempted to bring out I couldn't be critical of. Well, let me restate that. I think that if I had been assigned the job I doubt if I could have done it better.

Ritchie: Did you get much press inquiry while you were working on this? Did people try to interview you?

Riddick: Oh, gosh, yes. Everybody wanted the inside information, and as I will point out in a moment there were some places where I was the only one who knew what the actual changes were -- the secret ballots, the secret votes, and all. As we considered each ballot, I had to pull the slips off the ballots as they had been cast and attached in New Hampshire; and then after the committee voted, I had all of the

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information before me, including how the committee voted; where they had reversed either or not; and then I had to staple them back on the ballot and put it in this box. I was the only one there that knew what was going on in this regard. I did not try to tabulate it, but I got all kinds of questions: "Were there any changes over the way they had been counted in New Hampshire?" Well, Hades, I was doing a secretive job and I wasn't about to tell anybody anything that I knew. I didn't give an impression to anyone, not even the senators. So, I kept it secret, and I felt that that was my assignment.

This is a little out of place, but I thought that while I was mentioning it, there are another couple of paragraphs on pages 255 and 256 from Tibbett's book:

The Rules Committee sent two of its subcommittee staff, James Duffy and James Schoener (majority and minority counsel) along with Senate Sergeant at Arms, William Wannall, to

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New Hampshire to place the voting machines under security and seal and to collect 185,000 paper ballots, check sheets, tally sheets, and other relevant materials. These ballots were removed to Washington, D.C., in an armored truck with an escort of U. S. Marshalls.

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 [James Allen](#) (D-AL), as amended by Senator [Mark o. Hatfield](#) (R-OR), was adopted by a roll call vote of 8-0. That motion called for "a recount of approximately 3,500 ballots which had been before the New

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Hampshire Ballot Law Commission, and for consideration of all 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, the parliamentarian emeritus of the Senate, and the two Committee legal counsel, Duffy and Schoener. This panel was to examine those ballots to determine whether they could be masked so as to conceal from Committee members anything which could identify the candidate, the political party, or otherwise influence the Committee, and yet leave enough of the disputed voting mark exposed to decide the issue on each ballot.

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That in a way reviews part of the other, and you can set it forth at the appropriate place.

Well, I have pretty well pointed out that after we had eliminated the non-contested ballots that both the Durkin and Wyman people agreed upon (so that the committee wouldn't have to count them), we turned the others back to the committee for their tabulation; and I pointed out how many votes they had taken to make this decision. After the committee finished all of its voting, they found so many tie votes. They went through and examined every one, but there was a big number of tie votes that they could not resolve, enough to make the difference in the election. So the problem was: what are you going to do now? The Committee first talked about filing a report to the Senate, but this brought up a question as to what kind of a report, and how should we make

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it. To show you how this was developed, I think two or three excerpts here will give you an idea of what was done. The Chairman, talking in the committee meeting, said:

Well, I think the Senator has made it quite clear that he is attempting to void this whole election through any process that he can take, and this is one of the diversionary tactics adopted.

This is a response to Senator Griffin.

The Senator referred to Dr. Riddick making the rulings, and Dr. Riddick did not make the rulings, and it was made clear in the record here all through this proceeding on the Riddick committee that the rulings were only when the parties were unanimous, and where these two gentlemen did not agree on a particular issue, then the matter came back to the

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committee for a decision, and it was not a matter of Dr. Riddick making a ruling.

I would like to ask him, have I correctly stated the situation?

Dr. Riddick. That was my understanding from the instructions of the committee, that we would unanimously agree or otherwise bring the issue back to the committee.

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The Chairman. And that was followed throughout with respect to the segregation of the ballots in going through and deciding what could be masked, and the stipulation as to whether they were valid protests, is that correct?

Dr. Riddick. I would have gladly made decisions had I been instructed to make decisions.

The Chairman. But you did not during any part of this whole process, is that correct?

Dr. Riddick. Yes.

So this I point out to show that what we were really trying to do was not to let the panel make decisions for the committee but resolve as much of the work for the committee as we could with the controversial issues being brought back to the committee for decision. That was in the May 15 proceedings, found on page 1,524 of the committee sessions on this problem. Then the problem was: what was the committee going to do after they had gone through and counted all of these and still had this great number of tie votes. I read from page 1,543 of the hearings, open sessions

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of the committee on these problems:

Senator [Robert C. Byrd](#). May I offer this suggestion: It seems to me that here is a situation in which the talents of Dr. Riddick are peculiarly well fitted, and would require an effort such as Senator Allen has suggested. It would seem to me that Dr. Riddick working with the majority and minority counsel could organize issues to be voted upon in the most practical way.

Senator Griffin. Could we make him a chairman in this instance?

Senator Hugh Scott. Yes; would that be all right?

