bizarre accounting, the possibilities are endless.

Indeed, I would argue that the ''national-interest'' theory is not only misguided, but wrong. True international competitiveness is achieved by reducing costs, not ignoring them. Over time, capital markets will also function more rationally when logical and even-handed accounting standards, rather than the ''feel-good'' variety, are followed.

Back in 1937, Benjamin Graham, the father of Security Analysis and, in my opinion, the best thinker the investment profession has ever had, wrote a satire on accounting. In it, he described the gimmicks that companies could employ to inflate reported earnings, even though economic reality changed not at all. Among Graham's most hilarious suggestions—because the thought seemed so far fetched—was a proposition that all employees of a company be paid in options. He pointed out that this arrangement would eliminate all labor costs (or, more precisely, eliminate the need to record them) and do wonders for the bottom line.

Today, in the world of stock options, we have life imitating satire. So far, of course, companies have largely substituted option compensation for cash compensation only when paying managers. But there is no reason that this substitution can't spread, as corporate executives catch on to the possibility of inflating earnings without actually improving the economics of their businesses.

One close-to-home example, involving Berkshire Hathaway and its 20,000 employees: I would have no problem inducing each of them to accept an annual grant of out-of-the-money options worth $3,000 at issuance in exchange for a $2,000 reduction in annual cash compensation. Were we to effect such an exchange, our pre-tax earnings would improve by $40 million—but our shareholders would be $20 million poorer. Would someone care to argue that would be in the national interest?

Many years ago, I heard a story—undoubtedly apocryphal—about a state legislator who introduced a bill to change the value of pi from 3.14159 to an even 3.0 so that mathematics could be made less difficult for the children of his constituents. If a well-intentioned Congress tries to pursue social goals by mandating unsound accounting principles, it will be following in the footsteps of that well-intentioned legislator.

Sincerely,

WARREN E. BUFFETT,
Chairman.

Mr. LEVIN. Finally, Mr. President, I just want to make sure that the clerk has the amendment in the same form that I do. I will simply read this amendment, and if there is any problem, the clerk can correct me. It has already been adopted, but I want to double check to make sure, and make a parliamentary inquiry, that the amendment reads as follows:

That it is the sense of the Senate the Committee on Finance of the Senate should hold hearings on the tax treatment of stock options.

The PRESIDING OFFICER. That is subsection (b) of the amendment?

Mr. LEVIN. That is correct.

The Senator is correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. LEVIN. I thank the Chair.

Again, I thank my good friend from Rhode Island for his patience.

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

REVENUE RECONCILIATION ACT OF 1997

AMENDMENT NO. 551, AS MODIFIED

Mr. CHAFEE. On behalf of Senator NICKLES, I send a modification of his amendment No. 551 to the desk and ask unanimous consent that it be so modified.

The PRESIDING OFFICER. Without objection, it is so ordered.

The modification is as follows:

On page 212, between lines 11 and 12, insert:

SEC. . INCREASE IN DEDUCTION FOR HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS.

(a) IN GENERAL.—The table contained in section 162(l)(1)(B) is amended to read as folllows:

''For taxable years beginning in calendar year—	The applicable percentage is—
1997	50
1998	50
1999 through 2001	60
2002	60
2003	70
2004	80
2005	85
2006	90
2007	100

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 1996.

On page 159, line 15, strike ''December 31, 1999'' and insert ''May 31, 1999''.

On page 159, line 18, strike ''42-month'' and insert ''35-month''.

On page 159, line 19, strike ''42 months'' and insert ''35 months''.

On page 160, lines 10 and 11, strike ''December 31, 1999'' and insert ''May 31, 1999''.

On page 160, lines 19 and 20, strike ''December 31, 1999'' and insert ''May 31, 1999''.

HEART AND HYPERTENSION BENEFITS

Mr. DODD. Mr. President, I wish to speak briefly about an amendment that I have submitted with my colleague from New York, Senator D'AMATO, to benefit firefighters and law enforcement officers in our respective states of Connecticut and New York.

For the firefighters and police officers of Connecticut, this amendment seeks simply to correct a wrong that, while unintentional, has cost these committed public servants a great deal of money and anguish. It has always been the intention of the state of Connecticut to provide its police officers and firefighters heart and hypertension benefits tax-free by considering them workmen's compensation for tax purposes. Based on that intention, these individuals accepted benefits with the understanding that they were not taxable.

However, the original version of Connecticut's Heart and Hypertension law contained language which made the benefits from the statute taxable under a ruling by the IRS in 1991. As a result of the problem with the state law, and through no fault of their own, these citizens have been charged with millions of dollars in back taxes, interest, and penalties by the IRS.

Connecticut has since amended its law, but that change does not help those police officers and firefighters who received benefits prior to the amendment. This legislation would remove their tax liability for heart and hypertension benefits for the years prior to the IRS ruling (1989, 1990, and 1991). The bill is narrowly drafted to accomplish that limited purpose, and would not affect the tax treatment of benefits awarded after January 1, 1992.

Mr. President, the police officers and firefighters of Connecticut serve our state's citizens with courage and compassion. The least we can do is provide them with this small measure in recognition of their bravery and commitment. I urge my colleagues to support this amendment.

The measure has been scored to cost $11 million for FY98 only.

LOUISIANA CONTESTED ELECTION

Mr. WARNER. Mr. President, on April 17 the Committee on Rules and Administration voted, along party lines, to conduct an investigation into allegations that fraud, irregularities, and other errors affected the outcome of the 1996 election for United States Senator from Louisiana. The vote was taken after a very thorough discussion. Periodically I have reported to the Senate with floor statements; today is my third.

On May 8, I reported that the committee was about to embark on a bipartisan investigation, as a result of efforts by both the majority and minority to agree to a ''Investigative Protocol'' regarding the joint conduct of the investigation. From the inception, I have believed a joint investigation could better serve the Senate.

On May 23, I provided a second status report to the Senate on the following: on efforts to secure the detail of FBI agents to the Committee, on assurances of cooperation by Louisiana officials, and on my agreement with Senator FORD, the ranking member on the Committee, on the issuance of over 130 subpoenas.

Last evening, Senator FORD announced that the ''Rules Committee Democrats will withdraw from the investigation of illegal election activities in the contested Louisiana Senate election''. Further, he asserted that the ''investigation was over budget, it's exceed the time frame agreed to, and none of Mr. Jenkin's (sic) claims have been substantiated by any credible witness.''

Since last Friday, Senator FORD and I had been working to resolve differences and develop a written outline of the work we jointly could agree on to complete our investigation. I had good reason to believe we had made progress, but I learned at approximately 6 p.m. yesterday that the minority had decided to terminate their participation.

A BRIEF HISTORY OF THE INVESTIGATION TO DATE

On April 17, 1997, when the Committee on Rules and Administration authorized me, ''in consultation with the ranking member'', to conduct an investigation into the 1996 Senate election in Louisiana (exhibit 1), I stated that I believed that a preliminary inquiry could be completed in approximately 45 days. Today is June 26, some 70 days later. This passage of time included: 20 days to first develop the Investigative Protocol required by the minority before we proceeded to finalizing contracts with our respective outside counsel; 53 days to secure from the Department of Justice the detail of FBI agents to the Committee.

As I stated at the April 17 hearing, it was my hope that this investigation could be conducted in a bipartisan manner, with the use of experienced investigative attorneys to direct the investigation, and with the assistance of experienced agents from the Federal Bureau of Investigation.

The majority proposed to retain the law firm of McGuire, Woods, Battle & Boothe as their outside counsel. Senator FORD proposed to retain the law firm of Perkins Coie. Under federal law, such consultants can only be hired pursuant to a joint agreement between the Chairman and Ranking Member of the Committee.

Senator FORD further conditioned the contracting of these firms on first reaching a joint Investigative Protocol. Among other matters this document had to detail the rights of the minority, the direction of the investigation, and the confidentiality of all aspects of the investigation. On April 21, our respective designated outside counsel began a long series of negotiations leading up to this Protocol, which counsel signed on May 1. The Protocol was approved not only by Senator FORD and his counsel, but also by the minority members of the Rules Committee. The contracts retaining the two law firms were signed on May 7. This process in total consumed 20 days, during which no investigation could take place. Copies of my letter to Senator FORD on this issue, the Investigative Protocol, and the letters of retainer are attached (exhibits 2–5).

We also agreed upon retaining the services of the General Accounting Office to assist in review of election documents. Two specialists, one a Certified Public Accountant, were detailed to the Committee on May 30, and are reviewing and assessing many of the thousands of election documents that were subpoenaed to assess the allegations of ''phantom votes''. That work is on going.

As the Investigative Protocol was being developed, committee staff had begun discussions with the Federal Bureau of Investigation and the Department of Justice to detail experienced FBI agents to the Committee. Initially, Senator FORD indicated that members of the minority had some concern in using FBI investigators. Accordingly, on my own initiative, I wrote the Attorney General on May 9 requesting the detailees (exhibit 6). After additional conversations with Senator FORD, on May 14 he then joined me in formalizing a Committee request for the use of FBI agents (exhibit 7).

Thereafter, more negotiations ensued with the Department and Bureau, including my personal consultation with Director Freeh, to have the request approved by Attorney General Reno. Her final approval, given by her Deputy, occurred on May. But, the Department and Bureau stated that they could only provide two agents rather than the four we requested.

These two agents were not actually detailed to the Committee until June 9. By this time, 53 days had passed since the Committee hearing on April 17.

In addition, the Department still has not formally approved a Memorandum of Understanding between the Bureau, Department, and the majority and minority sides of the committee. Our staffs submitted a draft several weeks ago to the Department of Justice. This document, which is required under normal Committee procedures, has not been formally approved by the Department. A copy of the draft memorandum is attached (exhibit 8).

As regards timing, the central fact is that not until June 9 could the Committee get in place, in Louisiana, the agents to begin the field investigation. Petitioner Jenkins delivered files and tapes in response to a Committee subpoena and the FBI agents promptly began their review. Since this field investigation began in Louisiana only 17 days ago, we have had inadequate time to complete a preliminary investigation for the Committee. Indeed, we have not even begun the investigation into fraudulent registration which was one of the three areas that the Democratic counsel specifically recommended should be investigated. But progress is being made in collecting evidence and assessing Petitioner's allegations.

Speaking for myself, I am of the opinion this joint investigation should continue until the full Committee, not just the minority members, have had the opportunity to evaluate the work done to date. The Committee, I believe, has this obligation to the Senate.

