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INVESTIGATIVE HEARING REGARDING ROLL CALL 814, DAY 1

HEARING

BEFORE THE

SELECT COMMITTEE TO INVESTIGATE THE VOTING IRREGULARITIES OF AUGUST 2, 2007 HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

MAY 13, 2008

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SELECT COMMITTEE TO INVESTIGATE THE VOTING IRREGULARITIES OF AUGUST 2, 2007

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INVESTIGATIVE HEARING REGARDING ROLL CALL 814

TUESDAY, MAY 13, 2008

HOUSE OF REPRESENTATIVES,
SELECT COMMITTEE TO INVESTIGATE THE VOTING
IRREGULARITIES OF AUGUST 2, 2007,
Washington, DC.

The Committee met, pursuant to call, at 10 a.m., in room 1539, Longworth House Office Building, Hon. William D. Delahunt (Chairman of the Committee) presiding.

Present: Representatives Delahunt, Davis, Pence, and LaTourette.

The CHAIRMAN. The hearing of the Select Committee will come to order. Let me begin with my own statement. First, the Committee would like to extend our thanks to the witnesses who will testify today. We thank them for the time and assistance they have already provided to the Committee as they have all been previously interviewed by Committee members and staff. Additionally, I want to extend our collective appreciation to all of the individuals, Members, officers, and staff of the House who the Committee has called upon to assist us in our work. Every single one of them, without hesitation, responded diligently and professionally to all of our requests.

In particular, I would like to recognize the Clerk of the House, Lorraine Miller, who we have not asked to testify today, but who along with her counsel, Russ Gore, has devoted countless hours educating the Committee, compiling document productions and providing us with unfettered access to her staff and explaining the Clerk's Office internal operations.

I know I speak for all of the Committee when I say that all of the offices and professional staff of the House with which we have interacted are of the highest caliber and we are grateful for their service; the Office of the Parliamentarian, the Chief Administrative Officer, and the leadership staff on both sides. The American people should be confident and proud of the collective service they provide to the people's House. Now, the purpose of these hearings is to discover what happened on August 2nd during Roll Call 814. Voting in the House can be chaotic, confusing and often an emotional process. And on that particular evening, many Members left the floor feeling frustrated and dissatisfied, not simply with the result, but with the process. I understand this Committee's mandate is to determine how and why this roll call unfolded in the manner that it did, and make recommendations to ensure the integrity of the voting procedures. I would also suggest that implied in this

charge is a task to, not only ensure confidence in our voting procedures, but to abate the anger and mistrust that was evidenced that evening.

As our first witness, Kevin Hanrahan, testified during his interview, "the atmosphere in the Chamber was vitriolic, at best it was hateful. In my whole time I have seen some weird stuff, but that night was the worst. Everybody was hateful. And I am putting that gently." And while my own opinion is that there has been considerable improvement in the mood and atmosphere in the House, my hope is that the Committee's work can further enhance civility and respect among Members that is necessary for the proper functioning of the people's House.

Now, it should be noted that a great deal of time and effort has already been devoted to the Committee's task. We have been working. Members and staff have spent hundreds of hours on this undertaking. I cannot overstate their diligence and commitment and I wish to publicly commend them. We were fortunate to have the benefit of a videotape of the event that evening. And Committee members and staff have reviewed that tape countless times. We have also requested and reviewed over 5,000 pages of documents, e-mails, logs, notes and memoranda from over 33 individuals and six offices in the House. We have conducted over 20 interviews and have taken almost 50 hours of testimony. We will be making all of the transcripts of those interviews, as well as all of the documents, part of the official Committee record today.

And I would move that we now, by unanimous consent, move to place all of the documents that I just enumerated into the official record. And hearing no objection it is so ordered.

[The information described is available in the Committee archive. Opening statements can be found in the Appendix of this transcript.]

The CHAIRMAN. Now, I would be remiss if I failed to note the contribution of the Congressional Research Service in assisting with the drafting of the interim report, which was filed on September 27, 2007. This interim report laid out the steps we anticipated would be necessary to conduct a thorough inquiry of the events surrounding Roll Call 814. Next, we conducted three public hearings on the history, rules and customs surrounding voting in the House of Representatives. What was particularly revealing, even at that early stage, was how little many of us, particularly myself, knew about the process that is involved in recording the votes cast in the House of Representatives. The parliamentary rules and procedures, as well as the instrumentalities, the computer, the electronic voting system, the boards, the tally slip that serve as the infrastructure of the voting process, is complex and it requires a high degree of coordination. We interviewed the Clerk of the House, the deputy clerks, and the parliamentarian emeritus, Charles Johnson.

We conducted an in-depth walk-through of the House floor and the electronic voting system, or to use the acronym, the EVS, and took a view of the EVS control room. We used these hearings and the expertise of the Congressional Research Service to provide a strong foundation going forward.

I must take special notice of the outstanding work of Judy Schneider and Mike Koempel, for without their assistance, I believe the Committee, or at least myself, would have been adrift as we embarked upon our work. I think it is important to note that while the videotape is clearly helpful, it has its limitations. I believe we have made good use of it, and I expect we will utilize this videotape today and in the future.

However, as we will see, it does not provide a panoramic view of the House. Nor does it explain the actions of the principals, the key players. Therefore, our witnesses today are vital in understanding Roll Call Vote 814. And that is why the Committee invited these particular individuals to testify. At our first public hearing, I said a number of things that I believe hold true today. First, none of us chose this assignment. Secondly, though none of us asked for this task, I can say that I am privileged to serve with the other five members of the Select Committee. We have worked well together, as has our fine professional staff.

August 2, 2007, was a Thursday, but it wasn't just any Thursday. It was the last day before Congress was supposed to break for the August recess. Members were exhausted, staff was exhausted and we were all anxious to go home. As a senior rostrum staff person said during his interview in February, "the workload," and these are his words, "the workload that three months, June, July and August, was maybe one of the worst I have ever seen in all of my time here. We set a record with roll calls." Another officer of the House stated, "it was the ugliest week I can remember in the House." Another said, "we were all tired that night, it was a long night and we had a stack of votes on a bunch of amendments. And then we moved into what we all thought was going to be the final passage and then hopefully go home." Roll Call Vote 814 was a motion to recommit promptly H.R. 3161, the fiscal year 2008 appropriations bill for the Department of Agriculture. Roll Call Vote 814 was supposed to take place around 10:00 at night after a series of 9, 2-minute votes on amendments to H.R. 3161. Congressman Mike McNulty was presiding.

At this point I should note that Mr. McNulty's reputation among his colleagues and the staff is well known for integrity and professionalism, and his ability to serve as the Speaker pro tem. Both leaders following August 2nd have reaffirmed their respect for his service to this House. Majority Leader Steny Hoyer stated, "I think McNulty is a competent accomplished presiding officer, and I think he is perceived by all Members as a very fair individual of high integrity, and I think he is that."

Similarly, the Republican leader, John Boehner, said on the morning following Roll Call 814, "I accept the regrets offered by my friend from New York," referring to Mr. McNulty. "Having been in the Chair myself, I understand how it can happen. He and I are friends. In fact, he is one of the fairest Members who could ever be in that Chair." Well, the vote began at 10:34 and 5 seconds. And as time passed it was clear that the vote would be close. At 10:49 and 47 seconds, which would be 15 minutes and 42 seconds into the vote, the Speaker voted against the motion and the vote was tied. At 10:50 and 8 seconds Mr. McNulty announced the tally, but

did not proceed with any further statements that are often integral to closing down a vote.

At 10:50 and 15 seconds, more Members appeared in the well and took possession of well cards, arguably, manifesting intent to change their votes. At 10:50 and 29 seconds more Members entered the well, similarly obtaining well cards. At 10:51 and 30 seconds, Mr. McNulty announced that the vote is tied at 214 and the motion is not agreed to. A fraction of a second later, the tally on the display board in the Chamber refreshed, I would use the word change or uptick, as the professionals use that term, reflecting a different tally than the one that Mr. McNulty announced. It is fair to say that chaos erupted.

Six seconds later, two additional Members turned in well cards, which the clerks accepted and announced as changes. For those of us in the Chamber that night, the noise level was, again, as our first witness described, deafening. As another witness said, you could hardly hear. We were then, as the parliamentarian stated, in unchartered territory. Well, among the first orders of business the next day were apologies offered by the Majority Leader, Mr. Hoyer and Mr. McNulty, for the events of the evening before. During this hearing we will review the beginning of Roll Call 814 through the subsequent motion to reconsider Roll Call 815. That is the time frame that falls within this Committee's jurisdiction. I look forward to listening to the testimony we will hear today. And while I certainly have reached no conclusions, I do have a sense that when the dust settles, that as we consider the events of that evening with the advantage of hindsight and a calm perspective, a culprit may emerge. And I have a hunch that we will see it in the form of a rule, a rule that was enacted with a noble intent to curb other perceived abuses, but a rule that is, at best, difficult to enforce, and at worst, the catalyst for the raw anger that we observed on August 2nd.

As I said, our purpose is to determine what happened and what changes to the voting procedures may be necessary or may be an improvement so that a similar situation does not reoccur. I look forward to working with all members of the Select Committee to put forth a final report that reflects the good work we have done to this point and encompasses the thoughtful and respectful deliberations that I am confident we will undertake to develop positive recommendations for our voting procedures in the House of Representatives. That concludes my statement, and I now yield to the Ranking Member, the gentleman from Indiana, Mr. Pence.

Mr. PENCE. Thank you Mr. Chairman. And I want to take this opportunity to thank Chairman Delahunt for holding this investigative hearing of the Select Committee to Investigate the Voting Irregularities of August 2, 2007. And on a personal note, Mr. Chairman, I want to thank you for the collegial spirit and cooperation and courtesy that you have shown to the Members of this Minority throughout this inquiry.

The CHAIRMAN. Thank you.

Mr. PENCE. The integrity of the House of Representatives is completely dependent on the integrity of the vote that takes place on the floor of the Congress. Every American is entitled to have a voice in the People's House and to know that their representative's

vote counts. This Select Committee has been tasked with the responsibility of investigating what happened during Roll Call 814 held on the night of August 2nd, and making recommendations to the House regarding necessary changes to the House rules and proceedings so that the voting right of every Member of Congress is protected.

I am confident that today's hearing will go a long way toward fulfilling this responsibility. Now, there were some who predicted that the Select Committee would never meet, let alone hold public hearings. I am very pleased that all six members of the Select Committee have been able, over the course of many months, to put the interests of the American people and this institution above partisan politics. I would like to thank the members of both parties on this Committee and the staff for conducting this investigation in a truly bipartisan manner. As the Chairman said, and I would associate myself, it has been a privilege to work with the men and women on this Committee and with their capable staff and counsel. I particularly would like to express my appreciation for my Republican colleagues on this Committee. Representative Kenny Hulshof has made an extraordinary contribution of time and professionalism to this effort. And I would like to offer special gratitude and recognition to the vice ranking member of this Committee, Steve LaTourette of Ohio.

I thank both of these men for lending their professional experience and their extraordinary reputations for integrity and commitment to the institution to this inquiry. As the Select Committee held educational hearings last fall and then moved forward with its investigation, a clear commitment to fairness and the facts was exhibited, befitting the serious business with which the Select Committee was tasked. I am pleased to report that we have taken on this responsibility with a thorough and professional investigation. As the chairman stated, we retained outside counsel to lead the investigation, we collected and reviewed over 6,000 pages of documents and conducted more than 21 transcribed interviews with witnesses, all of which, by unanimous consent today, will be a part of the record of these proceedings.

As a result of these efforts, we now have a solid understanding, not only of what happened on the evening of August 2nd, but also why it happened. While our examination of the documentary record was substantial, it was hampered by limitations created by the failure of some parties to take timely action to preserve relevant documents. For instance, if the Chief Administrative Officer of the House had been more diligent in preserving potentially responsive documents as required by our authorizing resolution, the picture might be even clearer.

Before I go on with my statement, since nearly a year has passed since that night in August, I think it would be appropriate to watch a short video of some of the key scenes from that night. And I would ask unanimous consent to make this video a part of the record.

The CHAIRMAN. Without objection.

[Video was played. The video can be found in the Committee's archive.]

Mr. PENCE. Catlin O'Neill, the aide to the Speaker is in orange, the Speaker of the House is circled in blue, the Majority Leader is circled in red, Jerry Hartz, an aide to the Speaker, is circled in yellow, and the Parliamentarian, John Sullivan, is circled in green.

[The color code can be found in the Appendix.]

Mr. PENCE. Roll Call 814 was taken on the Republican motion to recommit the Agriculture appropriations bill on the night of August 2, 2007. The Republican motion would have denied taxpayer benefits in that bill from going to illegal immigrants. It was, to say the least, a contentious and controversial issue in Congress. The evidence will show that the Republican motion to recommit passed the House by a vote of 215–213, and was overturned by the Democratic Leadership and the Speaker pro tem.

In the face of pressure from the Democratic leadership to shut down Roll Call 814 while they were prevailing, the Speaker pro tem, Representative Mike McNulty, bypassed well established procedures for closing a vote. This failure threw the House into chaos, and what one veteran professional staff member called "unchartered territory," undermining the confidence in the integrity of the House. Given the video record that we just viewed and the candor and cooperation of numerous witnesses, most of the facts about what happened that night are not in dispute.

After the minimum time for voting had expired, Speaker Pelosi received a signal to go to the well and cast her vote, making the total 214–214. Mr. Hoyer was quite candid during his interview with the Select Committee, acknowledging that he had expressed, in no uncertain terms, a strong desire that the vote be closed as soon as the Speaker cast her vote. To this end, he yelled at the Chair to close the vote in a voice loud enough to be heard. This was confirmed by at least five witnesses on the rostrum that evening. At the time the Speaker voted, Mr. Hoyer can be seen near the rostrum having a conversation with Catlin O'Neill of the Speaker's floor staff.

Mr. Hoyer recalled telling Ms. O'Neill words to the effect of "We need to shut down the vote when we are prevailing." The video shows that Ms. O'Neill immediately turned and said something to the Chair, who then attempted to close the vote for the first time. Ms. O'Neill and Mr. McNulty both have denied giving or receiving any instructions about closing the vote that evening. It is troubling that their testimony was contradicted by the testimony of Mr. Hoyer. The Chair attempted to close the vote at 214–214, but stopped short when it became clear that well voting cards were still being processed. Believing that the parliamentarians had somehow prevented Mr. McNulty from closing the vote while the Majority was prevailing, Mr. Hoyer angrily vented his frustration toward the Parliamentarian, John Sullivan.

In remarks that can be clearly heard on the video, he said, "We control this House, not the parliamentarians." This outburst occurred on the rostrum a few feet from Mr. McNulty. And shortly thereafter, Mr. McNulty banged the gavel and called the vote at 214–214 and declared that the "motion was not agreed to." However, in the time between the Chair's first attempt to call the vote and the second, three Florida Republicans had changed their votes and the tally clerks were still entering those changes in the

House's electronic voting system. Consequently, the display board in the Chamber upticked to 215–213 milliseconds after the Chair's second and final announcement of 214–214, creating an atmosphere of confusion and anger on the House floor, because at that time with those votes counted properly, the motion had, in fact, passed. Mr. McNulty explained during his interview that he intended to close Roll Call Vote 814 as soon as the last of the three Republicans had voted, concerned that holding the vote open any longer might allow other Members on both sides of the aisle to change their votes, and that such a delay might violate clause 2(a) of rule XX, which states that, "A recorded vote by electronic device shall not be held open for the sole purpose of reversing the outcome of such vote." As Mr. Hoyer himself readily acknowledged, the presiding officer, Mr. McNulty, certainly had the discretion to close the vote at this point, when the true vote count was 215–213 in favor of passage. Clause 2(a) of rule XX in the House also provides "The clerk shall conduct a record vote by electronic device." It is uncontroverted that Mr. McNulty, an experienced and respected Chair who has presided over dozens, perhaps hundreds of votes, called Roll Call 814 without giving the employees of the Clerk of the House an opportunity to conduct a record vote, prepare a tally slip and certify the results.

While the requirement of the tally slip is not formally codified in the Rules of the House, numerous witnesses have stated that this tally slip is deeply embedded in the traditions of the House and that they have never before seen a vote closed without one. Had Mr. McNulty followed this long-standing procedure, the tally slip would have reflected a 215–213 vote total in favor of passage of the Republican motion denying taxpayer benefits from going to illegal immigrants. Rather than simply making a new announcement of the correct result, Mr. McNulty compounded his error by allowing the vote to remain open after he had announced the final result, enabling three Democrat Members to switch their votes, thereby altering the outcome from passage of the Republican motion to failure.

Remarkably, numerous witnesses and the documentary evidence attest that a tally slip prepared by the Clerk was never produced in connection with Roll Call 814. I take no pleasure in saying this, but it is simply not plausible that such an experienced presiding officer simply forgot to wait for the tally slip during the course of such a close and controversial vote. Instead, I believe the evidence gathered by the Select Committee will show that the Chair rushed to close the vote in face of pressure from the Democratic leadership, and in so doing, side-stepped a long-standing procedural safeguard designed to ensure the integrity of the vote on the floor of the House.

During an interview before this Committee when asked whether his demeanor or actions, "may have unintentionally created an environment of more pressure on [Mr. McNulty] to close the vote," the Majority Leader did not argue the point, but merely replied that that was "certainly possible." Leadership instructing a presiding officer about the timing of closing a vote is hardly uncommon. But as one professional staff member explained, he had "never seen the Chair buy into it, never." When any Majority feels

that it can cut corners to achieve a particular legislative result, we risk reducing the most powerful democracy in the history of the world to a banana republic.