Senator Robert C. Byrd. I am suggesting that there is merit to what Senator Allen has proposed. I think Dr. Riddick with the two counsel could draw up such a list of issues that have to be decided, and he would be in a good position, I think, to suggest the order in which the issues would be presented to the Senate.

Dr. Riddick. If I may say so, Senator, I think it might be a good idea if you do not do that. Actually the Senate does not normally vote on a report. I would recommend that we take the contents of the report and reduce it to a resolution, which could be visible on the Senate floor, and therefore you could get your votes separately.

Senator Hugh Scott. Separately on each issue?

Dr. Riddick. Yes; each of the issues.

So, after I presented this proposal, the committee actually

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authorized me to draft the resolution. I'm reading from the report of the minority side, which states the case very accurately:

On May 19, in light of the unprecedented reference by a Committee of its own tie votes in an election contest directed to the Senate, the Committee determined that it would at least have to present the Senate with a resolution defining the issues. Dr. Riddick was therefore requested to draft such a document for Committee action. On May 21, Dr. Riddick presented a proposed resolution enumerating each of the tie vote issues and ballots. During the debate, Senator Scott noted that passage of the resolution by the Committee was not to be construed as a limitation upon the right of any Senator on the floor to offer a substitute motion for the Committee to conduct a broader review of the election or to vacate the seat and return the matter to New Hampshire for a new election. Senator Byrd agreed. The Riddick resolution was then adopted unanimously by the Committee.

(Committee on Rules and Administration, The Wyman Position, 14.)

So I drafted the resolution which was reported, it was Senate Resolution 166, Report No. 94-156, which means the report was number 156 in the 94th Congress. There were several issues which were presented in two parts. The first part presented

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a question: "Is it the sense of the Senate that the Committee should conduct a recount as requested by Mr. Wyman of the following precincts to determine the accuracy of the recount of the Secretary of State of New Hampshire?" Then point 2: "Is it the sense of the Senate that the Committee should conduct a recount of the following precincts because of alleged inaccuracies in the tally sheets of the Secretary of State of New Hampshire: Merrimack, Meredith, and Lancaster?"

There were a lot of these issues. Number 5 for example: "Is it the sense of the Senate that with respect to the ballots on which the Committee voted as tied, the ruling of the highest authority of the State of New Hampshire shall remain in

effect?" Number 6: "Is it the sense of the Senate that the Committee shall retrieve, separate, and review all of the ballots in its custody of a skip

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candidate type?" So all of these issues were set forth and then in part 2 there were tie votes on the particular ballots, as to whether they were to be counted one way or the other. There were 27 of these ballots, broken down into 11 miscellaneous ballots, one "skip Durkin" ballot, and three masked ballots. These were presented in this resolution form because as I told the committee the Senate doesn't normally vote on reports, and it's better to have an actual instrument before it to act on instead of just filing a report with the Senate. This was what the Senate had before it when it proceeded to work on the issue. After I had drafted the resolution and presented it to the committee, the committee met for at least two days to approve this resolution. On May 19, when the committee was called together the chairman said:

The committee will come to order. Dr. Riddick, are you ready to advise us now with respect to the resolution?

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Dr. Riddick. Yes, sir, Senator. I think I have given each member a copy. I worked with the assistance of one of the members of the Legislative Counsel in drafting this, so that we could properly put the proposition before the Senate. (Committee on Rules and Administration, Hearings, Senator from New Hampshire, Part 2, 19 May 1975), 1547.) I worked with the assistance of the others to be sure that everything was done accurately. Then we proceeded to go through this resolution line by line, issue by issue, voting on each, and after doing this for two days the committee unanimously agreed, as the report I just read from indicated, to file with the Senate for its consideration, with each member of course reserving his rights to offer any amendments he wanted to on the Senate floor. Now, the Senate had a long fight on this issue. It was debated at length. The debate began on June 11, when they agreed to proceed at 1:00 o'clock on June 12 with S. Res. 166;

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and this issue held the Senate consistently from day to day until July 30. They presented six cloture motions, rejected five of them by roll call vote. They offered endless amendments. Each side, first the Republicans voted to vacate the seat and throw the election back to the state for a new election -- Senator [Lowell Weicker](#) offered this. That was defeated. They even offered resolutions to that effect. They were defeated. Then finally, after all of this prolonged debate, they

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agreed, with the Democrats offering the motion later, to vacate the seat and throw the election back to New Hampshire. They agreed to it because they had found themselves totally unable to reach a decision because of filibustering, or prolonged discussion let's say; they just couldn't reach a vote on any other final disposition. So finally, the thing was settled on

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July 30, when the Senate indefinitely postponed S. Res. 166, and at a later date adopted another resolution putting a rider on that to declare the seat vacated, and paid the expenditures for the operation.