THE INVESTIGATIVE EXPENDITURES

At the time the investigation was authorized by the Committee, I believed that outside counsel could complete this preliminary investigation with an expenditure for outside counsel capped at $100,000 for the majority and an equal amount for the minority. This estimate assumed that the FBI and GAO would provide the Committee a sufficient number of detailees in a timely manner.

At this point the majority outside counsel is working within the limit authorized by contract, and the full expenditure limit of $100,000 for services has not been reached. In addition to lawyers, when the Bureau concluded it could only provide two FBI detailees, the Committee had to hire two retired FBI agents. This was an additional expense, but their costs are being met within the majority's share of the Committee's resources.

A large percentage of our legal expenses to date were incurred to keep this as a joint investigation. For example, these expenses included prolonged negotiations developing the protocol, extensive negotiation and meetings to agree on the issuance of over 100 subpoenas, the acquisition and briefing of FBI agents, and the designation of investigative priorities, and other related matters. To provide for a joint investigation, the majority has tried in an every way to meet minority requests (exhibit 9).

STATUS OF INVESTIGATION

Until the full Committee meets, I will defer any comment on the evidence collected to date from witness interviews involving allegations of fraud.

With regards to the work done by our GAO detailed auditors have been assessing a portion of the Petitioner's categories of ''phantom votes''. While this work is not complete, the auditors have provided the Committee with interim data indicating that there were very few ''phantom votes'' in the categories and precincts examined to date.

Now I turn to issues relating to the compliance, or non-compliance of the laws providing safeguards to ensure the integrity of the Louisiana election process. The investigation, thus far, has clearly revealed that the safeguards required under Louisiana law—designed to ensure an election free from fraud—were breached, broken, in many instances during the 1996 election. Crucial election records were never sealed and remained exposed to possible tampering in violation of state law. Other election records were destroyed. Documents were commingled within a single office instead of being forwarded to separate offices on election night as required by law, completely frustrating a safeguard designed to prevent fraudulent alteration of the records. In addition, voting machines were opened after the election, ahead of schedule and outside the presence of witnesses, again clearly in violation of state law. A detailed memorandum prepared by outside counsel is attached as exhibit 10.

In conclusion, this investigation, thus far, has established that in many instances election officials, entrusted with following the law, did not do so. Documents, statements of admission, and testimony taken by the Committee's field investigators establish these facts.

This non-compliance with these legal safeguards, particularly in Orleans Parish, provided the opportunity for persons to commit fraud. It is the responsibility of the Committee to determine from the evidence whether such fraud existed and whether it affected the outcome of the 1996 election.

Given the importance of this matter to the United States Senate, it is my intent to work with Senator FORD to schedule a full Committee meeting as promptly as possible upon the return of the Senate after recess.

I ask unanimous consent that the exhibits to which I referred be printed in the RECORD.

There being no objection, the exhibits were ordered to be printed in the RECORD, as follows:

EXHIBIT 1 AS PASSED BY THE COMMITTEE.

COMMITTEE ON RULES AND ADMINISTRATION

COMMITTEE MOTION

Wheras, the United States Constitution, Article I, Section 5 provides that the Senate is ''the Judge of the Elections, Returns, and Qualifications of its own Members . . .'';

Whereas, the United States Supreme Court has reviewed this Constitutional provision on several occasions and has held: ''[The Senate] is the judge of elections, returns and qualifications of its members. . . . It is fully empowered, and may determine such matters without the aid of the House of Representatives or the Executive or Judicial Department.'' [Reed et al. v. The County Comm'rs of Delaware County, Penn., 277 U.S. 376, 388 (1928)]; and

Whereas, in the course of Senate debate, it has been stated: ''The Constitution vested in this body not only the power but the duty to judge, when there is a challenged election result involving the office of U.S. Senator.'' [Congressional Record Vol. 121, Part 1, p. 440].

Therefore, the Committee on Rules and Administration, having been given jurisdiction over ''contested elections'' under Rule 25 of the Standing Rules of the Senate, authorized the Chairman, in consultation with the ranking minority member, to direct and conduct an Investigation of such scope as deemed necessary by the Chairman, into illegal or improper activities to determine the existence or absence of a body of fact that would justify the Senate in making the determination that fraud, irregularities or other errors, in the aggregate, affected the outcome of the election for United States Senator in the state of Louisiana in 1996.

This Committee Motion will operate in conjunction with and concurrent to the Standing Rules of the Senate. In addition, the following Rules of Procedure are applicable, as a supplement to the Committee Rules of Procedure:

A. Full Committee subpoenas: The chairman, with the approval of the ranking minority member of the Committee, is authorized to subpoena the attendance of witnesses or the production of memoranda, documents, records, or any other materials at a hearing or deposition, provided that the chairman may subpoena attendance or production without the approval of the ranking minority member where the chairman or a staff officer designated by him has not received notification from the ranking minority member or a staff officer designated by him of disapproval of the subpoena within 72 hours, excluding Saturdays and Sundays, of being notified of the subpoena. If a subpoena is disapproved by the ranking minority member as provided in this section, the subpoena may be authorized by vote of the members of the Committee. When the Committee or chairman authorizes subpoenas, subpoenas may be issued upon the signature of the chairman or any other member of the Committee designated by the chairman.

B. Quorum: One member of the Committee shall constitute a quorum for taking sworn or unsworn testimony.

C. Swearing Witnesses: All witnesses at public or executive hearings who testify to matters of fact shall be sworn. Any Member of the Committee is authorized to administer an oath.

D. Witness Counsel: Counsel retained by any witness and accompanying such witness shall be permitted to be present during the testimony of such witness at any public or executive hearing or deposition, and to advise such witness while he is testifying, of his legal rights. Provided, however, that in the case of any witness who is an officer or employee of the government, or of a corporation or association, the Committee chairman may rule that representation by counsel from the government, corporation, or association, or by counsel representing other witnesses, creates a conflict of interest, and that the witness may only be represented during deposition by Committee staff or consultant or during testimony before the Committee by personal counsel not from the government, corporation, or association, or by personal counsel not representing other witnesses. This rule shall not be construed to excuse a witness from testifying in the event his counsel is ejected for conducting himself in such a manner so as to prevent, impede, disrupt, obstruct, or interfere with the orderly administration of the hearings; nor shall this rule be construed as authorizing counsel to coach the witness or answer for the witness. The failure of any witness to secure counsel shall not excuse such witness from complying with a subpoena or deposition notice.

E. Full Committee depositions: Depositions may be taken prior to or after a hearing as provided in this section.

(1) Notices for the taking of depositions shall be authorized and issued by the chairman, with the approval of the ranking minority member of the Committee, provided that the chairman may initiate depositions without the approval of the ranking minority member where the chairman or a staff officer designated by him has not received notification from the ranking minority member or a staff officer designated by him of disapproval of the deposition within 72 hours, excluding Saturdays and Sundays, of being notified of the deposition notice. If a deposition notice is disapproved by the ranking minority member as provided in this subsection, the deposition notice may be authorized by a vote of the members of the Committee. Committee deposition notices shall specify a time and place for examination, and the name of the Committee members(s) or Committee staff member(s) or consultant(s) who will take the deposition. Unless otherwise specified, the deposition shall be in private. The Committee shall not initiate procedures leading to criminal or civil enforcement proceedings for a witness' failure to appear or produce unless the deposition notice was accompanied by a Committee subpoena.

(2) Witnesses may be accompanied at a deposition by counsel to advise them of their legal rights, subject to the provisions of Section D.

(3) Oaths at depositions may be administered by an individual authorized by local law to administer oaths. Questions shall be propounded orally by Committee members(s) or Committee staff or consultant(s). If a witness objects to a question and refuses to testify, the objection shall be noted for the record and the Committee member(s) or Committee staff or consultant(s) may proceed with the remainder of the deposition.

(4) The Committee shall see that the testimony is transcribed or electronically recorded (which may include audio or audio/video recordings). If it is transcribed, the transcript shall be made available for inspection by the witness or his or her counsel under Committee supervision. The witness shall sign a copy of the transcript and may request changes to it. If the witness fails to sign a copy, the staff shall note that fact on the transcript. The individual administering the oath shall certify on the transcript that the witness was duly sworn in his presence, the transcriber shall certify that the transcript is a true record of the testimony, and the transcript shall then be filed with the chief clerk of the Committee. The chairman or a staff officer designated by him may stipulate with the witness to changes in the procedure; deviations from this procedure which do not substantially impair the reliability of the record shall not relieve the witness from his or her obligation to testify truthfully.

(5) The Chairman and the ranking minority member, acting jointly, or the Committee may authorize Committee staff or consultants to take testimony orally, by sworn statement, or by deposition. In the case of depositions, both the Chairman and ranking minority member shall have the right to designate Committee staff or consultants to ask questions at the deposition. This section shall only be applicable subsequent to approval by the Senate or authority for the Committee to take depositions by Committee staff or consultants.

F. Interviews and General Inquiry: Committee staff or consultants hired by or detailed to the Committee may conduct interviews of potential witnesses and otherwise obtain information related to this Investigation. The Chairman and the ranking minority member, acting jointly, or the Committee shall determine whether information obtained during this Investigation shall be considered secret or confidential under Rule 29.5 of the Standing Rules of the Senate and not released to any person or entity other than Committee Members, staff or consultants.

G. Federal, State, and Local authorities:

1. Referral: When it is determined by the chairman and ranking minority member, or by a majority of the Committee, that there is reasonable cause to believe that a violation of law may have occurred, the chairman and ranking minority member by letter, or the Committee by resolution, are authorized to report such violation to the proper Federal, State, and/or local authorities. Such letter or report may recite the basis for the determination of reasonable cause. This rule is not authority for release of documents or testimony.

2. Coordination: The Chairman is encouraged to seek the cooperation and coordination of appropriate federal, state, and local authorities, including law enforcement authorities in the conduct of this Investigation.

H. Conflict of Rules: To the extent there is conflict between the Rules of Procedure contained herein and the Rules of Procedure of the Committee, the Rules of Procedure contained herein apply, as it relates to the conduct of this Investigation authorized herein.

U.S. SENATE, COMMITTEE ON RULES AND ADMINISTRATION, WASHINGTON, DC, APRIL 29, 1997.

Hon. WENDELL H. FORD,

Ranking Member, Committee on Rules and Administration, U.S. Senate, Washington, DC.