The chaos of August 2nd was a dark moment in the history of the United States House of Representatives, and it must never be allowed to happen again. The imperious actions of the Democratic Leadership unduly influenced the Chair and undermined the will of the American people on the controversial and divisive issue of taxpayer-funded benefits for illegal immigrants. Our national legislature was designed to resolve just such issues through the democratic process. But to accomplish this, the American people must have absolute confidence that their will is being worked in the People's House, and not thwarted through political gamesmanship, procedural sleight-of-hand, or a win-at-all-costs mentality. We cannot restore Roll Call 814, but this Committee can restore what has been taken: the fundamental respect for the independence, fairness and integrity of the House of Representatives.

By acknowledging what happened that evening and embracing the reforms necessary to ensure that it never happens again, this Congress can learn the lessons of August 2nd, move beyond that dark moment and restore the confidence of the American people that this is not a Democratic House, this is not a Republican House, this is the People's House, and their will is worked every time a vote is called. I look forward to hearing from our witnesses and thank the Chairman again for his courtesy and cooperation.

[The statement of Mr. Pence may be found in the Appendix.]

The CHAIRMAN. Thank you, Mr. Pence. And pursuant to our understanding I will now go to Mr. Davis for any observations he may have. And I would respectfully request he limit them to five minutes.

Mr. DAVIS of Alabama. Thank you, Mr. Chairman. And I will try to do even better than the five minutes, because I want to get us to what we are here for: Just to hear from witnesses today. Let me begin with just one general observation. As I have been a member of the Select Committee over the last several months, I am heartened about one thing. I think that the work of this Committee and the cooperation this Committee has practiced as we moved to this point today reminds me that one can debate about, disagree about, have contentious arguments about very emotional polarizing issues and still do it in a respectful way. That has been the tone of the last 6 or 7 months in which this Committee has done its work, and I frankly say with great confidence, I believe it will be the tone of the hearing today. And if we learn nothing else from this process, Mr. Chairman, I hope it is that the spirit with which we have conducted this investigation can be a template for the way we go about resolving many more substantive, many more difficult issues that face the House day in and day out.

The other two observations I want to make are more factual. I expect there will be two dominant things that will happen over the next several hours. The first one is that, in approximately one hour, a Member of the House of Representatives, a distinguished veteran Member, Michael McNulty, is going to come before this Committee and do something that very few people of our ilk ever do in public; that is acknowledge that he made a mistake. And he

is going to say that he did it not out of any malice, not out of any intent to disenfranchise, but because he looked up at a board that was tallying the votes and he mistakenly thought it reflected the sum total of all Members who voted that night.

But he will acknowledge that that was a mistake. What was the effect of that mistake? I think the testimony will be very clear over the next several hours that as a practical matter the vote was kept open for approximately seven minutes in real-time, more than ample time for Democrats or Republicans, people yea or nay on this motion to recommit, to change their vote, rethink their vote or do anything else they wished to do.

Seven minutes elapsed after what Mr. McNulty will acknowledge was an erroneous calling of the vote. Over those 7 minutes, some Members did change their votes and that led to the vote total that was announced that night. Finally, Mr. Chairman, I expect that the evidence will show that the Democratic leadership actually went beyond even that to make things right that night.

The Majority Leader went to the floor of the House of Representatives and said let us just do it over, there was an erroneous calling of the vote, let us just start it over, let us make a motion to reconsider, let us set the vote aside, let us do what needs to be done procedurally so that we can do it right. And instead of the other side of the aisle, the Republican caucus saying, Mr. Leader we thank you for agreeing to set this vote aside, they responded by walking out of the House; the opposite of comity, the opposite of the kind of decorum that this Committee has followed and that we all urge on the floor of the House. So none of us are happy to be here, but it will be an interesting day, an instructive day, and Mr. Chairman, I thank you for your leadership.

The CHAIRMAN. Thank you, Mr. Davis. The gentleman from Ohio, Mr. LaTourette.

Mr. LATOURETTE. Thank you very much, Mr. Chairman. And I want to echo the remarks that have been made by the three previous speakers. It has been a pleasure to serve on this Committee. Before this service I knew you, Mr. Chairman, but I didn't know Mr. Davis, Ms. Herseth Sandlin very well, and it has been a pleasure to get to know them, and it is one of the happy circumstances of this work. I noticed in your rather lengthy opening remarks, Mr. Chairman, you didn't indicate that the Cleveland Cavaliers had beaten the Boston Celtics by 11 points last night, and I am sure that that is an oversight on your part.

The CHAIRMAN. It was a stolen game, Mr. LaTourette.

Mr. LATOURETTE. If Steny Hoyer could dunk like LeBron James we wouldn't be here.

The CHAIRMAN. That is right. See you in Boston Garden.

Mr. LATOURETTE. I am glad in your opening remarks too you talked about how a culprit will emerge. In part of my misspent youth, I had read a lot of Agatha Christie, and I now have reread about six of her books and I find them to be very fascinating. And the interesting thing is that as you read through the pages, you think you know who the culprit is, and then when you get to the end you find that the culprit is not in fact who you thought it was. And that is really the mastery this Ms. Christie brought to her literary genre. And I agree with you that this false rule, 2(a), clause

2(a) of Rule XX, is one of the culprits. But I think that the evidence today will bring forth other culprits as well. My view is that the Majority party should always win in the House of Representatives. It should always win because there are more Members. And on any vote, the Democratic Party now, the Republican Party for the last 12 years, had more Members. And at any time that the Majority party can marshal their forces, they should win the vote.

That is the way that the process works, that is the way our elections work. Now, from time to time the chairman mentioned what busy months those were, and I can remember a celebration where the new Majority celebrated their 1,000th vote. And I would tell, I think they really should have patted them on the back when they made that announcement for their 1,001st vote because we had two 814s, and I don't think they got credit for the extra 14. But 990 of those votes are pretty controversial. And there are only maybe 10, a very small fraction, where there are issues that aren't necessarily divisive by party, but perhaps where you live. Geography; westerners versus easterners, southerners versus northerners. And issues like guns. I think it is a fair observation that more Members of the Democratic Party would support more regulations on firearms than would in the Republican Party.

On the issue of abortion, I would suggest that it is fair to say that more Members of the Democratic House are pro choice and the reverse would be true on the Republican side. And likewise with immigration; there is clearly a split between the parties and within the parties on this issue of immigration which brought us to this particular evening. And so on the close votes, you don't have the situation where the Majority just puts up its 230, 235 votes, you have some defections. And on this evening you had 19 Democrat defections that voted in favor of the motion to recommit. And continuing with the sports analogy just for a minute, Three River Stadium, every time they had a Pittsburgh Steelers game they would talk about the confluence of the Monongohela, the Allegheny and the Ohio Rivers. And this hearing, I think, will bring together a confluence of the rules, the unbroken precedence of the House and the transitions of the House, which all need to be given weight.

And I think most of us are lawyers, and we are familiar with the black letter law, and we can talk about the rules. And I think it would be impossible for a rule book to cover every situation that could occur in the House unless it was many, many, many volumes. And I would hearken back to an article that was written right after this vote by Norman Ornstein. And I think he had it right. And that is, the Majority can win any vote, but what the Majority cannot do is win or steal a vote and shield some of its Members from having to take a difficult vote on guns, a difficult vote on abortion or a difficult vote on immigration, which was the case on August the 2nd.

The second thing is this vote is still not right. Mr. Boehner's card was never processed. Mr. Boehner's change card was never processed. And this vote isn't 214–214. I think it should have been 215–213. And it is not 212–216, it is 211–217. And that is the vote that occurred on that evening if you are permitted to keep it open for these last 7 minutes that Mr. Davis talked about. And this notion

that the Majority Leader was just really fair and said start over, there was a remedy here.

The remedy was that at the time that Mr. McNulty issued the magic words that the motion is not agreed to, he could have made a second announcement that it is 215 to 213, the motion is agreed to and we still could have had, because the Rules of the House permit a motion to reconsider, any one of those three Democratic Members; Space, Gillibrand and McNerney, who changed their votes at the very end, because they would have been on the prevailing side, could have made the motion to reconsider and we would have had that vote anyway. So I look forward to the testimony, I appreciate the comity on both sides and thank you for your time this morning.

The CHAIRMAN. Thank you, Mr. LaTourette. And now we will call our first witness, Kevin Hanrahan. Mr. Hanrahan, will you proceed to the witness table? Kevin Hanrahan is a native of Nebraska. He began his career in Congress in 1978 as a staff member of former Representative John Cavanaugh. He joined the Office of the Clerk in 1979 as assistant tally clerk and was later promoted to senior legislative clerk. Mr. Hanrahan recently succeeded Mark O'Sullivan as chief tally clerk of the House. He has served the House of Representatives under 16 different Speakers and seven different clerks. Welcome Kevin. Pursuant to a conversation that Mr. Pence and I had prior, we have agreed to attempt to limit the questioning of the witnesses to an hour to be divided equally between the Minority and the Majority.

And I indicated to Mr. Pence that it was my intention to let Mr. Davis, the Vice Chair of the Committee, to conduct our inquiry so that we have coherence in our questioning. And let me begin with Mr. LaTourette.

Mr. LATOURETTE. I think actually, Chairman, the Ranking Member is going to ask some questions on our time and then hand off, if that is all right with everybody.

Mr. PENCE. The ranking member's prerogative.

The CHAIRMAN. Sure.

Mr. PENCE. Just a couple of brief questions for our witness. And Mr. Hanrahan, thank you for not only——

The CHAIRMAN. I didn't see Mr. Hanrahan with any papers in front of him, so I presume he did not have an opening statement.

Mr. HANRAHAN. That's correct, sir.

The CHAIRMAN. So then let me again yield to Mr. Pence.

Mr. PENCE. Thank you Mr. Chairman. Let me just reiterate my appreciation for your cooperation with the Committee, not only appearing today, but also your cooperation with the Select Committee from the very beginning. And let me also congratulate you on, I think more than a quarter century of service to the American people in your capacity. I think you do great credit to the House, and we are appreciative of your service and your cooperation. A couple quick questions before I yield the Majority of our time to Mr. LaTourette. In your 25-plus years of experience in your capacity, have you ever been involved with the closing of a vote without a tally slip?

Mr. HANRAHAN. No, sir, I have not.

Mr. PENCE. The Parliamentarian, John Sullivan, told the Select Committee that a written tally slip is "probably the most important quality control device in the announcement of a vote." Would you agree with that statement?

Mr. HANRAHAN. Yes, sir, I will agree with that.

Mr. PENCE. Lastly, for the record, did you, at any point in time, in connection with Roll Call Vote 814, prepare a tally slip?

Mr. HANRAHAN. I didn't have one ready when the vote was closing, but we have a practice, if you will, of in keeping with trying to keep things moving along rather than slow them down, it is not uncommon for the standing tally clerk to write the first digit of each of the totals in order to just save time. As long as we have topped over, for instance, if it is a 200 on one side, it would be okay to write a 2 and a 100 on the other side, a one. It saves time. And it might be construed as starting something, but it shouldn't be construed as a final product because it is not done, it isn't finished and hasn't been completed and turned in. We do it once in a while just to move things along and try to be ready, but it is not a be-all/end-all to the closing of a vote until we are through writing the tally and hand it up to the Chair for announcement to the House.

Mr. PENCE. In connection with Roll Call 814, is it your testimony that you did begin to create such a document?

Mr. HANRAHAN. To be perfectly truthful, I don't honestly remember. I might have, because I was not unaware of the situation we were in. And there may very well have been a partially completed tally slip.

Mr. PENCE. Let me ask you two quick questions. Do you recall ever completing a tally slip?

Mr. HANRAHAN. No, I never did complete one and I never turned it in.

Mr. PENCE. And so you never handed that tally slip to the parliamentarians to give to the Chair?

Mr. HANRAHAN. That is correct, sir.

Mr. PENCE. Okay. With that I would yield the balance of our time for questioning to Mr. LaTourette.

Mr. LATOURETTE. Thank you, Mr. Pence, and Mr. Hanrahan, welcome.

Mr. HANRAHAN. Thank you.

Mr. LATOURETTE. The first thing that I would ask you to do, we are going to put a picture of the rostrum up over here on this the easel. And if I could ask you to rise from your witness chair, I have prepared some labels, and would ask you to approach the easel and we are going to walk through who the people are.

Mr. HANRAHAN. Okay.

Mr. LATOURETTE. Let me ask you the question, the occupant of the Chair is Michael McNulty of New York, is that right?

Mr. HANRAHAN. Yes.

Mr. LATOURETTE. Could you put Mr. McNulty's sticker above his head. Not on his head, above his head. Who is the parliamentarian attending to the Chair?

Mr. HANRAHAN. Ethan Lauer.

Mr. LATOURETTE. Could you put Mr. Lauer's sticker above his head. And is there a person charged with keeping the time of the stop watch in that picture?

Mr. HANRAHAN. Well, Gay Topper is seated here, and that would be her function.

Mr. LATOURETTE. Okay. Could you put Gay Topper's sticker above her head. Do you see yourself in that photograph?

Mr. HANRAHAN. Yes, sir, down here in the lower left-hand corner.

Mr. LATOURETTE. And you were the standing tally clerk that evening?

Mr. HANRAHAN. That is correct.

Mr. LATOURETTE. Could you put your sticker underneath yourself? De'Andre Anderson was the seated tally clerk that evening?

Mr. HANRAHAN. Yes, sir.

Mr. LATOURETTE. Could you put his sticker below him? And I prepared a sticker for Allys Lasky that has her as the assistant tally clerk, because she told us that is who she was when we interviewed her, but you don't believe that was her title then?

Mr. HANRAHAN. No, sir, she was the journal clerk.

Mr. LATOURETTE. Okay. Could you put Allys Lasky's sticker below her? We will all understand that she is the journal clerk and not the assistant tally clerk. Okay. Thank you. Could you resume your seat? Mr. Chairman, while Mr. Hanrahan resumes his seat, I just want to make clear as we go forward, Mr. Pence, in his opening remarks played about 6 minutes of the videotape. And I know because we have agreed to move this along, so we don't inconvenience our witnesses, I want to make sure that we have stipulated that whenever we show the video to the witnesses, that the color coding that we have talked about, sort of the halos that we have described, in the fine tradition of Flemish painting, that those will be accepted by both sides as being accurate. And so if I indicate to a witness, would you please watch the tape, and the orange halo belongs to Catlin O'Neill, that we have agreed that that is, in fact, the case. Am I right about that?

The CHAIRMAN. Could you give us the color code again Mr. LaTourette? Orange?

Mr. LATOURETTE. I will give you the whole sheet, how is that? It is my understanding that counsel has agreed to that.

The CHAIRMAN. We have agreed.

Mr. LATOURETTE. Okay.

The CHAIRMAN. Was there any reason for the particular colors?

Mr. LATOURETTE. No, I don't think so. And as a matter of fact, when the Majority asked us to put a halo around Mr. Space, we had run out of colors, and so he is just going to be white.

The CHAIRMAN. I noticed that the Parliamentarian, Mr. Sullivan, is in green.

Mr. LATOURETTE. Right.

The CHAIRMAN. Is there any significance?

Mr. LATOURETTE. Celtic green.

The CHAIRMAN. Thank you.

Mr. LATOURETTE. All right. Mr. Hanrahan, when you were interviewed by the staff of the Select Committee on February 8th, they walked through with you a protocol, do you remember that?

Mr. HANRAHAN. Uh-huh, yes, sir, I do.

Mr. LATOURETTE. And do you remember where the protocol came from and what the document was?

Mr. HANRAHAN. With respect what the—how the deposition was going to be conducted?

Mr. LATOURETTE. Well, I was just asking, do you remember what document they were walking you through?

Mr. HANRAHAN. I remember the document, yes. I do remember looking at it.

Mr. LATOURETTE. Could someone take that to Mr. Hanrahan? I just want to show you a document that was prepared by Mrs. Miller, the Clerk of the House, dated September 4th, and ask you, when I read the transcript of your interview, is that the document that they were walking you through?

Mr. HANRAHAN. Yes, sir, it is.

Mr. LATOURETTE. Okay. And if I could ask you—do you guys have it, or do you want it to refer to? I don't want to surprise you.

Mr. DAVIS. Could I have a copy, Mr. LaTourette?

I have it now. Thank you.

Mr. LATOURETTE. If I could ask you, Mr. Hanrahan, to refer to page 2 of that document.

By the way, Chairman, I ask unanimous consent it be made part of the record.

The CHAIRMAN. Without objection.

[The document, a memorandum written by Ms. Lorraine Miller, Clerk of the House, can be found in the Appendix.]

Mr. LATOURETTE. On page 6—first of all, the first full paragraph on page 2, do you see that.

Mr. HANRAHAN. Yes, sir.

Mr. LATOURETTE. Okay. Do you recall during the course of your interview on February 8th having counsel walk you through that paragraph basically on the protocol that exists for conducting an electronic vote in the House of Representatives?

Mr. HANRAHAN. Yes, sir, I do.

Mr. LATOURETTE. Okay. And is that an accurate explanation of the protocol for conducting an electronic vote in the House of Representatives?

Mr. HANRAHAN. Yes, sir, it is. I could embellish it, if I needed to, but it is basically correct.

Mr. LATOURETTE. Okay. And, at one point, on page 7, for those at home following, you indicate that this protocol hasn't been changed in 30 years. Is that still your recollection today?

Mr. HANRAHAN. Yes, sir, that is correct.

Mr. LATOURETTE. Okay. And that protocol contemplates the delivery of a tally sheet, the tally slip. Is that right?

Mr. HANRAHAN. Yes, sir.

Mr. LATOURETTE. Next, we are going to put up on the easel an exhibit that we used at one of our previous hearings. And do you recognize that?

Mr. HANRAHAN. Yes, sir, I do. It is one of our tally sheets.

Mr. LATOURETTE. Okay. And when you were talking to Mr. Pence a little earlier, is that the document that you, as the standing tally clerk, or any standing tally clerk, during the course of a recorded vote would complete?