There were all kinds of amendments offered, I'll just give you one. Both the Democrats and the Republicans offered somewhat comparable amendments, each thinking that it would get an advantage over the other. For example, here is one that Senator Mansfield himself called up, that was authorizing a complete recount with me as the pivot person to make these decisions. Then here is one on June 19 that Senator [\[William\] Brock](#), a Republican offered. The one that Mansfield offered was quite a long amendment, authorizing in two different places the details that I was to be charged with; and the one that was offered on June 19 by Senator Brock read as follows:

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It is the sense of the Senate that the Committee shall authorize an investigation of the Manchester voting machines, such investigation to be conducted by Dr. Floyd Riddick, James Duffy, and James Schoener, each of whom shall have an equal vote in determining all issues concerning the scope of the investigation, which such panel shall have the assistance of two voting machine experts to be retained by the Committee, and during which such investigation each of the contestants may himself or through his counsel participate by making requests and posing questions to the experts. (*Congressional Record*, 94th Congress, 1st session, 19 June 1975, 19730.)

Now, here are two others from the numbers of them offered in various variations. Senator [Cranston](#) offered this one:

When the Senate proceeds to consider the ballots listed in section 2, Floyd M. Riddick, accompanied by the Sergeant at Arms of the Senate, shall bring to the Senate chamber the boxes containing all ballots voted upon by the Committee on Rules and Administration, including the two boxes containing those ballots upon which the tie votes were cast.

As the Senate proceeds to consider each ballot listed in section 2, Dr. Riddick shall remove that ballot from the box in which it is contained, remove all attachments therefrom, and display that ballot on an easel. When the Senate has voted on each of such ballots, Dr. Riddick shall affix the attachments to that ballot together

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with the result of the vote of the Senate thereon, and place that ballot in the box containing the ballots on which there was not a tie vote.

(Amendment to S. Res. 166 by Senator Cranston, 24 June 1975.)

Senator Cannon, the chairman of the Committee, had this one: I'm quoting these amendments because they are illustrative of so many different variations that were proposed during this long period of time. This one was offered by Senator Cannon, the chairman:

The Senate hereby directs the Committee on Rules and Administration to tabulate all the ballots which it has previously voted to count and those ballots voted upon by the Senate under section 2 of this resolution, such tabulation being made by three counters from the General Accounting Office in the presence of the committee panel consisting of Mr. Riddick, Mr. Duffy, and Mr. Schoener, to add the ballots so tabulated to, or subtract the ballots so tabulated from, the final figures certified for each candidate by the Ballot Law Commission of New Hampshire, and to express the results thereof in a Senate resolution, and to report each resolution to the Senate not later than July 20, 1975. If the committee fails to report such resolution by July 20, 1975, the committee shall be discharged from its further consideration and it shall be placed on the calendar. (Amendment to S. Res. 166 by Senator Cannon, 24 June 1975.)

So you can see it was endless all the variations and attempts that they tried to pursue in order to reach a solution.

Ritchie: And eventually they decided to send it back to New Hampshire and let the people there vote on it.

Riddick: Eventually they sent it back to New Hampshire. Shakespeare had a play entitled, which is very suitable for this: "Much Ado About Nothing."

Ritchie: This type of thing will occur probably in the future, there's a case in Virginia this year that may be recounted. Can the Senate really handle these things? What kind of mechanism should they create for these cases?

Riddick: Well, I don't know. It could be, but I pray to God they don't ask me to get in another one! It's no easy task. It's almost another career assignment of a kind. I don't know that you can do. I think after all if you are going to have the states' electing senators, the state should elect

the senator. But I don't believe, and I think the Senate would agree, that any election in any state where there's no case or charge of fraud should be brought to the Senate for decision. I think that the state itself, as long as there is no fraud and it's a clean election, should make the decision, because they are electing the senator. Now, if you have got fraud and justifications, or if you have got a sort of a variation like there was here where you have two kinds of certificates -- the Governor sent up a certificate to put Wyman in, and sent up a certificate to put Durkin in -- well, what's the Senate going to do? They almost had to get into this one. But unless it's something of that nature, or fraud, then I think the Senate should leave it to the states, and I think that's the feeling of the Senate. I doubt seriously if they go into the Virginia election, unless in this

recount I understand Andrew Miller is asking for, there is some evidence of fraud.

Ritchie: There's something about these disputed election cases that seems to touch on a raw nerve in the Senate.

Riddick: Oh, it's too political; and the Senate being a political institution, unless they're able to foresee all possible variations in the election contest, that they could write a law on even before the contest comes to the Senate, I just don't believe the Senate should get into it. Now, if they can anticipate some general types of contested elections, and they can write some guidelines, there might be some justification for it.

[End of interview #11]