DEAR WENDELL: As I announced at our Committee meeting on April 17, I would like to retain the law firm of McGuire Woods Battle & Boothe with Mr. Richard Cullen and Mr. George J. Terwilliger, III, serving as lead counsel, to conduct the initial investigation into the alleged fraudulent and improper activities that may have affected the outcome of the 1996 election for United States Senator from Louisiana. It was my intent then, and remains so today, that this investigation be

conducted in as fair a manner as possible, with the objective of determining the existence, or absence, of a body of fact that would justify the Senate in making a determination that fraud, irregularities or other errors, in the aggregate, affected the outcome of the election.

Accordingly, McGuire Woods will designate attorneys with long-term affiliations with both political parties, including Mr. William G. Broaddus, a former Attorney General of Virginia under Governor Chuck Robb, Mr. James W. Dyke, Jr., a former Secretary of Education under Governor Doug Wilder, and Mr. Frank B. Atkinson, former counsel to Governor George Allen. It is my hope that this investigation will be conducted in coordination with a like team of counsel selected by the minority.

It is now my understanding that, after many hours of meetings over four days, an ''Investigative Protocol'' has been agreed to by both sets of outside counsel as well as by Committee counsel, and that you are to be briefed on this protocol today. I am hopeful that you will agree with me that his protocol will permit a full and fair investigation of the allegations and facts, with complete participation by counsel for the minority.

This investigation must begin as soon as possible. It does no service to either party to this contest, nor the Senate, to prolong this matter. I reiterate my statement at the hearing that I will agree to your contracting for counsel. Any counsel you deem appropriate will be agree to by me pursuant to 2 U.S.C. Sec. 72a(i)(3). Further, I will honor any reasonable requests for subpoenas that you might wish to issue.

I look forward to your acceptance of the Investigative Protocol and a joint investigation that will collect the facts upon which our Committee may make an informed decision concerning this matter.

With kind regards, I am

Sincerely,

JOHN WARNER,
Chairman.

EXHIBIT 3

INVESTIGATIVE PROTOCOL

I. Process for Consultation and Review

Counsel will agree to consult on an ongoing, regularly-scheduled basis on the progress of the investigation, including consultation before significant investigative decisions are made; the majority and minority counsel will participate in regular staff meetings with investigators regarding the agenda and results of the investigation.

Consultation will include timely evaluation of the evidence, consideration of new lines—or extension of existing lines—of investigation, review of the schedule for interviewing witnesses and taking depositions, and discussion, where necessary, of other issues or investigative leads which promote a more efficient and cooperative investigative effort.

The majority and minority will work together to achieve agreement on investigative issues and decisions. When agreement cannot be reached after reasonable, good faith efforts, the necessary decision will be made in accordance with the majority view. It is understood, however, that the majority and minority will endeavor in good faith to avoid majority rather than consensus decision-making and that the minority reserves the right to withdraw from further participation under this protocol.

II. The Scope of the Investigation

Committee counsel will prepare and conduct an investigation pursuant to Committee resolution as follows:

Allegations of fraud, in particular vote buying, multiple voting and fraudulent voter registration. These allegations will be investigated as appropriate with attention to areas such as ''mismatched signatures'' and ''phantom voting,'' taking into account also evidence of failure of safeguards against fraud in the administration of the election.

The initial investigation plan will require that the investigation proceed in the first instance with the collection of all affidavits, notes, memoranda, audiotapes, transcripts and other materials in the possession of the Contestant which were submitted to the Committee on a redated basis but which shall be submitted in their original form to majority and minority counsel on an equal basis, without redaction, deletion or other editing, including the scheduling and conduct of interviews with the investigators hired or used by Contestant and the witnesses whom they interviewed and, as jointly determined pursuant to III (Investigative Plan), other allegations or evidence of error or irregularity.

The Committee investigation into any and all allegations will be guided and conducted as follows as evidence and testimony is collected or received, or evaluated.

The objective of the investigative effort will be competent, credible evidence, which evidence tends to show that but for the fraud, error or irregularity, the outcome of the election would have been different or the result of the election cannot be reliably determined.

The use of standard and generally accepted investigative techniques.

Careful consideration of Senate precedent and other analogous legal principles established by the law of Louisiana and other states reflected in the Senate precedent.

III. Investigative Plan

Counsel will reasonably endeavor to adhere to the 45-day timetable for completing the investigation; the 45-day timetable shall commence after agreement on the terms of the protocol. Counsel will advise the Chairman and Ranking Member if, due to new leads and areas of investigation, additional time is necessary.

An investigative plan will be proposed by majority counsel, subject to consultation with minority counsel, for the purpose of establishing priorities with respect to witness interviews, obtaining documents, issuing subpoenas, and other investigative requirements.

Every effort will be made to agree on an initial investigative plan. As part of the initial investigation, majority and minority counsel agree that interviews may proceed with the parties to the contest and/or their agents, employees and volunteers, and witnesses with whom they had contact in preparing the Petition and response, within 10 days of the commencement of the investigation. In the event of any unresolved differences on other aspects of the conduct of the investigation, the necessary decision will be made in accordance with the majority view.

The majority counsel will promptly provide a draft of recommendations at the conclusion of the investigation. The minority counsel will promptly provide suggested amendments, corrections or deletions. If respective counsel cannot agree on one final report, minority counsel may submit a supplement or separate report.

A written recommendation will be provided to the Chairman and Ranking Member within 5 days after the conclusion of the investigative period.

IV. Investigative Teams

Different areas of investigation will be assigned to teams which include representatives from the majority and minority counsel.

As part of the consultation process, the investigative teams will regularly advise the majority and minority counsel as a whole on the progress of their investigations.

Investigators will identify themselves as committee investigators only. A standard introductory statement to be used by investigators when approaching witnesses for the first time will be developed and agreed upon by majority and minority counsel.

Majority and minority counsel will jointly develop and participate in a briefing of investigators as to the purpose, scope, planning, and conduct of the investigation.

Majority and minority counsel will consult as to what instructions are to be given to investigators before conducting witness interviews. Majority and minority counsel will both participate in the briefing of investigators in advance of a particular witness interview, though either side may decline participation at its option.

V. Investigative Procedures

1. Subpoenas

Counsel shall seek to avoid unreasonable objection on the issuance of subpoenas.

The request of a witness for confidential treatment of his or her identity under Section V(3) is not a reasonable basis for objection to any subpoena requests.

Majority and minority counsel will consult on the drafting and issuance of all subpoenas consistent with the need to protect the identities of confidential sources of information as described below.

2. Depositions

The same considerations of comity and cooperation which apply to the issuance of subpoenas, as described immediately above, will apply to the noticing of depositions.

Majority and minority counsel will consult on the issuances of notices of depositions; in any event, at least one member of the majority and one member of the minority counsel staff will attend and participate in each deposition. In the event that the Senate grants counsel staff deposition authority, such depositions will be conducted on the same terms.

3. Witness Interviews

Investigators may be requested by the majority or minority counsel to conduct interviews, and the assignments will be considered and made on a consultative basis to assure the avoidance of conflicts and undue burden in the use of available resources. At the request of the majority or minority counsel, counsel may assist in the conduct of the interview or be present, or the majority or minority may request to conduct the interviews through counsel, but it is understood that occasions may arise where one side or the other may wish to conduct the interview without the other in attendance. Majority counsel has the responsibility to reasonably resolve any conflicting requests. Agents will be properly instructed as set out below.

Subject to the provisions of Section VI, witnesses may request an interview to be conducted with only the majority or minority counsel present, but in this instance and in any other instance where a witness requests that his or her identity be withheld from either the majority or minority, the counsel from whom the identity may be withheld may request the identity and the opportunity to interview the witness where the credibility of the witness is relevant to the evidentiary weight of the testimony.

No follow-up interviews of previously interviewed witnesses, except by investigators, shall be conducted without consultation between majority and minority counsel about the appropriate timing for such follow-up.

Investigators will be instructed to make all reasonable efforts to provide written reports of all witness interviews to majority and minority counsel within 24 hours of the interview. Any oral communications regarding investigative findings or significant investigative issues shall be promptly reported and transmitted to counsel to both the majority and minority.

VI. Policy Regarding Confidential Sources of Information

Although a witness seeking confidentiality will be encouraged not to place any restrictions on the disclosure of his or her identity, the decision to keep the witness' identity confidential will be left to the witness; however, the witness will be informed that his or her identity will be revealed to the Chairman or Ranking Member of the Committee upon request. There shall be a presumption that no confidentiality shall be extended to a party to the contest or to any agent, employee or volunteer of a party to the contest; exceptions may be granted by agreement of majority and minority counsel for good cause shown or upon agreement of the Chairman and Ranking Member or at the direction of the Committee.

Information obtained from a confidential source will be provided to the other counsel through the prompt exchange of written reports; these reports will describe the source's information, and provide the basis for and an assessment of the reliability of the source and his or her information. Where the substance of the information provided reveals the identity of the source, the content of the written reports will be redacted to protect the confidentiality of the source's identity.

In the event that there are interviews of confidential sources, each counsel will maintain a list of those sources; where disclosure of a confidential source is necessary, the identity of the confidential source will only be disclosed to the Chairman and Ranking Member.

VII. Evidence Integrity

The parties, their agents or other persons with an interest in the investigation shall be advised against any contact or communication with witnesses on the substance, timing or on other material matters relating to the provision of testimony or interviews, or to the collection of evidence. This advice will include a request that the parties in particular commit to cooperation with this investigation and encourage those in their employ, their counsel and supporters to extend this same cooperation. The purpose of this advisory and request for commitment shall be to protect the integrity of the testimony and evidence and the majority and minority shall consider and implement as appropriate other means to assure the fulfillment of this purpose as the investigation proceeds.

VII. Hearings/Quorum

Hearings at which sworn testimony is taken will be conducted with proper notice under Committee rules with a view toward and expectation of both majority and minority member attendance. Such notice will normally be three days. All hearings shall be scheduled in good faith to accommodate reasonable opportunities of majority and minority member attendance.

IX. Document Repository

The originals of all subpoenaed documents or other documents received in connection with the investigation will be kept and maintained under safeguarded conditions on the premises of the Senate Rules Committee as required by the rules of the Senate. Majority and minority counsel will have access to all original documents.

Majority and minority counsel will jointly maintain copies of all subpoenaed documents in a central document repository; a documents custodian will be appointed to maintain and catalog all documents obtained during the course of the investigation; the documents room will be kept under lock and key at all times but will be available to all counsel on an equal basis.

Minority counsel may create and maintain a separate document storage facility for the keeping of duplicate documents.