Mr. HANRAHAN. Yes, sir, it is.

Mr. LATOURETTE. And upon completion of that tally slip, except for this night that we are talking about, is that slip prepared by

the standing tally clerk, handed to the parliamentarian tending to the Chair, who then hands it to the Chair for announcement?

Mr. HANRAHAN. That is correct.

Mr. LATOURETTE. Okay. And again, to be clear, no such slip was prepared on August the 2nd.

Mr. HANRAHAN. That is correct.

Mr. LATOURETTE. There has been a suggestion when we interviewed the Majority Leader that there is nothing wrong with reading the numbers off the board. And, as a matter of fact, at one point in time, he said, "Well, the standing tally clerk does it all the time."

Now, do you just want to make an observation about that?

Mr. HANRAHAN. Yes, sir, I would like to. It is not that simple. The summary board is, of course, available for everyone in the chamber to see to track the progress of a roll call. But the submission of a tally slip, which is intended for announcement to the House as a result of the roll call, is limited to a discussion between the standing tally clerk, the seated tally clerk, as to when or if voting stations have been closed, which would prevent upticks and, therefore, signify that the tally that would be written on that slip and turned in could be expected to be the final for the vote and be accepted as the judgment of the House.

Mr. LATOURETTE. I think, at one point in your interview on February the 8th, you indicate that perhaps the reason that it appears that way is that, because the standing tally clerk has the responsibility to, sort of, be looking around in the well to make sure there is no further activity, that the standing tally clerk may in fact look at the board, but it is only after consultation with the seated tally clerk that the system has been closed to further input. Is that right?

Mr. HANRAHAN. That is correct. And that discussion is not limited to the tally clerks. That is a discussion that is commonly and always involves the parliamentarians and the reading clerk when the reading clerk is in a position to call Members who may or may not be coming to the well to cast initial votes or changes, whatever the case might be. It is an agreement that we don't see any Members or hear any Members attempting to make their presence known in the well for the purpose of casting a vote.

That little bit of a discussion takes just a little bit of time. It is a pause, if you will, but it is a perceptible pause. And it is meant to ensure that we all agree that there is not going to be any further voting and that we are then okay to close the voting stations and write that tally and submit it to the Chair for announcement to the House.

Mr. LATOURETTE. And that never happened on August the 2nd?

Mr. HANRAHAN. That did not happen, no, sir.

Mr. LATOURETTE. Could you put the picture back up?

I want to talk to you about magic words for a second. Again, going through the protocol, your discussion on February the 8th, there is a traditional way that the Chair closes a vote, and says that any Members want to vote, any Members want to change their vote. Then, when the Chair announces the result, with the benefit of a tally slip, says that, "on this vote the ayes are this, the noes are this," and then makes a declarative statement that is disposi-

tive of the issue before the House. And in the case of a motion to recommit, it would be that the motion is not agreed to. On other matters, it would be that the bill is passed and the motion to reconsider is laid upon the table.

Is that right?

Mr. HANRAHAN. Yes, sir, that is correct.

Mr. LATOURETTE. Okay. Are you aware—we saw the videotape; you were in the room during Mr. Pence's opening remarks—that Mr. McNulty makes two attempts to stop the vote or call the vote. The first time he stops after saying 214–214 and makes no declarative statement. The second time, he indicates that it is 214–214 and says that the motion is not agreed to.

Based upon your 27 years of experience with the House of Representatives, do those words carry any significance?

Mr. HANRAHAN. Sir, they carry significance, but we—from the time I came to work here, I was trained to observe the protocol for opening and closing a roll call vote, which includes announcements or statements from the Chair inquiring of the House if there is anyone who has not voted and would like to or who has voted and would like to change their votes.

We didn't touch either one of those bases that night. And so we, sort of, jumped over that point to arrive at the announcement of the tally. And the situation as it stands that night was that we were still processing well votes; we weren't done processing well votes.

And the normal sequence of events is to allow that process to play itself out. The Chair then makes its inquiries. We have our collaborative discussion as to whether or not anybody is aware of any Member attempting to come to the well to get recorded or not, change, whatever the case might be. Then we close the vote. And then the Chair makes his or her announcement based on the tally slip that, if I am the standing tally clerk, I have written for the Chair, and the Chair makes that announcement and then proceeds to close the vote finally by saying that the motion to reconsider is laid upon the table.

Mr. LATOURETTE. Let me ask you this. At the time, understanding what you just said, at the time Mr. McNulty closes the vote the second time—214–214, motion is not agreed—it is my understanding that you were still in communication with Mr. Anderson, the seated tally clerk, and were handing to him the well cards from the three Floridians who had voted, two Diaz-Balarts and Ros-Lehtinen.

Mr. HANRAHAN. That is correct.

Mr. LATOURETTE. Aside from that, was the well static at that moment in time?

Mr. HANRAHAN. Aside from that, the well was static at that moment, yes.

Mr. LATOURETTE. Okay. I think Mr. Pence, again, in his opening remarks, indicated a quote that you have never seen—I mean, you have been through a lot of close votes in 27 years, but you have never seen the Chair buy into it. Do you remember uttering those words?

Mr. HANRAHAN. Yes, sir, I do.

Mr. LATOURETTE. Okay. Could you indicate to the Committee what it is you believe the Chair bought into?

Mr. HANRAHAN. It is not uncommon for leadership on either side to have an interest in moving things along for whatever benefit might be implied at the time.

Our interest is not in the disposition of motions before the House. Our interest is to record votes accurately and provide the House with a result that it can rely on and know to be true.

When I said that, I have heard any number of times over the years Members, leadership or not, come to the well and attempt to move things along, and it is not unheard of. In fact, we pretty much aren't even deterred much by it, except we take note of it, we are aware. We are not here to impede anything. We are here to move things along, but within the protocol that we were trained to observe: never to take shortcuts.

Mr. LATOURETTE. So what did Mr. McNulty buy into? What did you mean?

Mr. HANRAHAN. The quick call on the vote was based on an observation from the summary board. Now, I can't read his mind; I don't know what made him say what he said. But the fact that he said it while we were still processing well votes, there was nobody more shocked than me. Because I knew exactly, but exactly, what was going to happen the minute De'Andre entered that last well vote.

Mr. LATOURETTE. The Mario Diaz-Balart card.

Mr. HANRAHAN. Yes, sir.

Mr. LATOURETTE. You knew the machine was going to uptick to——

Mr. HANRAHAN. I knew exactly what was going to happen.

Mr. LATOURETTE. Did you mean at all that the Chair bought into the pressure?

Mr. HANRAHAN. Yes, that was probably what I was trying to get at. I would say that, yes, I think it was a direct result.

Mr. LATOURETTE. And where was the pressure coming from?

Mr. HANRAHAN. Well, the pressure was coming, at that point in time, from the leadership.

Mr. LATOURETTE. And who in the leadership?

Mr. HANRAHAN. Mr. Hoyer, the Majority Leader.

Mr. LATOURETTE. And did you hear Mr. Hoyer tell the Chair to close the vote?

Mr. HANRAHAN. I did.

Mr. LATOURETTE. Did you hear him say that more than once?

Mr. HANRAHAN. I would say, yes, at least twice.

Mr. LATOURETTE. And was Mr. Hoyer speaking in a loud voice, soft voice?

Mr. HANRAHAN. It wasn't soft. It was declarative.

Mr. LATOURETTE. Did you have any difficulty hearing what Mr. Hoyer was indicating relative to the closure of the vote?

Mr. HANRAHAN. No, sir, not at the point where he initially approached the well. He was very close to where I was standing. It wasn't hard to hear.

I do know that another exchange took place, as you mentioned earlier, between he and John Sullivan. That took place off to the side of the rostrum, and it was not quite as clear to overhear that.

But where he was at that point, it was clear to me that he was interested in moving things to a close.

Mr. LATOURETTE. In my last 29 seconds, on pages 57 and 58 of your observations to us in February, I just want to read you two paragraphs and ask if you still agree with them today. "There was some stuff said, I think, maybe. And I hate to do this. I don't even know if it is right. I am guessing Mr. McNulty knows better. He has been up there a hundred times if he has been once. He is one of the better Members we have in the Chair. He knows how to do this. Why he bought into that I don't know. I still don't know. I was stunned to hear that."

Then over on page 58, "But, again, it is the whole thing that happened that night that makes it different from any other night, is the Chair's response. I mean, I have heard it a hundred times, 'Close this vote now.' I have heard all kinds of admonitions and hurry-ups and we have things we have to do and 'I don't like the way it is going; hurry up,' all that stuff. But I have never seen the Chair make an early call like that."

Mr. HANRAHAN. That is correct. That is still how I feel about it.

Mr. LATOURETTE. Thank you so much.

The CHAIRMAN. Mr. Davis?

Mr. DAVIS. Thank you, Mr. Chairman.

Mr. Hanrahan, first of all, let me begin by thanking you for being here today. I know that you are an individual—and, frankly, a lot of folks in the room may not fully appreciate this, so I will open by making this point. The staff, the parliamentarians, the people who work the rostrum are neither Democrats nor Republicans. You all work for the House of Representatives.

And you currently work in this Democratic Majority. You have worked in a Republican Majority. And then, before that, you worked in a Democratic Majority. Is all that correct?

Mr. HANRAHAN. Yes, sir, that is correct.

Mr. DAVIS. And let me begin, Mr. Hanrahan, by talking for a moment about the importance of the tally sheet.

Mr. LaTourette gave you a document that was prepared by Lorraine Miller, the Clerk of the House. Do you still have that document in front of you?

Mr. HANRAHAN. Yes, sir, I do.

Mr. DAVIS. I would like you to turn to page 2, and I would like you to look at the same paragraph that Mr. LaTourette referenced. It is a paragraph that describes the process for closing the vote in the EVS system. Do you see that?

Mr. HANRAHAN. Yes, sir, I do.

Mr. DAVIS. Now, this document was prepared by Ms. Miller at the request of this Committee. Is that your understanding?

Mr. HANRAHAN. Yes, sir.

Mr. DAVIS. Is this kind of an explanation for how the EVS system is closed out; is this kind of a document routinely given to Members of the House? Have you ever known this kind of document to be in any other context given to Members of the House?

Mr. HANRAHAN. I am aware of an orientation process when Congresses begin and Members are apprised of the outline, anyway, of the general voting process. Of course, they are issued their voting

cards, and that process is explained to them, locations of voting stations in the Chamber and that sort of thing.

Mr. DAVIS. Do you participate in that process?

Mr. HANRAHAN. No, sir, I don't.

Mr. DAVIS. And do you have any knowledge of whether even presiding officers are routinely given any kind of documents summarizing how the electronic voting system closes out?

Mr. HANRAHAN. I am not aware of one, no, sir.

Mr. DAVIS. And are you aware of any kind of an orientation session that presiding officers go through in which they are given the kind of information that Ms. Miller puts in this document?

Mr. HANRAHAN. I am not aware of one personally, no, sir.

Mr. DAVIS. And had Mr. McNulty been in the Chair numerous times before that night, to your recollection?

Mr. HANRAHAN. Yes, sir, many times.

Mr. DAVIS. Had you ever had occasion to discuss with Mr. McNulty prior to the night of August 2nd the process for closing the vote in the EVS system?

Mr. HANRAHAN. No, sir.

Mr. DAVIS. And had you ever had any occasion prior to August 2nd for discussing with Mr. McNulty or any other presiding officer the importance of a tally sheet?

Mr. HANRAHAN. No, sir.

Mr. DAVIS. And I think you would agree that the written rules of the House do not refer to the presence of a tally sheet. Is that correct?

Mr. HANRAHAN. As far as I know, that is correct.

Mr. DAVIS. Now, let me ask you a broader question. Is there any requirement in the rules that a presiding officer obtain the permission of the parliamentarian before he or she calls a vote?

Mr. HANRAHAN. Permission, no, not per se. But the protocol that we live with and observe on a day-to-day basis allows room for consultation to get to that point with the parliamentarians. I mean, I don't think that permission is required, as much as touching bases in the protocol to maintain accountability and quality control are probably important more than permission.

But in the sense that you can't get to a point where the vote can be closed until the protocol basis has been met in order to ensure that accountability, I think it is maybe easy to say that, to some extent, there is a waiting period to move to a point where such a thing can occur.

Mr. DAVIS. Well, I respect your perspective, but let me just ask you very directly: Who has the ultimate discretion to call a vote in the House of Representatives?

Mr. HANRAHAN. The Chair has to have the ultimate discretion.

Mr. DAVIS. Now, on the night of August 2nd itself, let me just ask you generally, as you recall the moments after the motion to recommit went to zero and the space between that time and the space when Mr. McNulty calls the vote erroneously—I will go ahead and acknowledge he called it erroneously, and I think he will acknowledge that—and the gap between when the clock hits 00 and Mr. McNulty makes his premature calling of the vote, did you hear any member of the staff telling Mr. McNulty, "You need to have a tally sheet?"

Mr. HANRAHAN. No, sir, I did not.

Mr. DAVIS. Did you personally communicate to Mr. McNulty that he needed to have a tally sheet?

Mr. HANRAHAN. No, sir, I didn't. And I wish I had had the presence of mind to, in that situation, at that time. Under the circumstances, I wish I had done better.

Mr. DAVIS. Let me ask you—if I can get our video operator to begin to play the tape, because I want to ask you to look at a series of events and comment on them.

And if we could go to 10:50:45. And when you have found 10:50:45, let's put it on the screen. Or 22:50:45, if you are using the military time for 10:50 that night.

Mr. Hanrahan, you can see two TV screens, and you can take your pick. So we'll go to 22:50:45.

Just play it.

Watch, Mr. Hanrahan, if you would.

[Video was played.]

Mr. DAVIS. At the point that Mr. McNulty calls the vote, if we could dial back on the tape and just visually look at it for a moment.

At the point before he calls the vote, you were standing there, Mr. Hanrahan, and you are processing a well card. Is that correct?

Mr. HANRAHAN. That appears so, yes, sir.

Mr. DAVIS. And you said that you knew that there was going to be an uptick in the board. The board was, I believe, 214–214. You believed that once that last card from Diaz-Balart was processed, that there would be an uptick from 215–213, if I understood you correctly?

Mr. HANRAHAN. That is correct, yes, sir.

Mr. DAVIS. During your deposition in February, you were asked a question, and at one point, on page 39 of your deposition, this is what you said: "Nobody but us is aware—the tally clerks, I am talking about—is aware of whether there are any well votes to be processed."

What did you mean, sir?

Mr. HANRAHAN. Sir, that remark was in response to a scenario in which the well may or may not appear to be populated by Members who are attempting to vote or to change. But it does not speak to the fact that we may still be holding and processing well cards.

And as a small, little aside here, ever since I came to work here, my personal preference has been to hold that yea–nay pad that we showed up earlier, I hold that as a platform on which to write the roll call number and to initial the well card as to being identified as submitted by the Member who submitted it and turn it in.

It appears that—it may look like there is nobody there doing anything, but we are still processing votes and in the process of my marking them, verifying them, and handing them to the seated tally clerk, who in this case was De'Andre.

Mr. DAVIS. That is something you appreciate as a tally clerk. Do you know whether or not the typical presiding officer appreciates that, Mr. Hanrahan?

Mr. HANRAHAN. Appreciate? I don't know if I——

Mr. DAVIS. Well, in fact, what you said in your deposition is, "Nobody but us is aware—the tally clerks, I am talking about—is aware of whether there are any well votes to be processed."

Mr. HANRAHAN. Yes, okay, I see what you are getting at. Yes, sir. I don't know whether the Chair appreciates it, but it is the case.

Mr. DAVIS. Okay. Now, do you have any way of knowing whether Mr. McNulty appreciated that there was about to be an uptick in the vote at the time he makes his call?

Mr. HANRAHAN. I don't have any way of knowing whether he knew there was or wasn't, no.

Mr. DAVIS. And you will remember from looking at the tape, Mr. Hanrahan, we can see Mr. McNulty standing there, and I assume you agree with me, the Majority Leader is not in the picture at this point. We don't see the Majority Leader.

Mr. HANRAHAN. Correct.

Mr. DAVIS. Do we see any member of the Majority Leader or the speaker's staff near Mr. McNulty at that point?

Mr. HANRAHAN. Near Mr. McNulty, no.

Mr. DAVIS. What does Mr. McNulty appear to be doing, and not just at this moment, but as you watch the tape, in the moments before he calls the vote, what did he appear to be doing? Where did he appear to be looking?

Mr. HANRAHAN. To the summary board in the Chamber.

Mr. DAVIS. And, again, recognizing that there are people viewing this who aren't in the Chamber every day, the summary board is the board that is on the left and right side of the Chamber that lists the vote score at any moment. Is that correct?

Mr. HANRAHAN. Yes, sir.

Mr. DAVIS. And you agree with me that Mr. McNulty appears to be continually looking up at the summary board before he calls the vote. Is that correct?

Mr. HANRAHAN. Yes, sir.

Mr. DAVIS. And at the time Mr. McNulty calls the vote; do you see him appear to be receiving any instruction from the Majority Leader to call the vote?

Mr. HANRAHAN. At that point, no, sir.

Mr. DAVIS. At the time Mr. McNulty calls the vote; do you see him appear to be receiving any instruction from anyone?

Mr. HANRAHAN. No, sir. Not in that picture, no.

Mr. DAVIS. Well, I focus on this because that is when he calls the vote.

Now, at the time that Mr. McNulty calls the vote, who are the members of the staff who are closest to him on his right?

Mr. HANRAHAN. His right are the parliamentarians, John Sullivan and Ethan Lauer.

Mr. DAVIS. Did either Mr. Sullivan or Mr. Lauer attempt to stop Mr. McNulty as he calls the vote?

Mr. HANRAHAN. I don't believe that they did, but I also have to say that I don't know that they would have had an opportunity. It happened very quickly.

Mr. DAVIS. Well, let me just ask you. Again, we can all watch it for ourselves, but do you see either of them appear to attempt to stop him as he calls the vote?

Mr. HANRAHAN. I didn't see one, no.

Mr. DAVIS. And, obviously, it took him some seconds to state the iteration. He declares a number, and then he says the motion is not carried. Do you see anyone attempt to interrupt him as he does that, Mr. Hanrahan?

Mr. HANRAHAN. At that point, no, sir.

Mr. DAVIS. Now, you are standing here, and I think you have candidly and correctly acknowledged that you don't make any attempt to stop him at this point. Let's look at what happens next. Let's play the tape from this point, and we will have you watch it, Mr. Hanrahan. Or if we could get to the point he calls the vote.

[Video was played.]

Mr. DAVIS. Let's stop at this point.

To save time—and you have had occasion to review the tape before today. Isn't that correct?

Mr. HANRAHAN. I have seen it before, yes.

Mr. DAVIS. Do you agree with me that after Mr. McNulty erroneously calls the vote, that voting activity continues in the House?

Mr. HANRAHAN. Yes, sir.

Mr. DAVIS. And let me back up and ask one other question for clarification. At the time Mr. McNulty called the vote, did you hear any Member yelling, "One more?"

Mr. HANRAHAN. "One more," no, sir. I don't remember hearing that.

Mr. DAVIS. Do you remember any Member yelling or saying anything that would indicate that he or she was attempting to cast a vote while McNulty was calling the vote at this point?

Mr. HANRAHAN. Given the noise level, I think it is hard to say. I don't remember hearing that, but it doesn't mean it didn't happen.

Mr. DAVIS. Okay, well, by definition, I am just—And, Mr. Hanrahan, just so we are clear, let's go back again to what happens after this. Members continue to vote; is that correct?

I think, in my opening statement, I characterized a 7-minute gap that occurs. Does that sound about right to you, in terms of the time frame between when McNulty erroneously calls the vote and when McNulty reads his final statement about the vote?

Mr. HANRAHAN. Yes, sir, that is approximately right.

Mr. DAVIS. During that approximate time frame of 7 minutes, did some Members go to the well, fill out cards and change their votes?

Mr. HANRAHAN. Yes, sir.

Mr. DAVIS. Now, what is interesting is this process continues even after he has called the vote. Do you agree with that?

Mr. HANRAHAN. Yes.

Mr. DAVIS. Did anyone instruct you to continue to process well cards even though the vote had been called, if you will?

Mr. HANRAHAN. No, sir, no one instructed me, because we were operating under the protocol that we always operate under.

Mr. DAVIS. Did anyone, in any way, try to prevent the process from going forward? Did anything happen that would impede Members from coming down to continue to change votes?

Mr. HANRAHAN. No, sir.

Mr. DAVIS. And during that time frame, which you agree is approximately 7 minutes, I assume that Members could have changed

votes either way. They could have gone from no to yes and yes to no. Is that correct?

Mr. HANRAHAN. There was plenty of time, yes.

Mr. DAVIS. Did you observe any Member that night, Mr. Hanrahan, during the 7-minute gap, attempt to walk forward to change a vote and be prevented from doing so?

Mr. HANRAHAN. No, sir.

Mr. DAVIS. Did any Member complain to you that night, "I tried to change my vote during this 7-minute period and was prevented from doing so?"

Mr. HANRAHAN. No, sir.

Mr. DAVIS. And you would remember that, wouldn't you, Mr. Hanrahan?

Mr. HANRAHAN. Absolutely.

Mr. DAVIS. Let me ask you a few questions about the exchanges with Mr. Hoyer. And just so you are clear, I will have another 10-minute frame to question you, and so will Mr. LaTourette. But I want to go to Mr. Hoyer for one second.

You are aware that we took Mr. Sullivan's deposition?

Mr. HANRAHAN. Yes.

Mr. DAVIS. And I know you have an enormous regard for Mr. Sullivan. You view him as an outstanding parliamentarian. Is that correct?

Mr. HANRAHAN. Yes, sir.

Mr. DAVIS. And you view him as someone who is certainly honest and candid.

Mr. HANRAHAN. Yes, sir.

Mr. DAVIS. He was asked during his deposition, frankly, about the tenor of the exchange with Mr. Hoyer. I want to briefly quote, if I can. Mr. LaTourette asked him the question on page 76 of the Sullivan deposition, referring to Mr. Hoyer, "But was he profane?" The response from Mr. Sullivan: "Not to my recollection."

I want to go to page 77. Mr. LaTourette tries it again, as we questioners often do: "But you don't recall the Majority Leader being profane?" Mr. Sullivan's answer: "No. He may have said the word 'damn' or something like that. Distinguishing between profane and vulgar, certainly not vulgar. Maybe he said, 'You know, this damn place; we run this damn'—or something like that. I don't know."

Are you also aware, Mr. Hanrahan, that we have interviewed other members of the rostrum staff that night?

Mr. HANRAHAN. Certainly.

Mr. DAVIS. And I in no way mean to impugn or question anything about what you said. I think you are an exceptional member of the staff, and you have a reputation for such.

But are you aware that no member of the staff that we interviewed has any recollection of Mr. Hoyer using profanity beyond the one word I just mentioned?

Mr. HANRAHAN. No, sir, I wasn't aware of that.

Mr. DAVIS. But these other members of the staff at some point would have been in position to hear the exchanges between Hoyer and McNulty. Is that correct?

Mr. HANRAHAN. Certainly.

Mr. LATOURETTE. You mean Hoyer and Sullivan?

Mr. DAVIS. Hoyer and Sullivan, yes, I am sorry.

Mr. HANRAHAN. Yes, sir.

Mr. DAVIS. Now, as I wrap up on this first round of questions, let me just begin to pull this together a little bit, Mr. Hanrahan.

Was there any point that night when Mr. McNulty ignored an instruction from the parliamentary staff?

Mr. HANRAHAN. I don't recall.

Mr. DAVIS. Was there any point when you recall any member of the rostrum staff attempting to get Mr. McNulty input and him refusing or declining it?

Mr. HANRAHAN. No, sir, I don't remember anything like that.

Mr. DAVIS. In fact, do you remember after the erroneous calling of the vote, that Mr. Sullivan walks up, stands next to Mr. McNulty, and essentially talks him through the process for correcting what happened?

Mr. HANRAHAN. I am aware that he was writing a statement and trying to come up with something for him to recite, yes.

Mr. DAVIS. Did Mr. McNulty follow the statement that Mr. Sullivan gave him?

Mr. HANRAHAN. Sir, I don't know. I don't know what the statement said, so——

Mr. DAVIS. You didn't see him showing any resistance to what Mr. Sullivan was saying?

Mr. HANRAHAN. No resistance, no.

Mr. DAVIS. And you made the observation about the Democratic Majority wanting to close the vote down. In the 30 years—I hate to date you, but in the 30-some years you have worked for the House, it is commonplace in a close vote for the majority to try to close it down after zero, isn't it?

Mr. HANRAHAN. Absolutely.

Mr. DAVIS. You have seen Democrats be aggressive about closing it down, correct?

Mr. HANRAHAN. Yes, sir.

Mr. DAVIS. You have seen Republicans be aggressive, correct?

Mr. HANRAHAN. Yes, sir.

Mr. DAVIS. You certainly saw Mr. DeLay be aggressive at times by closing a vote down, didn't you?

Mr. HANRAHAN. That is correct.

Mr. DAVIS. My final question on this round. Mr. Boehner made this observation—in fact, actually, Mr. Boehner made this observation in a statement on the floor, referring to Mr. McNulty, Mr. Boehner said, "He is in fact one of the fairest Members who could ever be in the Chair."

Mr. Boehner made that statement on the floor the day after all this happened, that he is in fact one of the fairest Members who could ever be in the Chair.

Do you disagree with that?

Mr. HANRAHAN. No, sir, I don't.

Mr. DAVIS. I have no other questions, at this point.

The CHAIRMAN. Mr. LaTourette.

I am sorry, I apologize. Mr. Pence.

Mr. PENCE. Just a couple of questions, but I will, Mr. Chairman, be yielding the balance of our redirect time to Mr. LaTourette.

Let me ask you, Mr. Hanrahan—thanks, again, for your testimony today—a couple of points, just to make sure I am clear.

Mr. Davis just spoke to you about—I think he used the word "commonplace" for Members of the Majority to seek to close down a vote. In your nearly three decades of experience on the rostrum, have you seen that many times?

Mr. HANRAHAN. Yes, sir.

Mr. PENCE. Let me ask again, have you ever seen the Chair disregard the longstanding procedure of waiting for a tally slip before closing a vote?

Mr. HANRAHAN. No, sir.

Mr. PENCE. Secondly—and Mr. LaTourette delved into this significantly, and I referenced your testimony in my opening statement, which I believe you were here to hear.

Mr. HANRAHAN. Yes, sir.

Mr. PENCE. And, again, to be clear, you testified in questions from Mr. LaTourette that when you used the phrase that you had, quote, "never seen the Chair buy into it, never. I wish he hadn't done it, but he did," close quote, Mr. LaTourette asked you if you believed he had bought into pressure. You said that was correct.

And I want to understand clearly. You believe that pressure, in your words, was from the leadership and specifically from Mr. Hoyer?

Mr. HANRAHAN. I would say leadership generally. I assume that, because Mr. Hoyer was in the well, that he would be the prime mover of that effort to close the vote down.

Mr. PENCE. At the rostrum, you also testified under questioning from Mr. LaTourette, that you heard Mr. Hoyer ask to close the vote twice.

Mr. HANRAHAN. I did hear that, yes, two times.

Mr. PENCE. Okay.

Let me ask you about an exchange—and Mr. Davis is very curious about this, so I will ask about it as well. After Mr. McNulty announced the result at 214–214 for the first time and pulled back, I want to confirm, you did observe a conversation between Mr. Hoyer and Mr. Sullivan on the rostrum. Is that correct?

Mr. HANRAHAN. Off the side, essentially.

Mr. PENCE. Off to the side.

Mr. HANRAHAN. At least relative to where I was standing.

Mr. PENCE. Leaving aside the vocabulary that the Majority Leader may or may not have used, how would you describe Mr. Hoyer's disposition at that point?

Mr. HANRAHAN. Certainly no different than any other experience I have had when a leader was trying to accomplish what he was trying to accomplish. I don't think it was particularly pleasant to be on the receiving end of it. I don't think it was unusual to hear it. And so it is kind of hard for me to categorize it, because it is not unusual. I have seen it before.

Mr. PENCE. Let me see if I can get to a specific question. When asked the question, "how would you describe Mr. Hoyer's disposition at that point," you testified with one word, "angry." Would that still be a fair characterization?

Mr. HANRAHAN. Yes, sir, he was angry.

Mr. PENCE. Was that conversation within earshot of Mr. McNulty?

Mr. HANRAHAN. I would have to say, even if it was, given the noise level, he probably wouldn't have necessarily heard it.

Mr. PENCE. That angry exchange between Majority Leader Hoyer and Mr. Sullivan, did that take place shortly before Mr. McNulty called the vote the second time?

Mr. HANRAHAN. The second time, yes. That is my recollection.

Mr. PENCE. One last question before I yield. My question is about Mr. Space, who we saw on the video moving around with the yellow circle.

How long do you recall Mr. Space had been in the well? And also, would it have been reasonable for Mr. McNulty to assume that if he had intended to vote he already would have voted? Do you remember?

Mr. HANRAHAN. I don't even remember seeing Mr. Space in the well until he presented his well card.

Mr. PENCE. Okay.

Mr. HANRAHAN. So I don't really have a way of answering that any better than that.

Mr. PENCE. Okay. That is responsive. Thank you.

Mr. LaTourette.

Mr. LATOURETTE. Thank you very much. And just a couple of questions.

And Mr. Davis asked you about the typical Chair this, typical Chair that, the typical presiding officer. Mr. McNulty, at this point in time, was not a typical presiding officer. He was one of the best presiding officers the Democrats had. Isn't that fair?

Mr. HANRAHAN. Yes, sir.

Mr. LATOURETTE. And wouldn't it be fair to indicate that the reason that people weren't offering a lot of advice is that the rostrum was stunned at the call of this vote?

Mr. HANRAHAN. I certainly was.

Mr. LATOURETTE. Well, and I think—and, again, on February the 8th, you indicated that you thought it was your impression that Mr. Sullivan was stunned.

Mr. HANRAHAN. I think everybody was. That is a fair statement, I think.

Mr. LATOURETTE. Okay. Again, the document prepared by Ms. Miller that we referred to, page 2, the way in which an EVS vote is concluded, that the last step for the seated tally clerk is to release the boards. Is that right?

Mr. HANRAHAN. That is the last thing, yes.

Mr. LATOURETTE. And are you aware that after Mr. McNulty called the vote the second time and said the motion is not agreed to, that, in fact, the seated tally clerk was attempting to release the boards?

Mr. HANRAHAN. Yes, he was.

Mr. LATOURETTE. And if we could put up—the seated tally clerk was De'Andre Anderson.

Mr. HANRAHAN. Yes.

Mr. LATOURETTE. And during your interview in February, you were shown a document that Mr. Anderson prepared at the time of this event and asked—Mr. Anderson says, "Then I got to the

fifth step of the process, the last step, which is, 'Are you sure you want to release the vote?' I clicked and clicked and click again and could not release the vote. After about 5 to 10 seconds of trying to release the boards, more Members came into the well of the House to vote and submitted well cards."

Do you remember that exchange?

Mr. HANRAHAN. Yes.

Mr. LATOURETTE. Do you remember that being what happened on August the 2nd?

Mr. HANRAHAN. Yes. I will say yes.

Mr. LATOURETTE. Okay. And am I right that what he is talking about is that after Mr. McNulty says, "214–214; the motion is not agreed to," Mr. Anderson attempted to clear the system, was unsuccessful because of a malfunction, apparently, and it is at that time that the three additional Democrats—Space, Gillibrand and McNerney—presented themselves to submit well cards?

Mr. HANRAHAN. I don't know exactly at that point how far along. He communicated to me at a point, yes, that he was having difficulty getting the system to respond to his efforts to move us from the well voting process to the shut-down process.

It is not uncommon at all to reach the drop-dead point and still even pull back. It happens routinely.

And at that point in time, I would have to say that I don't actually know when he communicated that to me with respect to the appearance of the well voters, except that it couldn't have been much time. It had to have been a very short period of time.

Mr. LATOURETTE. Well, let me ask you this: Do you have any reason, based upon your observations of August the 2nd, to dispute that paragraph of Mr. Anderson's statement?

Mr. HANRAHAN. No, sir. But to be perfectly fair, I was not the seated tally clerk that night. I don't know what key strokes were pushed, and I don't know what icons might have been clicked. And so the exact exchange and timeline is something that only the person seated in that chair would necessarily know.

Mr. LATOURETTE. Well, and that is fair. And that is why I asked the question, do you have any information to dispute what Mr. Anderson has written?

Mr. HANRAHAN. No, sir, I don't.

Mr. LATOURETTE. Did you receive a well card from Mr. Boehner, the Minority leader?

Mr. HANRAHAN. Yes, sir, I did.

Mr. LATOURETTE. Are you aware that it was never processed?

Mr. HANRAHAN. I am.

Mr. LATOURETTE. Are you aware that, because the protocol of the Clerk's office wasn't followed, that this vote was not 212–216, as Mr. Sullivan eventually wrote down, it was really 211–217?

Mr. HANRAHAN. Had that vote been processed, the outcome would have been different.

Mr. LATOURETTE. Do you have any explanation for why that vote wasn't processed?

Mr. HANRAHAN. No, sir, except that I will tell you that in close votes, such as the one we had that evening, we are not unprepared to watch for and wait for the leadership to appear to cast votes, particularly when we know or at least expect that they are going

to position themselves for a possible motion to reconsider. And, as everyone here knows, you have to be on the prevailing side to make that motion.

Now, he did that. But my only answer to your question—and I realize it is not a good one, but it is the only one I have—is there was so much going on in the House, at one point we simply stopped. We weren't doing anything.

Mr. LATOURETTE. Right. But for whatever reason, Mr. Boehner's change—was never——

Mr. HANRAHAN. It was never recorded.

Mr. LATOURETTE. Still, to this day.

Mr. HANRAHAN. Right.

Mr. LATOURETTE. The last thing is you were asked a lot of questions by Mr. Davis about who could hear what, and was this person approximate to that person, and so forth and so on.

The level of voice that Mr. Hoyer was using in communicating that he wanted the vote closed now, you heard it clearly?

Mr. HANRAHAN. That was audible to me, yes, because his initial approach to the well was right where I was standing.

Mr. LATOURETTE. Okay.

And I think that that is all. Thank you.

The CHAIRMAN. Thank you, Mr. LaTourette.

Mr. Davis.

Mr. DAVIS. Thank you, Mr. Chairman.

Let me just quickly pick up, if I can, Mr. Hanrahan, on the questions about Mr. Boehner and his well card.

Do you remember Mr. Boehner raising any issue that night about his well card not being processed?

Mr. HANRAHAN. No, sir, he didn't. Not to me, anyway.

Mr. DAVIS. Do you remember, for that matter, any member of his staff raising any issue that night about his well card not being processed?

Mr. HANRAHAN. I don't recall anything being said at that time.

Mr. DAVIS. Mr. Pence, in his opening statement, made some assertions about what he believes the correct vote was that night. So let me just walk you through some basic things here.

We have agreed that, during a 7-minute period after the vote is erroneously called, that Members are allowed—or continue to go to the well card and process their votes. Is that correct?

Mr. HANRAHAN. Yes.

Mr. DAVIS. And a count was being kept as they did that. Is that also right?

Mr. HANRAHAN. Yes.

Mr. DAVIS. And was Mr. Sullivan aware of that count?