X. Press Policy

Majority and minority counsel will decline comment to the press, except as agreed in extraordinary circumstances to address errors in public reporting that may compromise the integrity of the investigation or perceptions of its integrity of course. Otherwise, all press inquiries will be referred to the Senate Rules Committee.

The majority and minority counsel and staff will treat the investigative plan, all consultations, the development and recommendations, the identity of interviewees and deponent, and all evidence obtained through the investigation on a confidential basis.

XI. Confidentiality of Investigation

Majority and minority counsel agree that all information gathered in the course of this investigation, as well as any reports drafted by counsel, shall be treated as strictly confidential. Pursuant to this understanding, counsel agree that each consultant law firm will take reasonable measures to ensure that information gathered in the course of, or pertaining to, this investigation is treated confidentially, is not disclosed to individuals within the firm who do not have a direct need to know the information, and is not disseminated outside the firm except to the Members of the Senate Rules and Administration Committee and its staff, unless otherwise directed to do so by the Chairman or Ranking Member. Counsel further agree that the information gathered during this investigation will be used solely in connection with this matter and use for any other purpose is expressly forbidden. In order to ensure strict confidentiality in this matter, each firm will implement reasonable security measures for all documents and other materials related to this investigation and shall inform all individuals working on this matter of the requirements of this section.

RICHARD CULLEN,
McGuire, Woods, Battle & Boothe, L.L.P.
ROBERT F. BAUER,
Perkins Coie.
RICHARD CULLEN.
GEORGE J. TERWILLIGER, III,
Counsel for the Majority, United States Senate Committee on Rules and Administration.

EXHIBIT 4

U.S. SENATE,
Washington, DC, May 16, 1997.

RICHARD CULLEN, Esq.,
McGuire Woods Battle & Boothe, Richmond, VA.
GEORGE J. TERWILLIGER III, Esq.
McGuire Woods Battle & Boothe, Washington, DC.

DEAR RICHARD AND GEORGE: On behalf of the Senate Committee on Rules and Administration, this letter confirms our retention of your services to assist the committee in its Constitutional responsibility, pursuant to a petition filed by United States Senate candidate Louis ''Woody'' Jenkins, to review questions raised about the 1996 U.S. Senate race in Louisiana. This retainer letter also covers the retention of services of other McGuire Woods partners and associations.

In accordance with Senate procedures, this petition was filed with the Vice President of the United States, in his capacity as President of the Senate, and referred to this committee for consideration as we have jurisdiction over this matter. On April 17, 1997, the Committee authorized an ''Investigation of such scope as deemed necessary by the Chairman, into illegal or improper activities to determine the existence or absence of a body of fact that would justify the Senate in making the determination that fraud, irregularities or other errors, in the aggregate, affected the outcome of the election for United States Senator in the State of Louisiana in 1996.''

This investigation shall be conducted in conjunction with counsel for the minority, and an identical retainer has been extended to Robert F. Bauer and John Hume of Perkins Cole.

Pursuant to your discussions with Committee counsel, please sign the original enclosed contract and return it for our records.

Sincerely,

JOHN WARNER.
WENDELL H. FORD.

EXHIBIT 5

U.S. SENATE,
Washington, DC, May 16, 1997.

ROBERT F. BAUER, Esq.,
JOHN P. HUME, Esq.,
Perkins Coie, Washington, DC.

DEAR BOB AND JOHN: On behalf of the Senate Committee on Rules and Administration, this letter confirms our retention of your services to assist the committee in its Constitutional responsibility, pursuant to a petition filed by United States Senate candidate Louis ''Woody'' Jenkins, to review questions raised about the 1996 U.S. Senate race in Louisiana. This retainer letter also covers the retention of services of other Perkins Coie partners and associates.

In accordance with Senate procedures, this petition was filed with the Vice President of the United States, in his capacity as President of the Senate, and referred to this committee for consideration as we have jurisdiction over this matter. On April 17, 1997, the Committee authorized an ''Investigation of such scope as deemed necessary by the Chairman, into illegal or improper activities to determine the existence or absence of a body of fact that would justify the Senate in making the determination that fraud, irregularities or other errors, in the aggregate, affected the outcome of the election for United States Senator in the State of Louisiana in 1996.''

This investigation shall be conducted in conjunction with counsel for the majority, and an identical retainer has been extended to Richard Cullen and George Terwilliger of McGuire Woods Battle & Boothe.

Pursuant to your discussions with Committee counsel, please sign the original enclosed contract and return it for our records.

Sincerely,

JOHN WARNER.
WENDELL H. FORD.

EXHIBIT 6

U.S. SENATE,
Washington, DC, May 9, 1997.

Hon. JANET RENO,
The Attorney General of the United States, Washington, DC.
Hon. LOUIS J. FREEH,
The Director of the Federal Bureau of Investigation, Washington, DC.

DEAR MADAM ATTORNEY GENERAL AND DIRECTOR FREEH: As you know, the 1996 Senate race in Louisiana is being contested. Under Article I, section 5, of the U.S. Constitution,

the Senate has exclusive responsibility to judge the final results of this election.

The Committee on Rules and Administration has initial jurisdiction over this matter for the Senate, and I am privileged to serve as its Chairman. The Committee met three times in open session to discuss the election contest and has authorized me by Committee Motion to conduct an investigation, in consultation with the Ranking Member, Senator Wendell Ford. Senator Ford and I have each retained counsel from outside law firms to assist the Committee, and we executed contracts with these attorneys on May 7.

In my opinion, there is no more serious responsibility of the Senate than to determine the validity or non-validity of an election for United States Senator. The freedom that we enjoy is predicated on the American people having confidence in our election laws and believing that they have been complied with in elections for the Congress.

I make no prejudgment as to the few facts that are before the Senate at this time. But there is a clear duty to conduct such investigation as we deem necessary so that the full Senate can make an informed decision as to the election contest.

Given the importance of this matter to our federal system, I call on the Department of Justice to provide the United States Senate with the assistance of several investigators to work with our designated counsel and other persons engaged by the Committee to conduct this investigation. I believe that the credibility and experience of agents detailed from the Federal Bureau of Investigation will help to establish a like credibility in the outcome of the Senate's investigation.

I request that at your earliest opportunity we meet concerning this matter, hopefully to be joined by Senator Ford, to ascertain your willingness for the Department to assist the United States Senate.

Enclosed is copy of the authorizing Committee Motion, along with a recent floor statement I made concerning the contest and other relevant documents, which should allow your advisors to quickly understand the Committee's responsibilities and the specifics regarding the content.

The Committee point of contact is Bruce Kasold at (202) 224–3448. Thank you for your assistance in this matter.

Sincerely,

JOHN WARNER
Chairman.

EXHIBIT 7

U.S. SENATE,
Washington, DC, May 14, 1997.

Hon. JANET RENO,
The Attorney General, Department of Justice, Washington, DC.

Hon. LOUIS J. FREEH,
Director, Federal Bureau of Investigation, Washington, DC.

DEAR MADAM ATTORNEY GENERAL AND DIRECTOR FREEH: As you are aware, the Committee on Rules and Administration is conducting preliminary investigation into allegations of fraud and other irregularities which reportedly occurred in the 1996 U.S. Senate race in Louisiana. The Committee anticipates that this investigation will last approximately 45 days.

The Committee has hired outside counsel to advise the Committee and direct this investigation. It is their strong recommendation that the Committee augment our resources with professional investigators. In order to expedite and facilitate this investigation, and ensure the level of investigative professionalism required in such a case, the Committee respectfully requests the assistance of detailees from the Federal Bureau of Investigation.

The Committee has identified an immediate need for two detailees, preferably with a familiarity with Louisiana, and the New Orleans area specifically. As the investigation progresses, the Committee anticipates a need for at least two additional detailees. We ask that these detailees be provided to the Committee on a non-reimbursable basis, with the Committee bearing the associated travel expenses for these detailees, pursuant to Senate rules.

The Committee has secured space in the Hale Boggs Federal Building in New Orleans for the duration of this investigation with the exception that attorneys for the Committee will begin occupying that space by early next week. Due to the timeliness of this investigation, we would hope that two detailees could be made available to the Committee at the same time so that the Committee investigation could begin promptly.

It is important to the Committee that this investigation be conducted with the utmost professionalism and respect for the individuals involved, in particular, the elected officials and citizenry of Louisiana. The reputation and integrity of the Bureau make it the most appropriate source for such assistance. We anticipate that a memorandum of understanding regarding the deployment of these detailees will need to be signed between your office(s) and the Committee. We are prepared to execute that document immediately.

We greatly appreciate your assistance in this regard.

Sincerely,

WENDELL H. FORD,
Ranking Member.
JOHN WARNER,
Chairman.

EXHIBIT 8

MEMORANDUM OF UNDERSTANDING BETWEEN THE UNITED STATES SENATE COMMITTEE ON RULES AND ADMINISTRATION AND THE U.S. DEPARTMENT OF JUSTICE

I. This document is a Memorandum of Understanding (''MOU'') between the United States Senate Committee on Rules and Administration (''Committee'') and the U.S. Department of Justice regarding certain terms and procedures relating to the detail assignment of Special Agents of the Federal Bureau of Investigation (''FBI'') to the Committee for the purpose of assisting the Committee in its investigation (''Special Investigation'').

II. *Relation of FBI Special Agents detailed to the Committee to the FBI and other components of the Department of Justice.*

(A) FBI Special Agents to be detailed to the Committee (''Committee Investigators'') shall be selected by the FBI after consultation with the Criminal Division of the Department of Justice.

(B) Committee Investigators shall not report to or receive direction from the FBI or any other component of the Department of Justice regarding the investigative activities of the Committee, except as expressly authorized by the Chief Counsel for the Committee. The activities of the Committee Investigators shall be directed by the Chief Counsel and Minority Chief Counsel of the Committee acting directly or through designated lead counsel for the Special Investigations, as provided in Part III of this MOU.

(C) Committee Investigators shall not provide any oral or written account of information obtained as a result of the Agents' assignment to the Committee either to the FBI or to the personnel of any other Executive Branch agency without the express authorization of the Chief Counsel and the Minority Chief Counsel for the Committee. Approved communication of such information to the FBI or other components of the Department of Justice shall be through a designated point of contact, as provided in paragraph (F).

(D) Committee Special Agents shall not exercise any law enforcement authority granted them by law while executing the duties and responsibilities for which they have been detailed to the Committee.

(E) Committee Special Agents shall not be entitled, by virtue of their status as federal law enforcement officers, to have access to information developed through criminal investigation, including grand jury information.

(F) All communications [relating directly or indirectly to investigative matters] between Committee Special Agents and the FBI or any other component of the Department of Justice, shall be through a point of contact established by the Department of Justice. The Department of Justice will notify the Chief Counsel of the Committee of the name of that point of contact.

III. *Duties and Responsibilities of the Chief Counsel and Minority Chief Counsel to the Committee.*

(A) FBI Special Agents detailed to the Committee shall be a joint resource to both the Majority and Minority staffs of the Committee and outside counsel retained by the Committee.

(B) The Committee shall reimburse the FBI for all costs associated with the detail assignment of FBI Special Agents to the Subcommittee, including official travel expenses.

(C) The Chief Counsel and/or the Minority Chief Counsel shall furnish written or oral responses, if requested by the FBI, regarding the performance appraisal of FBI Special Agents detailed to the Committee.

(D) All assignments to the Committee Investigators shall be made by the lead attorney and the minority lead attorney, acting jointly, or by either attorney after consultation with the other. All assignments shall, for administrative purposes, be made either by or through the lead attorney for the Special Investigation, to the supervisory Committee Investigator designated by the FBI. The lead attorney for the Special Investigation shall provide timely notice to the minority lead attorney for the Special Investigation of all assignments to the agents.

(E) Unless directed otherwise by the lead counsel for the Special Investigation, the Committee Investigators may conduct interviews personally or by the telephone.

IV. *Duties and Responsibilities of the Committee Investigators.*

(A) The Committee Investigators shall assist the Committee in all tasks related to the objectives of the Committee in its investigation.

(B) Except as otherwise provided in this MOU, the Committee Investigators will remain subject to the personnel rules, regulations, laws and policies applicable to FBI employees. The Committee Investigators will also adhere to Committee rules and regulations which are applicable to the performance of their assigned duties at the Committee, so long as those rules do not conflict with FBI rules and regulations.

(C) Except in extraordinary circumstances, Committee Investigators shall provide the lead attorney for the Special Investigation, who shall in turn notify the minority lead attorney for the Special Investigation, sufficient advance notice of any pending appointments for interviews, so that either attorney for the Special Investigation can determine whether to assign an attorney to join the interview.

(D) With regard to all investigative activities performed for the Committee, Committee Investigators

(1) shall identify themselves as staff investigators of the Committee, and not as federal law enforcement agents;

(2) shall not possess a firearm nor display FBI credentials or badge during the conduct of any personal interviews or other investigative activity;

(3) shall inquire whether a witness to be interviewed is represented by counsel, and if so, inform the lead attorney for the Special Investigation accordingly, prior to scheduling the interview;

(4) shall take notes during all interviews and keep the originals of the same as a record of the Committee;

(5) shall reduce to writing, in memorandum form, the substance of all witness interviews within five working days, unless circumstances prevent that schedule and the lead attorney for the Special Investigations approves the delay;

(6) shall provide both the lead attorney and the minority lead attorney for Special Investigation a copy of the interview memorandum; and

(7) shall insure that any documents, records, exhibits, or other evidence obtained from the interviewed witness are turned over immediately to both the lead attorney and the minority lead attorney for the Special Investigation pursuant to the procedures relating to the same.

V. Termination

This agreement may be terminated by any of the undersigned upon written notice to the others.

Approved by the Committee on Rules and Administration of the United States Senate.

Chairman John Warner.

Ranking Member Wendell H. Ford.

Howard M. Shapiro, General Counsel, FBI.

Mark M. Richard, Acting Assistant Attorney General, Criminal Division, U.S. Department of Justice.

EXHIBIT 9

U.S. SENATE, COMMITTEE ON RULES AND ADMINISTRATION,
Washington, DC, May 1, 1997.

Hon. WENDELL H. FORD,
Ranking Member, Committee on Rules and Administration, U.S. Senate, Washington, DC.

DEAR WENDELL: Per our conversation, let me state my intent with regard to the rights of the Committee minority as they apply to the preliminary investigation into the contest of the 1996 Senate election in Louisiana.

First, as I understand to be reflected in the investigative protocol provision regarding the issuance of subpoenas, I agree that the subpoena power delegated to the Chairman, with the approval of the ranking minority member of the Committee, pursuant to Rule A of the Committee's supplemental rules of procedure adopted on April 17, 1997, shall be used reasonably and equitably to compel the attendance of any witness or the production of any documents requested by a majority of the minority members of the Committee.

Second, I agree that when majority and minority counsel cannot agree on investigative issues, decisions, or aspects of the conduct of the investigation, then they shall, at the request of either counsel, bring their disagreement to the immediate attention of the Chairman and ranking minority member. If the Chairman and ranking member cannot agree, then the full Committee will be asked to resolve the issue after an opportunity for discussion and comment.

Third, I agree that at any hearing held for the purpose of taking recorded, sworn, or unsworn testimony, at least three days' notice shall be given and any member or members of the Committee may attend and participate.

I hope this clarifies my position.

Sincerely yours,

JOHN WARNER,
Chairman.

EXHIBIT 10

MCGUIRE WOODS BATTLE & BOOTHE

MEMORANDUM

To: Senate Rules Committee
From: George J. Terwilliger and Frank Atkinson
Date: June 23, 1997
Re: Jenkins-Landrieu—Voting Procedures and Election Safeguards

BACKGROUND INFORMATION—VOTING PROCEDURES AND ELECTION SAFEGUARDS

Louisiana has been plagued by a history of election fraud, and the state therefore has enacted elaborate voting procedures and safeguards designed to guard the integrity of elections. The state legislature has expressly recognized the state's ''longstanding history of election problems, such as multiple voting, votes being recorded for persons who did not vote, votes being recorded for deceased persons, voting by non-residents, vote buying, and voter intimidation.'' La. R.S. 18:1463.

Secretary of State McKeithen is the ''chief election officer of the state.'' La R.S. 18:421.A. He has publicly sated: ''Our [election] law, if strictly followed, is probably the tightest law in the country. The problem was it wasn't followed [in the November 1996 election].''[1]*

Even where modern voting machines are used and post-election tampering with the machines is made generally impracticable by a combination of machine security features and procedural safeguards, the possibility of fraud still exists whenever one person (or several acting in concert) can gain access to precinct registers, poll lists, absentee voter lists, and other documentary materials used on or before election day.

Voting machines are devices for recording and tallying the number of votes, the accuracy of the tally is vitally important, but it is only one component of an honest election.

The integrity of the election also turns upon the validity of the votes cast, and this central facet of election administration is addressed in detail in Louisiana statutes that prescribe the preparation, use and post-election disposition and custody of various written election records. These written records provide an indispensable check that guards against improper manipulation of voting machines before, on, or after election day.[2]

SUMMARY : KEY PROCEDURAL PROVISIONS AND BREACHES OF SAFEGUARDS

4. Key procedural provisions

State law provides that a precinct register (together with a supplemental list of absentee voters) is to be used at each polling place.

The precinct register contains an alphabetical listing of all registered voters in the precinct. Voters must sign the precinct register when they vote, and an election commissioner also must sign (initial) opposite each voter's signature.

Election commissioners in each precinct are also required to prepare two (duplicate) poll lists.

The poll lists contain the names of actual voters recorded in the order that they vote. Election commissioners record the names of voters on sheets with consecutively numbered spaces.

Voters and election commissioners must execute certain other documents in prescribed circumstances, including Address Confirmation at Polls (ACP) forms, Affidavit of Voters (AV–33) forms, and Challenge of Voter (CV–56) forms.

When the polls close, election commissioners are required to follow specific procedures. With regard to the disposition of the written election records, each of the following must be accomplished by midnight on the day of the election and in the presence of commissioned poll watchers:

Election commissioners are required [a] to place certain specified records in a Registrar of Voters (ROV) envelope, [b] to then place the ROV envelope inside the precinct register and seal the precinct register,[3] [c] to then seal one copy of the poll list and certain other specified records inside the Put in Voting Machine (P–16) envelope, [d] to then place the sealed P–16 envelope and the precinct register inside the voting machine, and, finally, [e] to lock the voting machine and seal the key inside the Return Key Envelope (C–03).

Election commissioners are required to place certain other specified records, including the other copy of the poll list, in the Secretary of State (S–19) envelope and to mail the S–19 envelope to the Secretary of State.

Election commissioners are required to deliver the sealed Return Key Envelope and certain other specified records to the parish clerk of court.

Other provisions specifically govern the counting of absentee votes and the disposition of absentee vote records.

B. Identified breaches of election safeguards

Secretary of State Mckeithen and several staff members were interviewed by Senate Rules Committee outside co-counsel on May 13 and May 30, 1997. They identified and/or confirmed the following breaches of election safeguards:

Election commissioners were required by law to mail one set of election records to the Secretary of State on election night. Commissioners in Orleans Parish and several other parishes were instructed by the parish clerk of court's office to—and did—deliver this set of records to the parish clerk of court instead of the Secretary of State, in violation of the state law.

Instructional materials prepared by the Commissioner of Elections, Jerry Fowler, and his office directed the parish election commissioners to deliver the Secretary of State's set of election records to the parish clerk of court instead of mailing them to the Secretary of State, as required by state law. These instructions were prepared unilaterally by Commissioner Fowler's office in violation of another state law which requires that such instructional materials be prepared jointly by the Commissioner of Elections and the Secretary of State and be approved by the Attorney General before distribution to election commissioners.

Voting machines in Orleans Parish were unsealed and opened before the appointed time and outside the presence of candidate representatives, in violation of state law.

Secretary of State McKeithen also made the general observation—not specific to any particular parish—that election commissioners routinely failed to require voters to prove their identity in accordance with state law.

District Attorney Doug Moreau of East Baton Rouge Parish and his assistant were interviewed by Senate Rules Committee outside co-counsel on May 13 and May 30, 1997. From his office's review of election records obtained from Orleans Parish pursuant to subpoena, he has found the following:

Besides mailing one set of original precinct election records to the Secretary of State on election night (the ''S–19 envelope''), parish election commissioners are required by law to seal the other set of original records in an envelope (''the P–16 envelope''), seal the precinct register, and lock the sealed P–16 envelope and sealed precinct register in the precinct voting machine. Moreau subpoenaed

*Footnotes at end of article.

the P–16 envelopes and contents from Orleans Parish. After reviewing approximately half of these records, he found that none had ever been sealed in accordance with state law.