Mr. HANRAHAN. I would assume that he was, yes. I don't know for certain. But under standard protocol, he would be.

Mr. DAVIS. All right. So the statement for the Chair that was read that night, do you happen to remember whether or not Mr. McNulty's statement ever actually referenced a vote number?

Mr. HANRAHAN. Not that I am aware of, no. I never did hear that.

Mr. DAVIS. But you are aware there is a final vote number that is logged that night. Is that correct?

Mr. HANRAHAN. In a tally? Yes.

Mr. DAVIS. Yes.

Mr. HANRAHAN. Yes.

Mr. DAVIS. And what is the final recorded tally from that night of August 2nd?

Mr. HANRAHAN. I believe it was 213–216—212–216.

Mr. DAVIS. And which way?

Mr. HANRAHAN. Against the motion.

Mr. DAVIS. All right. So 216 noes, 212 yeas. And is that a reflection, do you believe, of the changes that happened in the well during the 7-minute time frame that I referenced?

Mr. HANRAHAN. Yes, sir. I would have to say yes.

Mr. DAVIS. Do you have any reason to believe that that is an inaccurate count or that count does not reflect the will of the House that night?

Mr. HANRAHAN. I have to simply say that the protocol that we follow wasn't followed.

Mr. DAVIS. I understand that, but I am asking about the final recorded score of 216–212. Do you have any reason to assert that that was not the stated vote count of the 428 Members who were there that night?

Mr. HANRAHAN. Well, it was the stated vote count. We know Mr. Boehner's card wasn't processed.

Mr. DAVIS. Right. But do you have any reason to believe that, other than Mr. Boehner's card not being processed, which Mr. Boehner didn't complain about, that that is erroneous or inaccurate?

Mr.HANRAHAN. Other than that, I don't have any reason to believe.

Mr. DAVIS. Let me show you one point from the tape.

If you would go to 10:50:38, or 22:50:38, if that makes it easier.

And I will ask you to look at this, Mr. Hanrahan. This will be the point where Mr. Hoyer approaches Mr. Sullivan, and he clearly says something that we believe is, "We control the House," or something like that. Why don't you just look at it for a moment?

[Video was played.]

Mr. DAVIS. You see Mr. Hoyer walking away. You have said you can't tell if Mr. McNulty even heard this exchange. Is that correct?

Mr. HANRAHAN. I have no way of knowing if he heard it, no.

Mr. DAVIS. Did Mr. McNulty call the vote, at that point?

Mr. HANRAHAN. After that? Right after that?

Mr. DAVIS. Yes. At that point, did he call the vote?

Mr. HANRAHAN. No, sir, he didn't.

Mr. DAVIS. In fact, at the point where Mr. McNulty calls the vote, I think you have acknowledged Mr. Hoyer is not in sight. Is that correct?

Mr. HANRAHAN. I did acknowledge that earlier, yes.

Mr. DAVIS. Now, let me try to, perhaps, put a little bit of a larger perspective around this, Mr. Hanrahan. One of the things that we have been asked to do is make recommendations to the House going forward.

Would it be helpful, in your opinion, if presiding officers were given some kind of regular education about the process for closing the EVS system?

Mr. HANRAHAN. I can't imagine that it wouldn't be helpful for everyone who presides to know how it works, yes.

Mr. DAVIS. And do you think it would be helpful, going forward, if presiding officers were given instruction about the relevance of a tally sheet? I think you said that you have no reason to think that has happened now. Would it be a helpful thing, going forward?

Mr. HANRAHAN. I think it would be, sure.

I also think that—actually, a training program, I am not aware of a training program that explains the tally sheet as one facet of the voting process. I know that any Member who assumes the Chair and presides, they get an on-the-spot rundown from the parliamentarian as to how things will go, from time to time. I don't know that it is a comprehensive plan that any Member who presides must sit through. There may be; I don't know if there is or isn't.

Mr. DAVIS. And just so we are clear, you don't remember there actually being any controversy about the presence or lack of a tally sheet before August 2nd, do you?

Mr. HANRAHAN. Before August 2nd?

Mr. DAVIS. Right.

Mr. HANRAHAN. As a matter of course, it was always offered up.

Mr. DAVIS. But as a consequence—I am asking a very simple question. Had there been any controversy about the relevance of a tally sheet before that night? Had there been any question or issue or anything that would have alerted the rank-and-file Member to be aware of any issues around the tally sheet?

Mr. HANRAHAN. If I understand your question, I would say no.

Mr. DAVIS. Now, let me go again through a series of questions involving Mr. McNulty.

We have heard Mr. McNulty described as one of the fairer presiding officers, and you have said you agree with that. Is that correct?

Mr. HANRAHAN. That is correct.

Mr. DAVIS. Do you have any reason to believe, Mr. Hanrahan, that Mr. McNulty was attempting to violate the rules of the House that night?

Mr. HANRAHAN. No, sir, I don't.

Mr. DAVIS. Do you have any reason to believe that Mr. McNulty was attempting to prevent Members from voting or having their votes recorded that night?

Mr. HANRAHAN. No, sir.

Mr. DAVIS. And did you hear Mr. Hoyer give any instruction or suggestion that the votes of Members be ignored that night in any way?

Mr. HANRAHAN. No, sir.

Mr. DAVIS. And you have talked several times today, in your answers to Mr. LaTourette, about Mr. McNulty buying into something. Mr. McNulty, as the presiding officer, would have had the discretion, and the sole discretion, as to when to call a vote on the night of August 2nd. Do you agree with that, sir?

Mr. HANRAHAN. Based on the past experience that we have had, yes, the Chair does have that discretion.

Mr. DAVIS. I have no further questions.

The CHAIRMAN. I am going to yield for a minute to the gentleman from Ohio.

Mr. LATOURETTE. Thank you very much. And I just ask unanimous consent that Artur get another minute, if that is where we are.

The CHAIRMAN. Without objection.

Mr. LATOURETTE. Three quick things. I mean, this whole business about the announced vote at the end, after everybody came in and changed the votes, was 212–216, but as we discussed, that wasn't the true vote. The true vote is 211–217, because Mr. Boehner's change card was not processed. Right?

Mr. HANRAHAN. Correct. Had it been processed, that would have been the result.

Mr. LATOURETTE. And we hear a lot about every vote should count, everybody should count. Mr. Boehner represents 650,000 Americans, does he not?

Mr. HANRAHAN. Yes, sir.

Mr. LATOURETTE. And just to be clear, Mr. Chairman, I would ask unanimous consent, because I don't want to leave the record unclear, that this line of questioning about did Mr. Boehner object, did a member of Mr. Boehner's staff object—we have interviewed them, and Mr. Boehner and his staff indicate that, on this night and for some nights after, he was not aware that his change card had been not processed.

And I would ask unanimous consent that—I wish I was smart enough to have the pages in front of me; I will get it over the lunch break—that those pages of Mr. Boehner's observations be included into the record.

The CHAIRMAN. Without objection.

[The information follows:]

had you voted in a voting station on the motion to recommit?

A I did vote for the motion to recommit.

Q At a voting station with your card?

A At a voting station.

Q And then subsequently to that, did you go down to the well for the purpose of entering a well card?

A I did. I went down and pulled a red card and changed my vote from aye to no.

Q Through testimony that has been received from other witnesses, the committee is aware that your changed vote was never processed, you were never recorded as a no. Was it your intention when you submitted the well card to be recorded as a no?

A Yes.

Q And for what purpose did you change from a yes on the motion to recommit to a no?

A To be on the prevailing side of the vote in case there was a need to move to reconsider the vote.

Q There was—when we had John Sullivan, his deposition, he suggested that that's not an uncommon practice for leaders on either side of the aisle to—in anticipation of being on the presiding side of the votes, to make a motion for reconsideration, to submit a card for that purpose. But he also indicated there are times when leadership on both sides will indicate to the staff of the Clerk's Office that only use the card if I signal you ordon't use the card.

Did you issue any instructions, observations to anybody in the Chamber that night whether you wanted your card to be entered onto the electronic voting display?

A I made no comment to anyone other than moving my vote from yes to no.

Q Through the course of that time when sort of there was a little ruckus caused in the House floor, were you aware at all that evening on August 2nd that your vote had not been changed from an aye to a nay?

A No.
Q Are you aware of it today?
A Yes.
Q And when approximately did you become aware of it?
A I don't know whether it was days or months afterwards.
Q And it would have been a conversation with staff or somebody else that that came to your attention?
A Yes.
Q Was it your intention as you left the floor or as you entered that well card on August 2nd to have been recorded as a no; you wanted to change from an aye to a no?
A I assume that when I left the floor, I was a no vote.
Q A couple of times after there is some activity, you rise to the microphone on the Republican side of the aisle and attempted to make a motion to adjourn, which is ruled out of order. You're also heard on the tape attempting to make a parliamentary inquiry. Do you recall that?
A I do.
Q Do you recall what was the nature of the parliamentary inquiry you were going to propound on August 2nd?
A I was going to try to get to the bottom of the mistake that I believe that had been made, because when McNulty was calling the vote at 214 to 214, on the board it said 215–213—215 yea, 213 nay, final. And I was trying to—my inquiry, if I had been recognized, was trying to get to the bottom of what happened right then and there before it was too late.
Q And you being in the Chamber that evening actually looked up at either the scoreboard at either end and saw 215–213 final?
A Yeah. I was looking at the board above the Democrat side on the east end of the Chamber.
Q I don't think I have anything further at this moment.

EXAMINATION

BY Mr. DAVIS:

Mr. LATOURETTE. I don't think it is appropriate that we, sort of, leave it out there that Boehner was somehow complicit in the fact that his card wasn't processed.

So thank you. And I yield back.

Mr. DAVIS. I will just take my 1 minute, Mr. Hanrahan, to ask you this question.

Do you have any reason to believe that any member of the Democratic leadership prevented Mr. Boehner's card from being processed?

Mr. HANRAHAN. No, sir.

Mr. DAVIS. And if Mr. Boehner's card wasn't processed, could it have been an old-fashioned mistake?

Mr. HANRAHAN. Yes.

Mr. DAVIS. No further questions.

The CHAIRMAN. I am going to have a few questions, Mr. Hanrahan.

We have had some conversation about the display board or the summary board. When the word "final" appears on that board, is that tantamount to closing the vote?

Mr. HANRAHAN. In a perfect world, when the protocol is observed, we should be moving in a step-by-step process to the point where the word "final" would appear and the Chair then moves to make its final statement, in this case the motion to reconsider being laid upon the table.

The CHAIRMAN. But my question is: According to the—you are a learned professional. And according to the rules of the House and according to the practices of the House, is the term "final" equiva-

lent, tantamount to the closing of a vote? Is that a parliamentary event?

Mr. HANRAHAN. Okay. I would have to say, just based on having experience with——

The CHAIRMAN. If you don't know, then that is an acceptable answer.

Mr. HANRAHAN. Well, I need to embellish just a little. I don't want to say I don't know, because it is conceivable, and it happens routinely, that it is possible to move through the process, and a click of an icon at the EVS system, which would move that summary board to display the word "final," can be accomplished in the exact same amount of time that a Member might appear to vote. We would have to back up.

And so the word "final" would remain up there. You can't take it back.

The CHAIRMAN. Thank you.

Mr. HANRAHAN. But voting can go forward.

The CHAIRMAN. You have answered my question. I appreciate that.

Again, I know you are familiar with the rules of the House. And you are familiar with Rule XX, clause 2(a)?

Mr. HANRAHAN. Not by the cite. If you told me what it was, I would know it, I think.

The CHAIRMAN. Okay, well, if you are not familiar with it, then—well, that would be the closing of the vote in anticipation of an individual keeping the vote open to prevent—well, let me retract that question. If you don't know, you don't know.

Those are all the questions I have. Thank you, Mr. Hanrahan.

Mr. HANRAHAN. Okay. Thank you.

The CHAIRMAN. Welcome, Mr. McNulty.

Mr. MCNULTY. Thank you, Mr. Chairman.

The CHAIRMAN. Let me formally introduce you.

Mike McNulty is in his 39th year in elective public office. He was first elected in November of 1969 as town supervisor of Green Island, New York, becoming the youngest person ever to hold that office.

Mike was elected to the U.S. House of Representatives for the 23rd Congressional District of New York in 1988 and was re-elected in 1990. In 1992, he was elected to represent the new 21st Congressional District and was re-elected in November 2006 to serve his 10th term in the U.S. House of Representatives.

He currently serves as an At-Large Whip in the House. He also begins his 15th year of service on the House Ways and Means Committee, where he is chairman of the Subcommittee on Social Security.

Congressman McNulty also enjoys spending time with his family.

Welcome, Mike.

Mr. MCNULTY. Thank you, Mr. Chairman.

The CHAIRMAN. When you can fit it in.

I understand that you have a statement. And if you could make your statement to the panel.

STATEMENT OF HON. MICHAEL McNULTY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. MCNULTY. Thank you, Chairman Delahunt, Ranking Member Pence, Representative Davis, Representative LaTourette, for allowing me the opportunity to comment on the vote in question while I was serving as speaker pro tempore on August 2, 2007.

I also want to thank Representative Herseth-Sandlin and Representative Hulshof for their service on this Committee and for their participation on the Committee when I gave my deposition.

First of all, Mr. Chairman, I ask that my floor statement of August 3, 2007, be included in the record.

The CHAIRMAN. Without objection.

[Mr. McNulty's statement may be found in the Appendix.]

Mr. MCNULTY. The vote in question was a motion to recommit the agriculture appropriations bill. To summarize, I called this vote prematurely, and that action caused a measure of chaos, confusion and anger on the House floor.

The morning after the event, I publicly apologized on the House floor to all of the Members of the House of Representatives. I repeat that apology today.

Beyond my August 3rd remarks, let me make these clarifications.

When I announced the vote, all time for voting had expired. After I called the vote at 214–214, no additional votes were cast; only changes of votes were made.

In my opinion, the Parliamentarian's staff, the Clerk's staff and everyone at the front desk did their usual outstanding jobs that evening. The problems which ensued were the result of my actions. When I announced the vote at 214–214, I did not do so at the direction of any other person or persons. I did so on my own in an attempt to enforce clause 2(a) of Rule XX, which states that a recorded vote by electronic device shall not be held open for the sole purpose of reversing the outcome of such vote.

I believe that it was obvious that Members on both sides of the aisle were changing their votes after time had expired for the sole purpose of changing the outcome. My attempt to enforce clause 2(a) of Rule XX was the reason for not following the usual, but not required procedure of waiting for the written slip from the Tally Clerk. That was clearly a mistake on my part. I deem it a mistake because it now seems apparent that the vote change which was announced by the Clerk just prior to my calling the vote at 214–214 had not yet been recorded by the computer, thus the discrepancy which ensued almost immediately after my announcement.

Following my August 3 floor statement, Minority Leader John Boehner said, quote, I accept the regrets offered by my friend from New York. Having been in the chair myself, I can understand how it can happen. He and I are friends. He is, in fact, one of the fairest Members who could ever be in the chair. I am grateful to my friend, Leader Boehner, for his statement. I believe his comments indicate that he understands that while I erred, there was no ill intent on my part. I hope that when all the facts are examined, all the Members of the House will reach the same conclusion.

Thank you, Mr. Chairman and members of the Committee.

The CHAIRMAN. Thank you, Mr. McNulty. And before I go to the gentleman from Alabama, I just want to state for the record my

own respect for you as an individual of integrity. I would—I know you to be a fair individual, a fair-minded individual. And those words that were stated by Leader Boehner I think embraces the sentiment of many of us here in Congress.

I would, for your edification, note the statement by Mr. Blunt during the course of his interview.

"And I reached out"—and these are his words—"And I reached out and talked to him," meaning yourself, "after that, and told him that I didn't know anybody on either side of the House that thought he had intentionally done anything wrong, that was unethical, or that he should spend undue time worrying about this. It is just something we needed to work out and not see repeated in the future."

I want you to know that these were the sentiments that were expressed during the interview with Mr. Blunt.

Mr. MCNULTY. I am grateful. He said those words to me personally as well. Thank you.

The CHAIRMAN. Let me now yield to the gentleman from Alabama, Mr. Davis.

Mr. DAVIS. Thank you, Mr. Chairman. Mr. McNulty, thank you for taking your time, first of all, to be here today. I know you had to interrupt business, family business you had in New York to get back here, and we appreciate you doing that. And we also thank you for the candor of your statement at the beginning.

You weren't in the room during my opening comments, but I previewed them by saying that you were going to do something that frankly very few people of our ilk ever do, which is to acknowledge an error in a public forum. And you are to be complimented for that. And Mr. McNulty, I want to actually pick up where the chairman started. And I want to quote some other observations that have been made by Mr. Boehner and Mr. Blunt regarding you because I think it is important for you to hear them and for other interested parties to hear them.

During Mr. Boehner's deposition, I asked him about his relationship with you. And he mentioned that you all had served for a long time, 18, 17½ years together. And I asked him, do you believe him, McNulty, to be an honest individual? Mr. Boehner said yes. Do you believe him to be an ethical individual? Mr. Boehner said yes. Do you believe that he knowingly violated any rules on the night of August 2, any rules of the House? No, I don't believe that he knowingly violated any rules.

Mr. Blunt, during his deposition—there was another point that I want to read to you. I asked Mr. Blunt, did you have a conversation with Mr. McNulty? His answer, not that night but I did later. It was just more of a reassuring conversation that sometimes you get caught in a situation that things happen that you don't intend to happen and that he should feel confident in his respect that Members have for him personally.

Later on Mr. Boehner says—well, let me just stop at that point—Mr. Blunt. Let's stop at that point.

Let me try to put some context around this, Mr. McNulty. And I will try to move through it quickly because we have watched the tape several times today. You were the presiding officer on the night of August 2, 2007. And as I understand it, you were one of

a group of Members who regularly presided over the House at that time. Is that right?