According to Moreau and his assistant, Sandra Ribes, the Orleans Parish P–16 envelopes appear to have many missing items and discrepancies, including irregularities in record-keeping for absentee voters. Rather than relying upon Moreau's review, however, we have requested these records so that we can conduct our own audit. Our request is pending, so Moreau still has these records.

In response to Moreau's subpoena, it was disclosed by the Clerk of Court in Baton Rouge that many original election records for East Baton Rouge Parish have been discarded, in apparent violation of state law.

Commissioner of Elections Jerry Fowler and staff members were interviewed by Senate Rules Committee outside co-counsel on May 13 and May 30, 1997. They confirmed the following:

Although Fowler's office prepared videotapes and instructional materials properly directing election commissioners to mail the S–19 envelopes and contents to the Secretary of State's office, they did also prepare certain ''customized'' videotapes and instructional materials—at the request of several parish clerks of court, including the Orleans clerk's office—directing the election commissioners in those parishes to send the S–19 records to the parish clerk of court instead of the Secretary of State.

Staff working for the Orleans Parish clerk's office did unlock and open voting machines and remove records outside the presence of designated candidate representatives a short time before the appointed hour for the opening of the machines three days after the election.

State employees reporting to Fowler were in control of the warehouse in which the locked voting machines in Orleans Parish were stored prior to the opening of them three days after the election. The clerk of court of Orleans Parish had ''legal custody'' of the voting machines during this period. It is unclear whether the clerk's staff had actual access to the voting machines during this time. They may have had access to an office within the warehouse, and the portion of the warehouse where the machines were stored was accessible from that office. There was no regular inspection of the storage area nor security check by any of Fowler's employees.

The rear of the AVC voting machines used in Orleans Parish contains a door that can be locked but has no ready means of sealing. This is the area where the election records (P–16 envelopes and precinct registers) were stored. Since the machines were locked but not sealed, a person with a key to the machines could gain access to these election records without it being physically evident that access was gained.

Also relevant to the investigation of breached election safeguards are the admissions by several Orleans Parish election commissioners that they accepted payments from gaming organizations interested in the outcome of questions on the November 1996 ballot. At least one election commissioner has admitted receiving such a payment for electioneering activity performed on election day.

PARTICULAR ISSUES

Separation of election records; delivery to Secretary of State

Legal Requirement: State law requires election commissioners to mail the Secretary of State (S–19) envelope containing one of the poll lists and other records directly to the Secretary of State's office before midnight. La. R.S. 18:572.A(2) and B.

Secretary of State McKeithen explained that this safeguard is designed to prevent tampering with the written election records by separating the poll lists and other important documents immediately upon their leaving the polling places. State law requires that one of the poll lists be mailed to the Secretary of State while the other is to be sealed in an envelope and locked in the voting machine. Mr. McKeithen stated that this is an important safeguard against election fraud, and he noted that it also is a means by which clerks of court can avoid vulnerability to fraud allegations by ensuring they do not have access to all copies of key election records.

Mr. McKeithen stated that, until the recent disclosure that a contrary practice existed in certain parishes, he was unaware of these election law violations. He further stated that, if he had been aware of the existence of this contrary practice, he would have acted decisively to prevent the violations.

Violations: Secretary of State McKeithen, Commission of Elections Fowler, and members of their respective staffs confirmed published reports that election commissioners in at least Orleans, Jefferson, and East Baton Rouge Parishes failed to comply with the legal requirement that they mail the S–19 envelopes and contents to the Secretary of State on election night. Instead, the commissioners delivered the envelopes and contents to their respective parish clerks of court. This placed the second copy of each precinct's poll list and other original records in the custody of the single local election official with access to the remainder of the original records.

Because the Secretary of State does not log in the envelopes upon receipt in his office, we do not know how long the S–19 envelopes and contents remained in the possession of the respective parish clerks of court before they were sent to the Secretary of State.[4]

We do not have authoritative information as to the other parishes in which this violation of state law occurred, when and where such violations have occurred in the past, or the reason or reasons given by the election commissioners-in-charge who took that action. We do know, however, that in the three parishes identified above, and apparently in others, the respective parish clerks of court instructed election commissioners to deliver the S–19 envelopes and contents to them rather than to mail them to the Secretary of State as required by state law.

Commissioner Fowler and his staff confirmed that instructional materials, including both written guidelines and video tapes, were used by the clerks of court to prepare election commissioners in their parishes. In Orleans and apparently other parishes, these materials expressly instructed election commissioners to send the S–19 envelopes and contents to the clerks of the court.

The proper procedure for disposition of the S–19 envelopes should have been clear to the clerks of court and the election commissioners. The Informational Pamphlet prepared jointly by the Secretary of State and the Commissioner of Elections, approved by the Attorney General, and distributed to election commissioners and clerks of court expressly instructs the commissioners to mail these envelopes, with the prescribed contents, to the Secretary of State by midnight on election night. The front of the S–19 envelope itself lists in bold print the items that must be enclosed and specifies that the envelope must be mailed to the Secretary of State.

Importantly, the S–19 envelopes were not sealed by activating adhesive on the envelop flaps or by any other method that would prevent undetectable access. Instead, when ultimately received in the Secretary of State's office, the S–19 envelopes generally were clasped using the metal clasp that is standard on manila-type envelopes.

Although there is no statutory requirement that the S–19 envelopes be ''sealed,'' the requirement that they be ''mail[ed]'' would seem to imply a more secure closing of the envelopes than that accomplished through use of the metal clasp alone. However, Secretary KcKeithen and his staff advised us that the S–19 envelopes have routinely been received by his office in a clasped but unsealed condition.

Regardless of the propriety of the practice of not sealing the S–19 envelopes, the significant point is that those envelopes were—while unlawfully in the possession of the clerks of court (and any others to whom they granted access)—in a condition that permitted easy and undetectable access to their contents.[5]

The significance of the unsealed condition of the S–19 envelopes and the accessibility of their contents is reflected in a published comment made by Alan Elkins, principal assistant to Commissioner of Elections Jerry Fowler. As described below, Elkins was one of the persons involved in preparing instructional materials that directed election commissioners in some parishes to send the S–19 envelopes to the parish clerks of court in violation of state law. Speaking shortly after the disclosure of these violations last month, Elkins was quoted as saying: ''What difference does it make? Those envelopes are sealed anyway. You can't open them without the appearance of them being opened.''[6] In our interview, Elkins acknowledged that the S–19 envelopes actually were not sealed; he now expresses the opinion that fastening the envelopes by clasp was sufficient.

2. Instructions to election commissioners regarding voting procedures and disposition of records.

Legal Requirement: State law assigns various responsibilities for election administration among the Secretary of State and the Commissioner of Elections. While the Commissioner of Elections has statutory authority over the voting machines, the Secretary of State is the chief election officer of the state. Accordingly, state law requires that written instructions to election commissioners regarding voting procedures be prepared jointly by the Secretary of State and the Commissioner of Elections, and that these instructions be approved by the Attorney General La. R.S. 18:421.C.

Secretary of State McKeithen described this provision to us as an important check and balance that is necessary in light of Louisiana's checkered election history.

Violation: The Commissioner of Elections and members of his staff acknowledged to us that, within the last four or five years, they have prepared written and videotape instructional materials that direct election commissioners to deliver the S–19 envelopes and the election records contained therein to the parish clerk of court, rather than by mail to the Secretary of State, as required under state law. The Commissioner's staff advised us that they produced a standard instructional videotape that directed precinct election commissioners to mail the S–19 envelopes and contents to the Secretary of State, but that, at the request of various parish clerks of court, they also ''customized'' some of the videotapes to direct that the S–19 envelopes and contents instead be delivered to the clerks of court. Corresponding written instructions also directed the delivery of the S–19 envelopes and contents to the clerks of court in those parishes.

Commissioner Fowler and his staff were unable to tell us with specificity which parishes requested and received instructional

tapes and written materials ''customized'' in this manner. He did indicate a general belief that the preparation of these instructional materials corresponded with the introduction and initial use of the new ''AVC'' (Sequoia) voting machines in Orleans and several of the other larger parishes. These tapes and written materials primarily were concerned with instructing commissioners in the use of these new and unfamiliar voting machines, but, for reasons Commissioner Fowler did not explain, they also included instructions on the disposition of the S–19 envelopes, which have nothing to do with the voting machines.

Secretary of State McKeithen expressed strong objections to the Commissioner's unilateral preparation of these instructional materials, of which the Secretary of State only became aware last month. McKeithen acknowledged that the Commissioner of Elections is responsible for instructing precinct commissioners in the use of voting machines and therefore could properly prepare those instructions unilaterally, but he stated that the inclusion of instructions regarding disposition of election records was clearly outside of the Commissioner's lawful authority. Secretary McKeithen called attention to the stark conflict between the Informational Pamphlet, which was jointly prepared by McKeithen and Fowler and approved by the Attorney General, and the videotape and accompanying written materials that were unilaterally prepared by Fowler's office in collaboration with local clerks of court. The Informational Pamphlet properly advises precinct commissioners to mail the S–19 envelopes to the Secretary of State; the other materials direct the local commissioners to send the S–19 envelopes to the clerk of court in violation of state law.

3. Sealing of envelopes containing original records; locking of percent registers and envelopes in voting machines

Legal Requirement: As noted above, state law requires that, in the presence of poll watchers and before midnight on election day, election commissioners must seal one copy of the poll list and certain other specified records inside the P–16 envelope, which is marked ''Put in Voting Machine.'' La R.S. 18:571(12). The election commissioner then must place the sealed P–16 envelope and the sealed precinct register in the voting machine, lock the machine, and seal the key in the Return of Key envelope. La. R.S. 18:571(11), (12), (13), (14).

Violation: We have been advised by District Attorney Moreau and his staff that they have examined approximately half of the P–16 envelopes from Orleans Parish, and that none of the envelopes are, or appear to ever have been, sealed in accordance with state law. The P–16 envelopes contained one of the two poll lists, and the failure to seal these envelopes as expressly mandated by state law represents another significant breach of the statutory safeguards relating to election records. We do not yet know whether the precinct registers were sealed.

Importantly, election commissioners in Orleans Parish placed the unsealed P–16 envelopes and the precinct registers in AVC voting machines that were themselves unsealed. State law required the commissioners to lock the door to the rear area of the machines where the records were placed, but, unlike other types of voting machines, the entire AVC machine is not sealed. On the AVC voting machines, the computer cartridge alone is sealed, and the rear area containing the precinct register and P–16 envelopes is merely locked. This circumstance aggravates the concern about the failure of Orleans Parish commissioners to seal the P–16 envelopes (and possibly the precinct registers). Since these crucial records were placed unsealed in a portion of the voting machines that was locked but not sealed, anyone with access to a machine key could have gained direct access to the election records without detection.

4. Unlocking and unsealing of voting machines in the presence of candidates or their representatives

Legal Requirement: State law provides that the voting machines are to be transferred from the precinct polling place to the custody of the parish clerk of court and are to be opened, in the presence of representatives of the candidates, three days after the election. La. R.S. 18:573.A, 18:573.B.

Violation: Secretary of State McKeithen, Commissioner of Elections Fowler, and members of their respective staffs confirmed to us that some significant number of voting machines in Orleans Parish were unlocked and unsealed outside the presence of candidate representatives and before the announced time for the supervised opening of the machines. Neither had direct knowledge of the particulars, but both indicated that Orleans Parish officials had acknowledged the improper action occurred.

McKeithen cited this improper action as a serious breach that, in tandem with other known violations such as the Clerk's receipt of the S–19 envelopes, rendered the Clerk of Court of Orleans Parish, Mr. Edwin Lombard, vulnerable to allegations of election irregularity.

In contrast, Fowler stated to us his understanding that this unlawful action was inconsequential since, according to the information relayed to him, the machines were opened at most fifteen minutes or so before they should have been. Commissioner Fowler further stated his understanding that Mr. Lombard had not personally authorized the improper action; he identified the Deputy Clerk, Mr. Broussard, as the senior official with the clerk of court's office who was present when the machines were opened. Both McKeithen and Fowler stated that the ceremonial opening of voting machines in the presence of witnesses three days after the election had traditionally been regarded as an important event and election safeguard. However, Fowler nevertheless ventured the opinion that the action of clerk's office personnel in opening the machines early, outside the presence of candidate representatives, and notwithstanding the close and contested nature of this particular election, was an incidental action taken for the innocent purpose of expediting the machine opening process.

While Louisiana law was violated by the opening of some or all Orleans Parish voting machines in the manner described above, the significance of this violation in terms of the opportunity for election fraud will not be clear until further investigation has been completed, with regard to access to the election records locked in the voting machines, the following facts are noteworthy:

The voting machines were in the legal custody of the clerk of court from the time they left the polling place until the unlocking and unsealing of the machines on the third day after the election.

The keys to the voting machines were in the possession of the clerk of court during this same period. They should have been contained in an envelope that remained sealed until the envelope was opened and the keys removed in the presence of witnesses three days after the election. However, because the clerk's employees began opening the machines early and outside the presence of witnesses, it is not known whether, and for how long, the key envelopes remained sealed while in the clerk's custody.

The precinct register, poll lists and other original election records were locked in the voting machines, but the rear area of the machines in which they were locked was not sealed; therefore, undetected access to the election records in the machines was possible for anyone possessing a key to the machines.

Prior to the opening of the machines, they were stored in a warehouse controlled by Commissioner Fowler and designated members of his staff. Clerk of Court Lombard had legal custody of the machines during this time, but the extent, if any, to which he and his staff had actual access to the machines is an issue for investigation. Clerk's office personnel may have had access at will to an office area within the warehouse where the machines were stored, and there was unobstructed access from the office area to the part of the warehouse containing the voting machines.

Taken together, the foregoing tends to confirm that the Clerk of Court of Orleans Parish, and presumably persons on his staff, may well have had the ready ability to gain access to the original election records in the voting machines if they so chose. This ability apparently existed for 2–3 days. In combination with the unlawful failure to seal the envelopes and election registers placed in the machines and the unlawful failure to send the other set of election records directly to the Secretary of State, the result in Orleans Parish appears to have been the very situation—a person or small group of persons enjoying access to all copies of crucial election records—that Louisiana law was designed to prevent.

Payments to election commissioners; related issues

Legal Requirement: State law prescribes the qualifications, powers, duties, compensation required training, and method of selection of the precinct election commissioner-in-charge and the other precinct election commissioners who administer the election at the polling places. See La. R.S. 18:424, 18:425, 18:426, 18:431, 18:431.1, 18:433, 18:434. Election commissioners are expressly prohibited from ''electioneer[ing], engag[ing] in political discussions, . . . or prepar[ing] a list of persons at the polling place'' (La. R.S. 18:425.C), and they may not ''in any manner attempt to influence any voter to vote for or against any candidate or election being held in that polling place'' (La. R.S. 18:1462. C). As a practical matter, these officials have virtually no opportunity to assist a candidate or ballot proposition at any other polling place on election day, since they are required to report to the polling place at which they serve no later than 5:30 a.m. on election day and to remain there for the duration of the voting and post-voting procedures; the clerk of court must approve the appointment of any replacement commissioner on election day. La. R.S. 18:433.E(2), 18:434.D, 18:434.E. The lawful compensation of election commissioners is prescribed by statute. La. R.S. 18:424.E. 425.E. State law specifically provides that no person shall ''[o]ffer money or anything of present or prospective value . . . to influence a commissioner . . . in the performance of his duties on election day.'' La. R.S. 18:1461.A(8). Election commissioners must be selected at random from a list of duly trained and certified persons. La. R.S. 18:433.B, 18:434.B.

Possible Violation: News media reports earlier this year disclosed that five election commissioners in Orleans Parish had been paid by gambling interests with issues on the November 5, 1996 ballot. They each received from $30 to $800 from Bally's Casino and Harrah's Jazz Co. for canvassing and distributing ballots. Three of the five were commissioners-in-charge. One of the commissioners-

in-charge was paid $120 for canvassing on election day. Harrah's and Bally's both denied any awareness that the recipients of these payments were election commissioners.[7]

Whether these, and any other, election commissioners received illegal payments or otherwise engaged in illegal activity, and the extent of any such activity, is unknown at this time. When viewed in the context of the opportunities for election fraud created by the breaches of election safeguards previously discussed, the prospect that the integrity and impartiality of election commissioners may have been compromised is obviously of significant concern. These published admissions by certain election commissioners in Orleans Parish suggest the need for close examination of the method of selection and conduct of other election commissioners, particularly in Orleans Parish where the above-described electoral irregularities occurred.

6. Designation of absentee voters; related issues

Legal Requirement: State law authorizes voters in certain circumstances to vote absentee by mail or absentee in person. Absentee in person voting is permitted from twelve days to six days prior to an election. Voters wishing to vote absentee in person must go to the parish registrar's office or other designated location during this time period, present proper identification, cast an absentee ballot, and sign the precinct register or other absentee voter list. Voters wishing to vote absentee by mail must submit a signed application letter and return their absentee ballots before election day. The registrar must enter the word ''absentee'' and the date of the election in the precinct register for each person who votes absentee in person or absentee by mail prior to the sixth day before the election. La. R.S. 18:1311.B After the sixth day, absentee by mail votes received in the registrar's office are recorded on a supplemental absentee voters list.

Possible Violation: Based on information provided to us by District Attorney Moreau and his staff, there reportedly are significant discrepancies in election records which suggest a failure to follow statutorily prescribed absentee voting procedures in at least some precincts in Orleans Parish.

Moreau reviewed some Orleans Parish precinct registers before they were produced in response to the Senate's subpoena, and his review found widespread instances where the registrar's office failed to note ''absentee'' on the precinct register by the names of persons who, according to records maintained by the Commissioner of Elections, did vote by absentee ballot. In the absence of some such identifying mark on the precinct register, it cannot be determined which signatures on the precinct register were supplied by voters on election day and which names were placed on the register before election day.

If our own review of the Orleans Parish election records reveals that election commissioners there did not receive precinct registers properly marked to identify absentee voters and/or did not receive supplemental lists of absentee voters, then a very important safeguard against multiple voting may have been compromised.

7. Retention of election records

Legal Requirement: All voting records and papers must be preserved for at least six months after a general election. La. R.S. 18:403. Certain registration records in federal elections must be preserved for twenty-two months after the election. La. R.S. 18:158.B. In addition, there are special record retention and handling provisions for certain voting records. For instance, the sealed envelope marked ''Put in Voting Machine'' (P–16) must be, after it is removed from the voting machine at the formal opening, preserved ''inviolate'' through the election challenge period. La. R.S. 18:573.D. Similarly, the election result cartridges from voting machines must not be disturbed until the election contest period has lapsed. If no contest is filed, the cartridges may be cleared. La. R.S. 18:1376.B(2).

Possible Violation: It is our understanding that local parish officials may have destroyed election records prior to the lapse of the six-month retention period, in violation of state law. East Baton Rouge Parish Clerk Doug Welborn has acknowledged that his office discarded 286 envelopes containing poll materials prior to the expiration of the six-month retention period. In addition, Allen Parish election records apparently were destroyed due to water damage in a leaky warehouse. We will have a clearer understanding of these and any other document retention/destruction issues after review of the documents and responses received recently from local parish registrars and clerks of court pursuant to the Senate's subpoenas.

8. Identification of voters at polls

Legal Requirement: State law requires that election commissioners identify each voter by requiring him or her to submit a current Louisiana driver's license, current registration certificate, other identification card, or by comparison with the descriptive information on the precinct register. La. R.S. 562.D.

Violation: In response to our query regarding the existence of any other known violations of state election laws in November 1996, Secretary of State McKeithen conveyed to us his general understanding that there were widespread violations of the voter identification requirement in the November 1996 election. Mr. McKeithen related that, in his experience, this provision is not vigorously enforced or complied with in many parishes throughout Louisiana.

FOOTNOTES

[1] ''Officials: Senate Investigators Told of Election Mistakes'', Associated Press, May 16, 1997.

[2] We have been supplied with a copy of the ''Informational Pamphlet for Commissioners-in-Charge and Commissioners on Election Day,'' a document prepared jointly by the Louisiana Secretary of State and Commissioner of Elections and approved by the Attorney General of Louisiana as required by state law. The document reflects that it was last revised in May 1996. This ''Informational Pamphlet'' is a useful reference for information about the requirements of state election law.

[3] There is an apparent discrepancy between the Louisiana election code, which expressly requires that the precinct registers be sealed (see La. R.S. 18:571(11); 18:573.E(1)), and the guidance given election commissioners in the Information Pamphlet, which nowhere instructs election commissioners to seal the precinct register (see pp. 14–16).