Mr. MCNULTY. It is. It changed a little bit. Now I presided over the House many, many times when the Democratic Party was previously in the Majority for my time from 1989 to 1994. And at the beginning of this, the 110th Congress, I was asked by the Speaker staff to resume that practice and that role. And as a matter of fact, I was one of the presiders on the opening day of the 110th Congress, and I did it quite frequently after that. After a period of time I was doing it quite frequently and for very long periods of time. I asked to have that amended so that I would be in the chair for shorter periods of time just because of a physical issue I have in standing for a long period of time. But I did do it frequently.

Mr. DAVIS. And you agree that the leadership attempts to select a small group of individuals and charge them with the regular responsibility of presiding over the House and that honor is given to people who are regarded as being very skilled presiding officers, is that correct?

Mr. MCNULTY. I think in general that is correct. But also I have encouraged the leadership to expand that group and to get more Members into the chair and develop a bigger pool of individuals who can serve in the chair. Obviously when I first served in the chair, it was my first time. I was new and I had to learn. And I encouraged the leadership to reach out to more of the newer Members.

Mr. DAVIS. Give me some sense—because one of the things that we are trying not to lose sight of, Mr. McNulty, is all of us on this Committee have spent a lot of time looking at these facts. And we have spent a lot of time looking at the video. And the few interested parties that may be paying some attention to this outside of this Committee, frankly may not have a real sense of even what the floor of the House is like. I am always astounded how many people, for example, assume that Nancy Pelosi is the person who is in the chair every day.

So can you just give us some sense of what a presiding officer does, particularly with respect to what is relevant here, the calling or closing of a vote?

Mr. MCNULTY. Well, the presiding officer basically follows the parliamentary rules and moves the business through the House of Representatives. And we get a lot of help from that in the chair from the Parliamentarians. I think just about everyone who has served in the chair—certainly I rely very heavily on the Parliamentarians in order to work through that process.

If you do it quite frequently, you become more and more familiar with it. It is the process of repetition, and you get to a point where you are familiar with those little slips that the Parliamentarian gives you about how to proceed with certain things. Well, if you are experienced in the chair, a lot of times you don't even need those. You know those by rote. But the basic job is to move the process and the business of the House. Sometimes that is routine. Sometimes it is fairly quiet in the Chamber. And sometimes it is a little busier.

Mr. DAVIS. Who has the responsibility for calling a vote?

Mr. MCNULTY. The person in the chair.

Mr. DAVIS. And give me some sense based on your extensive experience as a presiding officer how the person in the chair goes about making the decision as to when to call a vote.

Mr. MCNULTY. Well, first of all, you have to wait for the minimum time to have expired, whether it is 15 minutes or 5 minutes or in some cases 2 minutes. And then the vote can be called any time after the minimum amount of time has elapsed.

Mr. DAVIS. Any time after zero?

Mr. MCNULTY. Any time after zero. And——

Mr. DAVIS. Let me just stop you at that. Are the rules of the House any more precise on this point as to when a vote should be called? Do the rules speak with any level of precision as to when a vote should be called once the clock has passed zero?

Mr. MCNULTY. Not that I am aware of.

Mr. DAVIS. Is it pretty much the custom and protocol of the House that the presiding officer makes the discretionary judgment as to when to call a vote?

Mr. MCNULTY. That is correct.

Mr. DAVIS. What are some of the factors that a good presiding officer takes into account after zero?

Mr. MCNULTY. Well, I will give you an example of last week, the first vote of the week—or the first vote of the day. When it is the first vote of the day, it occurs in the morning. A lot of times Members are still coming in from their homes, and so on, or their offices. And usually you are a little bit more lenient in the amount of time for people to get to the floor to vote.

There are times when all the time has expired and the Chair is made aware that, for example, the Appropriations Committee, subcommittee is working on a particular bill. They can't get to the floor right away. You have to wait an extra few minutes. We always accommodate that sometimes.

It can be something like a bill signing at the White House where a number of Members are attending that event. If they are not back in time, you will hold a vote open for that. Things of that nature.

Mr. DAVIS. So if I understand you correctly, the presiding officer after zero, after the clock has hit zero tries to make some assessment of whether all Members have cast votes who wish to?

Mr. MCNULTY. That is correct.

Mr. DAVIS. And if a presiding officer has made the determination that all Members have cast votes who wish to, does he then have discretion to call a vote?

Mr. MCNULTY. Certainly.

Mr. DAVIS. Let me take you to the night in question, August 2, 2007. We know the subject of the vote that night was a motion to recommit. As I understand it, you had not been in the chair very long that night at the time this motion to recommit was called, is that right?

Mr. MCNULTY. No. That evening I was only going to be in the chair for the motion to recommit and the final passage of the bill.

Mr. DAVIS. And I remember noticing during your deposition that you said frankly you weren't even sure what the subject of the motion to recommit was, is that correct?

Mr. MCNULTY. I was not until I got to the floor.

Mr. DAVIS. And when you got down to the floor, did you receive any special instructions or did you receive any particular guidance that there might be something unusual or novel about this vote?

Mr. MCNULTY. No. The only communication that I remember was during the course of the vote Catlin O'Neill at one point saying to me that the vote was going to be close or I think she—and somebody pointed out to me she used the word "tight."

Mr. DAVIS. And Catlin O'Neill works for the Speaker's Office, is that correct?

Mr. MCNULTY. That is correct.

Mr. DAVIS. And it is not uncommon for Catlin O'Neill or people who work for the Speaker's Office to have some routine interaction with the Chair, is that right?

Mr. MCNULTY. That is correct.

Mr. DAVIS. Let me direct you—if we can have our video operator turn the video on. I am going to actually point you to the time, Mr. McNulty, when the clock literally hits zero, which I believe is 22:49. If we can get to 22:49.

Let's just let it play here. Just watch, Mr. McNulty. You will see it is 200 to 209. Let's just watch. Unfortunately we can't see the time because of the way the screen is configured. But if you will just watch.

You will notice at this point it is 210 opposed, 203 in favor.

Mr. MCNULTY. Okay. That is just the usual announcement: Are there any other Members who wish to vote or to change their votes?

Mr. DAVIS. Okay. Let me stop right here. What you see at this point—again, unfortunately because of the way that the VCR is set up we can't see the actual time. I will represent to you that we have a timeline the staff has prepared that suggests that the clock reaches zero somewhere around this time frame, around 22:49. You will notice at this point that based on the vote total on the screen, the motion appears to have been defeated, 213 to 211. Can you explain for people who do not watch C–SPAN or pay attention to this every day why you didn't just call the vote at that point?

Mr. MCNULTY. Well, because I had just made an announcement or—and asked the question, were there any other Members who wished to vote or to change their vote.

Mr. DAVIS. You believed there were Members who had not voted, is that right?

Mr. MCNULTY. Either had not voted or who might wish to change their vote. You usually wait a little period of time to make sure that no one is in the well attempting to vote.

Mr. DAVIS. And let me ask if you recall that there had been a long sequence of other votes that night, is that correct?

Mr. MCNULTY. There had been, yes.

Mr. DAVIS. There has been testimony from the Majority Leader that the vote total in the earlier vote series had been 427, that that had been the consistent number of people who were voting in the earlier series. Does that sound about right to you?

Mr. MCNULTY. I didn't have that number in my head at the time but it would seem logical to me because 428 people voted on this vote.

Mr. DAVIS. Right. And again, what is important is frankly your sense that night, not so much your sense now. But do you recall having a sense, even at this point, 211 to 213, that that iteration was less than the number of Members who had previously voted?

Mr. MCNULTY. I don't recall having——

Mr. DAVIS. All right. But at this point you don't call the vote and you said you don't call it because in effect you believe other Members had not voted. Is that right?

Mr. MCNULTY. Oh, well, you would wait——

Mr. DAVIS. Okay.

Mr. MCNULTY [continuing]. A bit of time just to make sure.

Mr. DAVIS. All right. Let's watch.

At this point the clock has passed zero. The boards narrow to 212 to 213, still in the negative. What are you doing right now, Mr. McNulty?

Mr. MCNULTY. I was waiting to see if there were any other votes.

Mr. DAVIS. Now at this point, the yeses take a temporary lead of 214 to 213. And you still don't call the vote, is that correct?

Mr. MCNULTY. That is correct.

Mr. DAVIS. There is a lot of noise in the Chamber.

Mr. MCNULTY. Catlin appeared to say something to me at that point or me to her. I am not sure.

Mr. DAVIS. Do you remember what it was?

Now let's stop at this point. At this point you appear to begin to call the vote but you stop. Can you tell us why you stopped?

Mr. MCNULTY. It would be because I would have some indication that someone else wanted to vote. Someone probably said one more vote or——

Mr. DAVIS. Okay. Is it commonplace, Mr. McNulty, from what you have seen that sometimes presiding officers begin to call a vote and someone will yell out, one more or something to that effect?

Mr. MCNULTY. That has happened many times.

Mr. DAVIS. And in effect that is what happens here, you are about to call the vote and in effect you stop because you hear motions suggesting other people are wishing to vote. Is that correct?

Mr. MCNULTY. Correct.

Mr. DAVIS. Now let's watch the tape again.

You see Members at the well.

Let's stop right here. We see Mr. Hoyer, the leader, who walks up. You saw that a moment ago. He walks up to Mr. Sullivan.

Mr. MCNULTY. I don't see that right now but——

Mr. DAVIS. You saw that a moment ago. He wasn't speaking to you. He was speaking to Mr. Sullivan, is that correct?

Mr. MCNULTY. That is correct.

Mr. DAVIS. Were you able to hear their exchange?

Mr. MCNULTY. I did not hear what he said. Now I have seen printed many times and quoted many times what he said. And I have no reason to doubt that. But if you were to ask me to say from my own recollection to say what he said, I would not be able to tell you. The noise in that Chamber that night was deafening.

And on that point, I just want to say about Kevin's testimony, because I think he is one of the finest employees of the House of Representatives. But I think he made an assumption which is not reasonable. He said something about something he heard Mr.

Hoyer say from the well. Well, if I couldn't hear Steny Hoyer when he was standing where John Sullivan is, I certainly didn't hear him say anything from the well. So I wanted to get that on the record as well.

Mr. DAVIS. And is it certainly fair to say, Mr. McNulty, that at this point that we see on the screen or either moments before this that Mr. Hoyer is not giving you any instruction as to when to call the vote?

Mr. MCNULTY. He absolutely did not give me any instructions.

Mr. DAVIS. And at this point—you have reviewed the tape before today, is that correct?

Mr. MCNULTY. I have.

Mr. DAVIS. What happens after this, Mr. McNulty, is that you stand there—let's just watch it for a moment. You stand here. There is no one around you, correct? There is no one close to you, no Member, no member of the staff, is that correct?

Mr. MCNULTY. Except for the Parliamentarians.

Mr. DAVIS. Right. But he is not engaged with you?

Mr. MCNULTY. That is correct.

Mr. DAVIS. Let's play the tape.

What are you doing at this point?

Mr. MCNULTY. I am waiting for the votes to be tallied. And I had made the determination at this point that after these votes were announced I would attempt to call the vote again. In order to enforce clause 2(a) of Rule XX.

Mr. DAVIS. Let's stop at this point. You say that at this point you made the determination that you would call the vote after you believe that the last well change had been processed, is that right?

Mr. MCNULTY. That is correct.

Mr. DAVIS. Tell me about rule 2(a) and why you felt it was operative in this instance. First of all, tell us what rule 2(a) is.

Mr. MCNULTY. Well, I will read it exactly.

Clause 2(a) of Rule XX states quote, a recorded vote by electronic device shall not be held open for the sole purpose of reversing the outcome of such vote.

Now, in my own mind, there was no violation of clause 2(a) of Rule XX because I was attempting not to hold open the votes for the purpose of changing the vote. I was attempting to close the vote. I was doing the opposite. But I wanted to avoid the appearance of any violation of clause 2(a) of Rule XX because that had been brought up as an objection by Members of the House several times since its enactment at the beginning of the year 2007.

Mr. DAVIS. Okay. Let me stop you and set some context. At this point—and again, I apologize because of the way the screen is configured, we can't show the audience how much time had elapsed after zero. But zero had lapsed for several minutes, is that right?

Mr. MCNULTY. I believe so, yes.

Mr. DAVIS. And was it your concern, Mr. McNulty, that the Minority might allege that the vote was being kept open in violation of rule 2(a)?

Mr. MCNULTY. It was.

Mr. DAVIS. And in response to that concern, you were of the mindset that once the last well change card had been processed, you were going to call the vote?

Mr. MCNULTY. That is correct.

Mr. DAVIS. And you do call the vote?

Mr. MCNULTY. I do.

Mr. DAVIS. Tell us why that was a mistake.

Mr. MCNULTY. Well, it was a mistake because after the Clerk announced Mario Diaz-Balart's vote, which I believe was the last vote change at that time, I banged the gavel and called the vote. What I believe to have happened at that time was that although Mario's vote was recorded and announced, the computer had not yet caught up with that. In other words, apparently it takes a few seconds for it to go through the process, and maybe it took even a little bit more that night because there were some problems with the voting machine. As a matter of fact, it failed on the next vote.

Mr. DAVIS. Now let me slow you down for a moment. You were looking at something. What were you looking at, Mr. McNulty?

Mr. MCNULTY. I am looking at the tally on the side.

Mr. DAVIS. And what did you see?

Mr. MCNULTY. 214–214.

Mr. DAVIS. Did you believe that the tally on the board accurately reflected the votes of 428 Members of the House of Representatives?

Mr. MCNULTY. Yes.

Mr. DAVIS. And would you have called the vote——

Mr. MCNULTY. And I believe that included the vote of Mario Diaz-Balart, too.

Mr. DAVIS. That was exactly my next question. Would you have called the vote if you thought that Mr. Diaz-Balart's vote had not been processed?

Mr. MCNULTY. I have heard this in previous questioning. When I—I have taken pains every time I have ever been in the chair to make sure that every person's vote has counted. I have waited on votes that were non-controversial and not close for Members not in the well but coming down the aisle, waving their cards. Because when I see that, I do not see one person. I see 650,000 American citizens. And they have a right to have their vote counted. And so I have always taken great pains in the hundreds of hours that I have been in the chair to make sure that everyone's vote counts.

Mr. DAVIS. Mr. McNulty, at the time that you started to call the vote, obviously it takes several seconds to say the magic words. At the time you were saying the magic words, 214 to 214, the motion is not carried, did you hear any Member yell out, "one more" or anything to that effect?

Mr. MCNULTY. No.

Mr. DAVIS. Did you see any Member standing in the well attempting to change a vote?

Mr. MCNULTY. No.

Mr. DAVIS. Did any Member manifest in any way an intent to come down and change a vote?

Mr. MCNULTY. Not that I saw, no.

Mr. DAVIS. Did any member of the parliamentary staff or any member of the rostrum staff try to stop you while you were calling the vote?

Mr. MCNULTY. No.

Mr. DAVIS. Now after you called the vote, I think it is safe to say there is a lot of consternation in the Chamber. There is a lot of noise. Several Members, Republicans are yelling "shame, shame" or something to that effect. When did you first get a sense that something was awry with your calling of the vote, Mr. McNulty?

Mr. MCNULTY. Well, I knew it was wrong when I looked up at the board again.

Mr. DAVIS. And then you saw 215–213——

Mr. MCNULTY. The board didn't say 214–214 anymore. It said 215–213. And I believe that the Minority had a right to be upset.

Mr. DAVIS. We have heard a lot of testimony about the custom and practice of a tally sheet. When you were in the chair on the night of August 2, 2007, did any member of the parliamentary staff inform you that you could not call a vote without a tally sheet?

Mr. MCNULTY. No.

Mr. DAVIS. In your years as a presiding officer, had any member of the parliamentary staff ever told you that it was a prerequisite that a tally sheet be presented before you called a vote?

Mr. MCNULTY. No. And as a matter of fact, the next day—the one question I asked John Sullivan was whether there was anything in the rules that required that because I wanted to make sure that I didn't violate any rules of the House. And the answer to that question was no, that it is not required in the rules. That does—so I am just answering your question. In my own mind, that does not excuse my error.

Mr. DAVIS. Let me try to give you a chance again to put this in some context because we have certainly heard Mr. Hanrahan say and we will hear Mr. Sullivan I believe saying that it is custom and practice that a tally sheet be presented. Perhaps you heard while you were in the room, perhaps you heard Mr. Hanrahan say, I can't recall a single instance when a tally sheet has not been handed up to a presiding officer.

I want you to give us a sense of why you called the vote without a tally sheet.

Mr. MCNULTY. It was not so much a conscious decision not to have the tally sheet. I really wasn't thinking of that at the time. I was fixated on enforcing—or at least acting in such a manner that there would not be the appearance of me holding the vote open for the purpose of changing the outcome. And therefore, I made that decision to call the vote after the last vote change had been announced, and I just went ahead and did it. And——

Mr. DAVIS. And let me just——

Mr. MCNULTY. And I think in my own mind looking back on it, I was overly fixated on the enforcement of that rule and that caused me to make an error which was—which I regret.

Mr. DAVIS. And let me just stop you at that point. Rule 2(a) obviously is a part of the codified rules of the House, is that right?

Mr. MCNULTY. That is correct.

Mr. DAVIS. A tally sheet is not part of the codified rules of the House.

Mr. MCNULTY. That is correct.

Mr. DAVIS. So in effect you have a written rule that you needed to enforce and a custom and practice. And you chose the written rule, is that right?

Mr. MCNULTY. I did.

Mr. DAVIS. We have lots of noises and buttons around here, Mr. McNulty, even when we are not in session apparently.

Now at this point again—we won't waste time going through the videotape because of our time constraints. But we see on the tape that Mr. Sullivan walks up to you and you and Mr. Sullivan engage in an exchange about how to make this right. Is that a fair characterization?