[4] The clerks of court in Orleans and Jefferson Parishes each wrote letters to the editor of the Times-Picayune that were published on May 21, 1997. Mr. Gegenheimer of Jefferson Parish assets in his letter that his practice conforms to state law because the envelopes are—and on November 5, 1996, were—mailed to the Secretary of State by the Jefferson Parish Clerk of Court before midnight on election day. Mr. Lombard of Orleans Parish apparently does not make the same assertion in his letter, though the wording is ambiguous. Mr. Lombard's letter does, however, respond to assertions by Jenkins workers that they found no Orleans Parish S–19 envelopes at the Secretary of State's office as late as November 12, 1997. Mr. Lombard states that ''the Post Office has assured [him] that delivery of all mail sacks was made to the secretary of state before Nov. 12, contrary to allegations by the Jenkins camp.''

[5] As noted in footnote 3, Clerks Lombard and Gegenheimer of Orleans and Jefferson Parishes, respectively, each wrote letters to the editor of the Times-Picayune that were published on May 21, 1997. Gegenheimer's letter asserted that the S–19 envelopes were ''sealed'' by the election commissioners at the precincts and that any tampering by the clerk of court ''would be readily discernible.'' Since we have been advised by Secretary of State McKeithen that none of the S–19 envelopes arrived in his office sealed (as opposed to clasped), we need to examine the S–19 envelopes from Jefferson Parish to test the accuracy of Mr. Gegenheimer's assertion. It is noteworthy that Mr. Lombard makes no similar assertion in his letter to the editor, though he does make the statement that ''the U.S. Postal Service provides mail sacks, and seals as well as pickup service for all secretary of state envelopes.'' Both members of Secretary McKeithen's staff and District Attorney Moreau's assistant advised us specifically that the Orleans Parish S–19 envelopes were not sealed.

[6] Walsh, Bill, ''Guide for Poll Workers Faulty, Parts of Policy Broke State Law,'' New Orleans Times-Picayune, May 17, 1997.

[7] Varney, James, ''Casinos Paid Poll Officials, Records Show Commissioner Got Money for Work on Election Day,'' New Orleans Times-Picayune, February 27, 1997.

Mr. FORD. Mr. President, I come to the floor to inform my colleagues that as ranking member on the Committee on Rules and Administration, committee Democrats can no longer participate in a joint investigation of allegations of election fraud in the 1996 Louisiana Senate race as alleged by Louis ''Woody'' Jenkins.

We reached this decision, because what we have learned to date suggests a possible fraud on the U.S. Senate and illegal tampering with witnesses by agents of Mr. Jenkins. This is nothing short of an embarrassment to the Senate and an affront to the people of Louisiana.

This investigation is over budget, it has exceeded the timeframe agreed to, and none of Mr. Jenkins' claims have been substantiated by any credible witnesses.

We come to this decision after waiting 7 months for Mr. Jenkins to provide the committee with credible evidence of multiple voting and of thousands phantom votes, which he has failed to do.

Not only have agents to the committee been unable to locate credible witnesses, but Government Accounting Office auditors have also been unable to substantiate Mr. Jenkins' claims of phantom votes.

Most disturbing, committee members have learned today that there has been continued interference with witnesses to the investigation in Louisiana by agents of Mr. Jenkins. I can't imagine any Member of the Senate, regardless of the party, who would not find this alarming, unacceptable, and certainly nothing the Senate should be party to.

On behalf of Democratic Rules Committee members, I have referred information to the U.S. Department of Justice and asked for an investigation into the incidents of witness tampering and interference with the U.S. Senate investigation.

The results to date have shown that the fraud on which Mr. Jenkins' allegations rest, were not only solicited by a convicted criminal, but involved payment for testimony and are otherwise not credible. There is no way that we, in good conscience, can or should proceed with this investigation.

Mr. President, the fraud has been committed against the U.S. Senate,

not against Mr. Jenkins, and the investigation should be terminated now and stop any waste of taxpayers dollars.

TRIBUTE TO JESSE BROWN

Mr. WELLSTONE. Mr. President, I rise today to pay tribute to a dynamic leader, very capable public servant, tenacious veteran's advocate, and a good friend—Veterans' Affairs Secretary Jesse Brown.

I am saddened by the news that Secretary Brown is leaving after four productive and hard working years at the helm of the U.S. Department of Veterans' Affairs. Under his leadership, the VA and veterans have made tremendous progress.

Jesse Brown fought battle after battle to protect, reform, and fully fund veterans' health care. Jesse Brown won most of those battles.

Jesse Brown fought to strengthen benefits for Vietnam veterans exposed to Agent Orange. He fought for their children suffering from Spina Bifida. Jesse Brown won those battles.

Jesse Brown fought to improve the veterans' benefits claims process. He better than anyone knew the importance of timely, accurate, and fair decisions.

Jesse Brown worked hard for veterans with post-traumatic stress disorder, Persian Gulf war veterans, women veterans, homeless veterans, and many others.

Most importantly, Jesse Brown cares about people. I've seen him on many occasions stop what he's doing to visit one-on-one with a veteran in need or a grieving loved one. In an airport, on the street, in a hospital, at VFW post, Jesse always took the time to listen to people and to try to help them. That is what leadership is all about. That is what being an effective public servant is all about. That is what being a veterans' advocate is all about.

Jesse was never afraid to speak his mind and fight for veterans and their families—no matter the strength of the opposition or political risk to him. He did what he thought was right. He was proud to be their advocate and it should come as no surprise when said that being Secretary had been the high point of his life. Jesse Brown, a former Marine wounded in Vietnam, can feel good about his accomplishments and he can feel proud that his place in history is secure. He will be known forever as the Secretary for Veterans' Affairs. He will be known as one of the best veterans' advocates the country has ever seen.

Here are some of the comments that veterans, their families, and veterans' advocates have shared with me since learning the news that Jesse is leaving the VA.

Jesse brought to the VA real experience, knowledge, and wisdom to prepare the VA for the 21st Century. We'll miss him.''—Bernie Melter, Commissioner, Minnesota Department of Veterans' Affairs.

Jesse Brown's commitment to veterans will never be questioned and his tenure as Secretary for Veterans Affairs will go down in history as the greatest advocate for veterans we'll ever see.—Duane Krueger, Vietnam veteran and Anoka County Veterans Service Officer.

Secretary Brown's departure is a major loss for all veterans. His advocacy for veterans was without regard to political affiliation and was based upon the fact that as a veteran you had earned your entitlement.—Wayne Sletten, Vietnam era veteran and Lake County Veterans' Service officer.

In my personal opinion Secretary Jesse Brown was the best leader of the VA we've ever had.—Chuck Milbrandt, Director, Minneapolis VA Medical Center.

At a time when my family was struggling to obtain my late husband's benefits for Agent Orange, Jesse took the time to personally review the case and ensure that we received all the benefits to which we were entitled. We owe a great debt of gratitude to Jesse Brown and his commitment to helping people.—Leesa Gilmore, widow of Vietnam Veteran Tim Gillmore.

Secretary Jesse Brown will be sorely missed by all of us at the St. Paul VA Regional Office and Insurance Center. He was a strong and fair leader and served as an excellent role model on how we ought to serve veterans and their dependents. We will miss his guidance, candor, and wit. We wish him the best of luck in future endeavors and know that he will continue to be a strong advocate for all veterans.—Ron Henke, Director, St. Paul VA Regional Office and Insurance Center.

These are some of the many people who have expressed their admiration and respect for Jesse Brown and who want to recognize his many achievements during his tenure in office.

For me, I will dearly miss working side-by-side with Jesse fighting for veterans and their families. Like veterans in Minnesota, he has been my teacher and today here in the U.S. Senate I am proud to honor him and thank him for his incredible service and wonderful friendship.

Mr. President, I ask my colleagues to join me in paying tribute to VA Secretary Brown and properly recognize him for his many years of service and commitment to the Nation and her veterans.

MEDICARE PROVISIONS VIOLATE BIPARTISAN BUDGET AGREEMENT

Mrs. MURRAY. Mr. President, as a Member of the Senate Budget Committee, I have spent the last four months in ongoing negotiations working towards the enactment of a real, balanced budget plan. I was part of the bipartisan negotiations that resulted in the historic balanced budget agreement. Getting to this agreement was not an easy task, but I realized that the need to get to balance was critical. I negotiated in good faith and believed that the final product was an equitable, fiscally sound agreement that did balance the budget without jeopardizing vital programs.

The agreement ensured the continued solvency of Medicare. It guaranteed that Medicare would remain an affordable health insurance program that provided quality health care for millions of senior citizens. The agreement also allowed for an expansion of health insurance for 10 million children that have no health insurance. It called for the largest investment in education in over 30 years and it would provide real tax relief for working families. While I still had some reservations about the agreement, I supported the package because I knew that in any good faith negotiation one can never expect to win on all points. It was not a perfect agreement and as I have said in the past, it is not the one that I would have produced. But, it was a bipartisan, fiscally sound balanced budget agreement.

The agreement called for $204 billion in net deficit reduction. This would be in addition to the over $200 billion in deficit reduction already accomplished as a result of the 1993 deficit reduction package. The agreement built on this successful deficit reduction package which resulted in 4 straight years of declining deficits. In 1993, the annual Federal deficit was close to $300 billion, for 1997 the Congressional Budget Office estimates that the deficit could fall to $70 billion. I was proud to be part of this deficit reduction effort and believed that we could get our fiscal house in order.

Following passage of S. Con. Res. 27, the FY98 Budget Resolution, which incorporated the balanced budget agreement, I was hopeful that a fair, equitable and fiscally sound balanced budget would be in place by the end of the year. I negotiated in good faith; I agreed to adhere to the agreement; and I was of the belief that my colleagues would do the same.

Unfortunately, the reconciliation spending measure adopted by the Senate, violates this bipartisan agreement. But, more importantly, it violates the commitment I made to my constituents when I was elected to the U.S. Senate.

One of the commitments I made to the people of Washington State was to work to expand affordable health care for all Americans. I am proud of the steps we have taken to improve access to health care for more Americans. Unfortunately, included in this reconciliation legislation is a provision that will deny affordable, quality health insurance for those Americans age 65 to 67. Increasing the Medicare eligibility age from 65 to 67 will deny affordable, quality health insurance for millions of Americans. I cannot in all good conscience support legislation that increases the number of uninsured Americans. We should be looking to reduce the numbers of Americans with no health security, not adding to it.

I did not come to this decision without a great deal of thought. I have listened to the debate on both sides of these issues. I cannot help but think about the impact that these provisions will have on senior citizens who have worked hard all of their lives and are now facing escalating health care costs and limited retirement income. I only need to think about my own parents to