Mr. MCNULTY. Yes. What happened—after I looked up at the board and saw the different total, I knew that I had committed an error. And I first started in the chair under Bill Brown when he was the Parliamentarian, and I remember him fondly for him spending a lot of time with me when I was in the chair and things were quiet and him tutoring me about things. And one of the things that I remembered that he said that popped into my mind at that very moment was, when in doubt do what the Parliamentarian says. And I knew that I had committed an error that had caused this chaos in the House. And I made the determination at that moment that I wasn't going to make any other ruling on that vote without the concurrence of the Parliamentarian. And what John said to me was, I am going to write out a statement for you to read. And I decided to wait until that was completed and to read it.

Mr. DAVIS. Now while Mr. Sullivan is writing out a statement, is it correct to say that Members went down to the well and changed their votes?

Mr. MCNULTY. They did.

Mr. DAVIS. In fact, at least three Members went down to the well and changed their votes. I represent in my opening statement and Mr. Hanrahan agreed with me that about 7 minutes lapses between your premature calling and your final announcement of the vote.

Does that seem about right to you?

Mr. MCNULTY. That would seem about right.

Mr. DAVIS. During that approximate 7-minute timeframe, do you know of any Member who attempted to cast a vote whose vote was not counted?

Mr. MCNULTY. No. The only thing that I heard about later and I didn't really remember it at the time was what Steve brought up about the Leader Boehner's vote.

Mr. DAVIS. Did you realize at the time that there had been some issue with Mr. Boehner's vote.

Mr. MCNULTY. No, I didn't. Not at the time.

Mr. DAVIS. During the 7-minute time frame or for that matter at any time that night, did Mr. Boehner manifest any concern that his vote had not been—his well card had not been processed?

Mr. MCNULTY. Well, I don't know if he did to anybody else.

Mr. DAVIS. But you don't know that, do you?

Mr. MCNULTY. No.

Mr. DAVIS. During the 7-minute time frame that we are referencing, you have said that you don't know of any Member who attempted to cast a vote and who was disenfranchised. To this day, Mr. McNulty, has any Member of the House of Representatives

come up to you and said, Mike, I tried to cast a vote that night or I tried to change my vote and I was prevented from doing it?

Mr. MCNULTY. No.

Mr. DAVIS. Has any Member come up to you to this day and said, Mike, I tried to process a vote with my well card and your actions prevented me from doing it?

Mr. MCNULTY. No.

Mr. DAVIS. Was there ever any point—well, let me just actually close out this first round of questions. You have heard some testimony today about how this matter resolved itself. You remember that Mr. Hoyer goes to the floor and in effect makes a motion to set aside a vote. Do you remember that?

Mr. MCNULTY. I think he verbally asked to vacate first. And there was objection to that.

Mr. DAVIS. And what happened after that?

Mr. MCNULTY. I think we then moved to a motion to reconsider.

Mr. DAVIS. And what was the result of the motion to reconsider?

Mr. MCNULTY. I think he made that request before I actually read the statement, and I think that John then said I needed to read the statement first to establish what the vote was.

Mr. DAVIS. And you did that, you read that statement to establish the vote?

Mr. MCNULTY. I read that statement, the conclusion of which was that the final vote was 212 to 216.

Mr. DAVIS. And that included the well cards that had been processed in the 7-minute period I referenced?

Mr. MCNULTY. That is correct.

Mr. DAVIS. And at some point there was a motion that Mr. Hoyer makes that actually was voted on the floor, is that right?

Mr. MCNULTY. That is correct.

Mr. DAVIS. What was that motion?

Mr. MCNULTY. I believe it was a motion to reconsider.

Mr. DAVIS. What would the effect of a motion to reconsider have been?

Mr. MCNULTY. It would mean you would then proceed to a revote on the motion to recommit.

Mr. DAVIS. So in other words——

Mr. MCNULTY. Because the motion to reconsider passed.

Mr. DAVIS. So in other words, there is a procedural motion or a procedural vehicle that would have had the effect of setting all this aside and starting over, is that right?

Mr. MCNULTY. That is correct.

Mr. DAVIS. Did the Republicans agree to invoke that vehicle?

Mr. MCNULTY. Well, there was objection to the motion to vacate. And then I believe that during the motion to reconsider, I think that is when the walkout occurred. But the vote eventually went on.

Mr. DAVIS. But you mentioned as the vote was going on, even though the vote would have had the effect of setting the Democratic victory aside and starting over——

Mr. MCNULTY. That is correct.

Mr. DAVIS [continuing]. Instead of participating in the vote, the Republicans walked out.

Mr. MCNULTY. Well, some did. Not all did. But some did.

Mr. DAVIS. My time has concluded for the first round of questions.

The CHAIRMAN. Thank you, Mr. Davis. Mr. Pence.

Mr. LATOURETTE. Mr. Chairman, before you recognize Mr. Pence, can I be recognized for a unanimous consent request?

The CHAIRMAN. Please proceed.

Mr. LATOURETTE. Thank you. In Mr. Davis' questions, I just want the record to be clear, he referenced the votes on amendments that took place prior to Roll Call 814 and indicated that I guess there was a question that on those votes there were 427 Members present and voting. I would ask unanimous consent—because I think the record shows otherwise—that the staff be directed to accumulate the vote totals from Roll Call Vote 803 to 813 and reflect in the record the number of Members who were present and voting on those roll call votes.

The CHAIRMAN. Without objection.

Mr. LATOURETTE. Thank you.

[The information may be found in the Appendix.]

Mr. PENCE. Thank you, Mr. Chairman. And I want to welcome our colleague Mr. McNulty to this Select Committee for the second time.

I would ask, cognizant of the challenges of your schedule, do you need a break at this point? Would it be helpful for you to have——

Mr. MCNULTY. I am fine.

Mr. PENCE. Very good. I am going to ask a few questions, and then I will yield the balance of our time to Mr. LaTourette.

Let me begin simply by thanking you for your cooperation with this Select Committee. Many of our colleagues and many commentators thought this Select Committee would never even meet, let alone engage in a thorough and thoughtful examination of the events of August 2.

And while there are issues that need to be resolved, I want to say publicly that I believe that your cooperation, your humility and the humanity that you have displayed have greatly facilitated this inquiry. And the Members of the Minority of this Select Committee are grateful for that.

Mr. MCNULTY. Thank you.

Mr. PENCE. I believe that your cooperation with this Select Committee and the seriousness with which you have approached it speaks volumes about your commitment to this institution and, as you prepare to conclude your career in the House of Representatives, that you will leave here with the respect of this Member for that.

Mr. MCNULTY. I thank the Ranking Member.

Mr. PENCE. Because I believe you are an honorable man and I have always respected you, I wanted to raise a couple of key questions, things about which we want to be clear about your testimony as we try and resolve and rebuild the events of that evening.

Number one, both in your written statement that you provided us on April 9 as well as your statement today, you said, "when I announced the vote at 214 to 214 I did not do so at the direction of any other person or persons. I did so on my own in an attempt to enforce clause 2(a) of Rule XX," et cetera, et cetera.

In that same interview before this Committee, you further stated, "no one instructed me to call that vote at any time that night that I recognized. I will be perfectly honest with you. Earlier on I was hoping to get some direction but it never came, so I used my own judgment at the time." That appears on pages 23 and 24 of your deposition.

Later on, on page 49, you added, "no member of the staff or Member of the Majority told me when to call that vote. I wished they had."

Mr. MCNULTY. Right. Because it is not uncommon to get a cue from Leadership when to wrap up a vote. But I never got any input from them. And all of this folklore about Steny directing me—if he wanted to get a communication to me, he could have done it. To take what Kevin—now again, I have the highest respect for Kevin. He may have very well heard Steny say something and Steny may very well have said something from the well apparently. How I would have been expected to hear something like that in the din that was going on in the Chamber that night I think is really a stretch. Because I didn't. So I used my judgment. I am talking about now—let's focus here. I am focusing on the key part, when I announced the vote and announced the result of the vote. I am saying nobody—nobody that I recognized gave me any direction to do that. I took that initiative on my own. I have acknowledged, not 9 months later or 8 months later when we met privately but the day after, that I made a mistake and I apologized for it. But I made the error. And let there be no mistake about it, it is not the fault of the Parliamentarians or the Clerk's Office or Steny Hoyer or anybody in the leadership as to why we are here today. It is because of the action that I took.

Mr. PENCE. I thank you. That is very clear.

Did Catlin O'Neill of the Speaker's staff give you any instruction, direction about when the Leadership wanted the vote closed?

Mr. MCNULTY. The only thing I remember, as I mentioned in my prior testimony, about Catlin is that she did say to me at some point that the vote was going to be tight. And I think that was before the vote was even over with. So that would have no direct bearing on, you know, several minutes later when I made that decision to call the vote.

Mr. PENCE. And I want to understand——

Mr. MCNULTY. In other words, to be clear, she didn't say to me prior to me calling that vote, do it now or anything like that. That did not happen. Or if she did, it was way out of earshot of where I was.

Mr. PENCE. But to borrow from a statement that you just made—and correct me if I am misstating it—that would have been fairly common for someone in her capacity to do to give guidance to the Chair?

Mr. MCNULTY. It would be common to say, wrap up a vote. But obviously what I did that night was not common. Remember, doing it as quickly as I did without the benefit of the tally sheet, that was a mistake. It was a mistake on my part. Steny Hoyer is not responsible. Catlin O'Neill is not responsible. She didn't tell me to do that. I did that on my own, and I was wrong. And no one else is responsible for that.

Mr. PENCE. You testified earlier today under Mr. Davis' questioning, you said that Mr. Hoyer, "absolutely did not give me any instruction."

I think you are aware of some of the work this Committee has done. You may not be aware that as many as six witnesses have testified to this Committee that they were both aware of the Majority Leader's disposition and they were aware of his desire to close the vote. My question to you——

Mr. MCNULTY. And where is the evidence that he communicated that to me?

Mr. PENCE. Let me get to that question if I can. But the preamble to my question is that we have six witnesses who were aware of both his angry disposition and of his desire to close the vote. I want to understand your testimony. You were not aware of his disposition——

Mr. MCNULTY. No. I didn't say that, Mike. And I think I said in my private testimony that he came up and he had some conversation with John and he didn't appear happy, but I couldn't even make out what he said because there was so much noise in the Chamber that night. But he obviously didn't look happy to me. So no, I am not making that characterization that he wasn't upset. He probably was upset.

Mr. PENCE. Well, the only thing that I would be curious about, and you just answered it, is whether you were aware of his disposition. And secondly would be—if—and I am very clear that your testimony is that neither Catlin O'Neill of the Speaker's staff nor the Majority Leader instructed you or directed you to close the vote. But were you aware that he was instructing anyone else of his desire to see the vote closed?

Mr. MCNULTY. No. But I mean, looking back on it now, looking at tapes and so on, and listening to all of the testimony you are giving, maybe that was his intent. It was not imparted to me that night.

Mr. PENCE. Okay. I will move on to two more quick questions. You are very aware of the Rules of the House, it would not surprise you if clause 2(a) of Rule XX also provided that, "the Clerk shall conduct a record vote by electronic device." That language should not be unfamiliar to you necessarily, would it? Or are you aware that that——

Mr. MCNULTY. I think almost all of our votes are by electronic device.

Mr. PENCE. But the language in the House rules, were you aware of the language that says, the Clerk shall conduct a record vote?

Mr. MCNULTY. I think we do that every time, don't we?

Mr. PENCE. Okay. Good. You referred to this tally slip we have been talking about now for months. And you have been very candid about your mistake. And I would associate myself with Mr. Davis' statements about your sincere regret about that error. You said it is, "usual but not required."

Mr. MCNULTY. I only say that because of the conversation I had with John Sullivan.

Mr. PENCE. Okay. Let me just ask you as a factual matter. You referred to your career in the previous Democratic Majority that you presided over the vote many, many times I think was your

characterization. Had you ever in any time serving in the chair closed a vote without a tally slip?

Mr. MCNULTY. No.

Mr. PENCE. Last question. At any point during Roll Call 814 did you ever receive a written tally slip prepared by the Tally Clerks?

Mr. MCNULTY. I don't believe so. I think the only tally that I had was the one that was written at the bottom of the statement that John Sullivan gave me, which I subsequently read.

Mr. PENCE. Very good. Thank you. I will yield the balance of our time to Mr. LaTourette.

Mr. LATOURETTE. Thank you very much. Mike, welcome. And I want to just chime in that I don't think anybody on either side thinks that you set out to break the rules or intended to break the rules. I happen to think you are one of the best presiding officers that the Democratic Party has and I was pleased, as I expressed on the record, that you, under the auspices of the Speaker, have resumed those duties because I think you are good at it.

Having said that though, I do want to say that when I listened to Mr. Davis and agree with him that you didn't intentionally do anything, sometimes a mistake can lead to a violation of something. And just to give you an example, the other day I was driving in Ohio and I thought that the speed limit was 25—or excuse me—35, and it actually turned out to be 25. I was mistaken in that regard. And the police officer who pulled me over wasn't impressed by my mistake of fact. So to be clear, I don't believe and I don't think anybody believes you intentionally created this difficulty or made the mistake, but a mistake can also be a difficulty, and that is what this Committee is charged with.

Mr. MCNULTY. But there is another difference there which is that you violated a rule and I don't believe I did.

Mr. LATOURETTE. Well, we are going to get to that, and I intend to walk you through that pretty aggressively.

Let me go to—oh, and I should mention because we had some trouble when we were interviewing you before about eyesight and who was where. The parties have stipulated that if I show you clips from the video that—and I will give you—I will have the staff give you the sheet so you can follow along. But Catlin O'Neill will have an orange halo around her. Jerry Hartz will have a yellow one. Steny Hoyer red. Nancy Pelosi blue. John Sullivan green. Kirsten Gillibrand purple. And Zack Space because we ran out of colors is white. And you don't have one. Do you have that in front of you?

Mr. MCNULTY. Yes.

Mr. LATOURETTE. So when I ask you—when we roll the tape a little bit later and I will ask you if you say that you don't agree that Catlin O'Neill has orange around her, then please tell me. But otherwise to move expeditiously through it, I think that that is what I would like you to understand.

You indicated that when we interviewed you before and again have reinforced today that the only communication from Catlin O'Neill during the course of that evening was that it is going to be close and maybe stay on your toes.

Mr. MCNULTY. It is the only one I remember, Steve.

Mr. LATOURETTE. Then I would ask the staff to play for us in—first chapter 4 and then stop it right after chapter 4. I ask you to watch chapter 4 on the monitor.

Okay. Chapter 4, to my observation, the orange circle, which we have stipulated is Catlin O'Neill, comes down the aisle from the Majority side and approaches the rostrum and appears to be engaged in conversation with you.

Mr. MCNULTY. Yes.

Mr. LATOURETTE. Do you remember that conversation?

Mr. MCNULTY. That may very well have been when she made the statement about I think this is going to be a close vote.

Mr. LATOURETTE. Okay. But just—I don't want to be tricky but—you know that that conversation happened sometime during the evening. Do you have a reasonable certainty that it was during that sequence?

Mr. MCNULTY. I think it was—a reasonable certainty, yes. Because I think that is the only time she came that close to me and had a direct conversation. I think there was one other time when she was further away.

Mr. LATOURETTE. Okay. Let's go to——

Mr. MCNULTY. I think that was the one where she mentioned it would be a close vote.

Mr. LATOURETTE. Okay. Let's go to—please play chapter 5.

Okay. Chapter 5, again, the orange circle which is Catlin O'Neill leaves the Democratic leadership table, rises to the rostrum and, from my observation, was having a conversation with you. Do you agree with that?

Mr. MCNULTY. Yes.

Mr. LATOURETTE. What did she and you talk about?

Mr. MCNULTY. I would have to be guessing at this one.

Mr. LATOURETTE. I really don't want you to guess. Do you have any recollection as to what that conversation was about?

Mr. MCNULTY. I don't. The only other common thing that it might be would be to say when to—to ask for additional votes or something after time has expired. But something routine like that. But I don't remember anything beyond that.

Mr. LATOURETTE. But to be clear, that is a guess. You don't remember?

Mr. MCNULTY. Yes. That is a guess. I don't remember.

Mr. LATOURETTE. Okay. If we could play chapter 6, please.

The CHAIRMAN. Would the gentleman yield for a moment?

Mr. LATOURETTE. Sure.

The CHAIRMAN. In your question you described the exchange, if there in fact was one, as a conversation. Can we determine if the tape runs the duration of that conversation?

Mr. LATOURETTE. I am sure we can. I would be happy to ask unanimous consent when my clock isn't ticking that we have the staff determine that.

The CHAIRMAN. Well, thank you very much. I yield back.

Mr. LATOURETTE. Chapter 6, please.

Mr. MCNULTY. Now I think in that one she is not talking to me. It looks like she is talking to Ethan.

Mr. LATOURETTE. You can stop there. So my question is, you don't recall what we have just played, chapter 6 being a conversation between Ms. O'Neill and yourself?

Mr. MCNULTY. No. And I think it looks obvious that it is not.

Mr. LATOURETTE. Well, I don't want to dispute—it is obvious she comes up the stairs to the rostrum, you look at her and you get up. I think if we played it a minute more or a couple seconds more, you are going to bang the gavel. But you don't remember having——

Mr. MCNULTY. I don't.

Mr. LATOURETTE. Okay. And lastly, chapter 7. Could you stop it there for just a second? You now see sort of the marriage of the orange and red circle sort of in the manner of the Olympics. And again, looking at our cue sheet, the red circle belongs to the Majority Leader, Mr. Hoyer. And Mr. Hoyer has indicated in his testimony or in his deposition with the Select Committee that he believes he was expressing a desire to Ms. O'Neill that the vote be shut down when we are ahead. Okay. Could you continue to play, please?

Stop it there. Okay. Again, the orange circle appears to go up. You lean over, and would you agree that it appears that there are words being exchanged between you and Ms. O'Neill?

Mr. MCNULTY. I leaned forward a couple of times that night in order to hear things. But I am not sure, Steve, on that one. The other ones, it was obvious that there was a communication. On that one, I am not sure.

Mr. LATOURETTE. Okay. So again, since you are the witness and I am not, I would just say that you don't recall that interchange between yourself and Catlin O'Neill.

Mr. MCNULTY. I don't recall——

Mr. LATOURETTE. There being one?

Mr. MCNULTY. That is correct.

Mr. LATOURETTE. Okay. Great. You do, in fact, during the course of that—and I would be happy to rewind it for you and replay it—but you do in fact gesture to someone with your hand. Did you notice that?

Mr. MCNULTY. Yes.

Mr. LATOURETTE. Okay. Do you have any idea—do you recall talking to anybody if it is not Ms. O'Neill at that moment in time?

Mr. MCNULTY. I just don't remember that one, Steve.

Mr. LATOURETTE. That is fine. Again, from the testimony of other people, including the Majority Leader, the Majority Leader indicated that when he entered the Chamber and came down to the well, that he yelled that he wanted the vote closed and closed now. I have understood you to say that if the leader was in the well you didn't hear him?

Mr. MCNULTY. I did not hear that.

Mr. LATOURETTE. And I think what Mr. Pence was getting at is that all of the other Members of the rostrum who have been interviewed did, in fact, hear that direction.

Mr. MCNULTY. Well, they were all closer than me.

Mr. LATOURETTE. Well, including I would say Ethan Lauer, who was standing next to you.

Mr. MCNULTY. Well, I did not hear that.

Mr. LATOURETTE. That is what I am saying. So I just want to tell you——

Mr. MCNULTY. I absolutely did not hear that.

Mr. LATOURETTE. That is where I think Mike was going in that discussion.

Now I want to get to this——

Mr. DAVIS. Would the gentleman yield for one second? I don't want to use this time to obviously argue about the facts. But Mr. LaTourette's observation that Mr. Lauer was next to you. Mr. Lauer is actually in the same place that Mr. Sullivan was. I mean, he is a little bit removed from him. So to suggest they are in a very close position is absolutely inaccurate, Mr. LaTourette.

Mr. LATOURETTE. Well, and I appreciate that and I thank the gentleman for bringing it up. And as a matter of fact, Mr. Lauer would be further away than Mr. McNulty at the time that the Majority Leader was in the well making his observations. But I thank the gentleman for making my point.

I want to get to this 2(a). 2(a) was a much publicized response to the 3 hour and some Medicare Part D vote in which it was alleged arms were broken, and so forth and so on. But at the end of the day the protocol that Mr. Hanrahan testified about was followed, a tally sheet slip was handed up, the computer was shut down appropriately, the Chair read from the tally slip, and we were done. And to purge the House of the culture of corruption, the new Democratic Majority determined that they would put in clause 2(a). I think that as we have explored this matter as a Committee, we have found—I have referred to it as a soup sandwich in that it says for the sole purpose of influencing or affecting the outcome of the vote. And it is a soup sandwich because the presiding officer could come up with any reason. He could say, because it is Tuesday, because my wife laid out a blue tie today, because I thought people were at the White House.

Are you a lawyer?

Mr. MCNULTY. I am not a lawyer.

Mr. LATOURETTE. Are you familiar with something called mens rea in the criminal law.

Mr. MCNULTY. Yes.

Mr. LATOURETTE. Okay. Well, in my mind, the only way that this clause 2(a) can be definitively violated is if the occupant of the Chair says, yeah, I did it. I mean, that is it. Because we have to—you know, unless we can get Mr. Spock and do the Vulcan mind meld and, you know, say that you know this is what happened, that the person in the Chair has to say, I held it open for the sole purpose of influencing the outcome of this vote. I don't ask you to agree with that, but that is my sense of 2(a).

Mr. MCNULTY. You are probably right, but what I was trying to do was to avoid even the appearance of impropriety with regard to that.

Mr. LATOURETTE. And I know you were.

But I want to get to your mens rea, and this goes to my opening observation about mistaken, not intentional, and everything else; and that is, you indicated to us in your interview, and you have reaffirmed that here to today, that as a presiding officer you were cognizant of rule 2(a).

Mr. MCNULTY. Very cognizant, maybe overly so.

Mr. LATOURETTE. And you wanted to make sure that nothing you did ran afoul of clause 2(a)?

Mr. MCNULTY. I will repeat, I wasn't so much worried about running afoul of it, because I knew in my own mind that I was not violating clause rule 2(a), but that there could be the appearance of a violation of clause—of rule 2(a)—clause 2(a) of Rule XX.

Mr. LATOURETTE. But let me walk you again to your interview and your statement today, and let me go back.

You called the vote twice before John Sullivan's statement. But the first time you say 214–214, you don't speak the magic words, the motion is not agreed to, and you stop?

Mr. MCNULTY. That is correct.

Mr. LATOURETTE. And based upon your earlier interview, you said you stopped because you became aware of people calling one more, or activity in the well, that evidenced that other Members wanted to vote?

Mr. MCNULTY. Yes.

Mr. LATOURETTE. And, as a matter of fact, five Members do then vote with well cards; two Democrats and three Republicans. There comes a time after the conversation between Mr. Hoyer and Ms. O'Neill that you call it a second time without benefit of the tally slip by referencing the board, and you call it 214–214 again, and this time you say, and the motion is not agreed to?

Mr. MCNULTY. But that had nothing to do with anybody else's conversations. That had to do with my—what was going through my mind about the enforcement of clause 2(a) of Rule XX and my determination in my own mind that after the last vote change was announced, I was going to call that vote; not what it was, I was going to call that vote.

Mr. LATOURETTE. And I am not saying that you buckled to pressure.

Mr. MCNULTY. And I wouldn't even know in my own mind what that vote would be until it was done.

Mr. LATOURETTE. That is exactly right. But that is what I want to get to. And that is, because you told us this, and I think this is important; and you may not agree with me, but I think this is important.

You have indicated to us that in your mind the application of rule 2(a) was going to cause you to call that vote after the Mario Diaz-Balart card had been entered.

Mr. MCNULTY. I would say the appearance of—I mean, I have to say to you, Steve, there was never any question in my mind a violation of clause 2(a) of Rule XX would be if I was holding the vote open for the purpose of changing the outcome.

I was in the process of closing the vote down; I was doing the opposite, so there was no violation of clause rule 2(a) in my mind. But I could understand, and as a matter of fact, expected later on that there could be the appearance of that, particularly if the Majority side prevailed and I was holding the vote open.

Mr. LATOURETTE. No, I get it, and I don't think we are disagreeing. But I had understood you to say in your interview that you, as the presiding officer surveying the well, seeing that after Diaz-Balart and Ros-Lehtinen came down, submitted well cards,

you told us that you had reached the conclusion, as the presiding officer, you were going to call the vote after those votes were processed, and that you were concerned that to keep the vote open after that would have given this appearance of a violation of rule 2(a). That is what you told us.

Mr. MCNULTY. I don't disagree with that.

Mr. LATOURETTE. Okay. That is all I want to say. Okay.

Now, but clearly—and so when you called the 214–214, the clock upticks, or the thing upticks.

Mr. MCNULTY. That's correct. Because I believe that Mario's vote had not yet been recorded by the computer.

Mr. LATOURETTE. That's right. But you would agree that within moments, and certainly today, you understand that what you read off the display was not right, the votes that had actually been processed into the system at that point in time, once the computer refreshed, was really 215——

Mr. MCNULTY. Well, that is a technical question. I mean, when I called the vote, it was 214–214. So you are asking a technical question whether a vote is counted before it is recorded. I don't really know the answer to that question, but that vote had not yet been recorded.

Mr. LATOURETTE. Okay. Well, we will ask somebody else that.

Mr. MCNULTY. That is a technical question.

Mr. LATOURETTE. I think that Diaz-Balart, Mario, his card is in the system.

Mr. MCNULTY. It was certainly my intention to count his vote.

Mr. LATOURETTE. Right. And then I think—could you put up the—we have sort of a time sequence of when votes were in and recorded and everything else. And quite frankly, when Mario Diaz-Balart's card goes in, it makes it 215–213.

Mr. MCNULTY. Yes.

Mr. LATOURETTE. Okay. Now, at that point in time you, as the presiding officer, because Mr. Davis asked you if anyone told you not to close the vote or close the vote or anything else, but when you attempted to call it the first time, nobody told you to call it the first time, right? The Parliamentarian didn't say, call it now?

Mr. MCNULTY. No. It was my same mind-set about clause 2(a), Rule XX.

Mr. LATOURETTE. And when you closed it the second time, the Parliamentarian—I mean, Mr. Davis' observation is, nobody told you not to do it; well, nobody told you to do it, either.

Mr. MCNULTY. That's right. And I have always taken responsibility for that. I did it.

Mr. LATOURETTE. Right. And you, as the presiding officer invested with the discretion in terms of when to close that vote down, you had a choice at that sort of pivotal moment; and that is, you read off the board, 214–214.

I will ask somebody else, but for purposes of this question I am going to ask you to assume that it really was 215–213 in terms of votes being in the system and just not making it from Anderson's computer to the screen.

You could have re-called the vote at 215–213 and that the motion is agreed to; you had that discretion as the presiding officer, did you not?

Mr. MCNULTY. If John Sullivan had told me to do that, I would have done it in a New York minute.

Mr. LATOURETTE. I understand that.

Mr. MCNULTY. And I described earlier what my mind-set was at that time, was that I made a serious error, and I wasn't intent on making another one. And I decided at that point to heed the words of both Bill Brown and Jim Wright, who both said to me, when in doubt, follow the instructions of the Parliamentarian.

On the rest of that vote I was going to follow the instructions of the Parliamentarian. And the Parliamentarian said to me, he was going to write a statement for me to read, and I did not make any ruling until he finished composing that statement and me reading it.

Mr. LATOURETTE. When did he tell you he was going to write a statement for you?

Mr. MCNULTY. You can probably find that on the tape. I think he came up and said something to me—I think.

Mr. LATOURETTE. Did you think it was contemporaneous with when you made the mistaken call?

Mr. MCNULTY. It was very shortly after that.

Mr. LATOURETTE. But the last question—I have heard what you said, that you sort of said, from this moment on you are going to do whatever the Parliamentarian. But do you disagree with the observation that you could have re-called the vote based upon the votes that were in the system, 215–213, motion is agreed to; and there still would have been available a motion to reconsider by the Majority party made by one of the 19 Democrats that voted for the motion?

Mr. MCNULTY. I think all of that could have happened. It is just, Steve, that at that point in time I knew I made a serious error. I felt terrible about it, and I didn't want to complicate the situation, so I waited to get instructions from the Parliamentarian.

Mr. LATOURETTE. I've got you. Thank you very much.

The CHAIRMAN. Mr. Davis.

Mr. DAVIS. Thank you, Mr. Chairman. Let me pick up Mr. McNulty directly on Mr. LaTourette's last set of questions to you, because I was a little bit struck by them.

He asked you, well, once you saw the uptick went from 215–213, why not just change what you said and announce that the motion is carried? Did anyone hand you a tally sheet showing the vote was 215–213?

Mr. MCNULTY. No.

Mr. DAVIS. And perhaps I am wrong, but I thought we were hearing all day from Mr. LaTourette and Mr. Pence and Mr. Hanrahan how important a tally sheet was.

If you had called the vote at 215–213, you would have been doing it without a tally sheet, correct?

Mr. MCNULTY. That is correct.

Mr. DAVIS. The only difference is, their side would have won and not ours, but there still wouldn't have been a tally sheet either way, right?

Mr. MCNULTY. No. If I just made that pronouncement on my own, it would have been without the benefit of a tally sheet.

Mr. DAVIS. And let us just for a moment actually go back one more time into the tape.

Mr. Operator, if you can go back to the time that Mr. McNulty calls the vote at 21:50 or 10:51:56.

Or 22, I am sorry. 22:51—is it 26 or 56? 26. Just get to that point.

And I want you to note Mr. McNulty, frankly, how quick a time frame elapses before other Members go up there and start changing their votes again.

Mr. DAVIS. Mr. McNulty, at 22:51:31, you complete your sentence saying the motion is not carried. Ten seconds later what do you see in the well?

Mr. MCNULTY. I see, I believe it is Zach Space and Kirsten Gillibrand.

Mr. DAVIS. Within 10 seconds of your prematurely calling the vote, at least two Members go to the well, do you agree with that?

Mr. MCNULTY. Yes.

Mr. DAVIS. Mr. LaTourette asked you why you didn't just call the vote again apparently without a tally sheet at 215–213. If you had called the vote without a tally sheet at 215–213, that would have meant that both Gillibrand and Space would have been prevented from changing their vote; isn't that right?

Mr. MCNULTY. That's correct.

Mr. DAVIS. And if prevented Gillibrand and Space from changing their vote, as they clearly stand in the well, you would have been disenfranchising them; is that right?

Mr. MCNULTY. I believe so.

Mr. DAVIS. And just for the record, it is not just the two of them, another Member comes forward—Mr. McNerney?

Mr. MCNULTY. That's correct.

Mr. DAVIS. So we have at least three Members—McNerney, Gillibrand and Space—who go on to change their votes. If you had called the vote during the 7-minute window, all three of them would have been disenfranchised.

Mr. MCNULTY. I believe so.

Mr. DAVIS. You were asked a number of questions about whether Ms. O'Neill communicated any instructions to you to close the vote out.

Mr. McNulty, you have been in the House for 20-some years or for 19 years, is there anything improper or unusual about a member of the Speaker's staff suggesting to a presiding officer that the vote be closed out?

Mr. MCNULTY. No. It is fairly routine.

Mr. DAVIS. As I understood your testimony, though, you are not saying the communication did—you are not saying it was an improper communication, you are simply saying you don't recall receiving it.

Mr. MCNULTY. No.

And there may have been, like I said at the beginning, just an indication of a call for the additional votes or changes of votes, something like that, which would have been very routine. But no one instructed me to call the vote when I called the vote.

Mr. DAVIS. And for the record—though Ms. O'Neill can speak for herself, since Mr. LaTourette took the care to characterize other in-

dividuals' testimony—I represent to you that Ms. O'Neill in no way contradicts that.

Now, as far as Mr. Hoyer goes, as a 19-year Member of the House, is there anything unusual about a Majority Leader or Majority Whip suggesting that a vote should be closed out, anything improper about that?

Mr. MCNULTY. Well, it would only be improper if someone was in the Chair and that was suggested and someone else was trying to vote. But other than that, it would not be unusual.

Mr. DAVIS. Now, what is interesting to me is, for all the questions about what Mr. Hoyer did or didn't do, this doesn't change if you look at the tape 50 times, 100 times or one time, when you call the vote, you were looking up at the board; and I can't see the gentleman from Maryland, Mr. Hoyer. Do you agree with that?

Mr. MCNULTY. Say that last part.

Mr. DAVIS. At the time that you call the vote, I don't see Mr. Hoyer anywhere in sight; and I see you looking up at the board, correct?

Mr. MCNULTY. I don't see him, but I have got a block on my screen here.

Mr. DAVIS. Well, I am not talking about this moment on the screen. That is a different point.

But at the time when you called the vote—you have seen that several times—I see you looking at the board. I don't see Representative Hoyer anywhere. So for all the questions about whether he pressured you or influenced you, I don't even see his physical presence.

Do you agree with that?

Mr. MCNULTY. I don't recall his physical presence, and I know that he was never successful in communicating anything to me.

Mr. DAVIS. So even if there were some admission or exhortation from the Chair to call a vote, Mr. McNulty, it seems to me, frankly, that you either didn't hear it or ignored it.

Mr. MCNULTY. I never heard anything as far as a direction to me from Steny Hoyer.

Mr. DAVIS. Now, one final set of questions.

There is some question from Mr. Pence about the atmosphere in the Chamber that night, and I think Mr. Pence read Mr. Hoyer's comments about whether his agitation might have created some sense of pressure.

What was the pressure that you felt when you were evaluating when to call that vote, Mr. McNulty?

Mr. MCNULTY. The possible charge later on that there might have been a violation of clause 2(a) of Rule XX. That is what I was concerned about.

And today I feel as though I was overly concerned about it.

Mr. DAVIS. But in other words, the pressure you felt that night wasn't from the leadership to call a vote prematurely. The pressure you felt was that if you kept the vote open too long, the Minority might have objected to a violation of 2(a); that sounds like what you are saying.

Mr. MCNULTY. Yes.

Mr. DAVIS. I will yield the balance of my time to the Chairman.

The CHAIRMAN. Mr. Pence.

Mr. PENCE. Thank you, Mr. Chairman. Just a couple more questions from me, and then I will yield to Mr. LaTourette and be able to let you go.

One point of clarification for my colleagues: Mr. Davis suggested that the Minority would have preferred for you to call the vote. And I am paraphrasing my friend, but I think in his dialogue with you, he just suggested that the Minority would have preferred that you call the vote at 215–213 even without a tally slip.

Let me be very clear. It is the judgment of the Minority that at the time you used your discretion following Mr. Diaz-Balart's vote being presented, at the time that you decided to close the vote, we believe the vote, had it been properly processed into a tally slip and handed to you, would have reflected 215–213. And Members of the Minority are not and have not advocated overturning—that you should have overturned that long-standing tradition that would have meant we would have won.

I think Mr. LaTourette's point there is that, had the tally slip been created at the moment that you clearly today have expressed your intent to close the vote, following Mr. Diaz-Balart's vote, that it is our judgment the vote at that time was 215–213.

Let me move on to my questions.

Mr. Hoyer stated during his interview that he told Catlin O'Neill that he wanted the vote closed when the Majority was prevailing. That is on page 44 of his deposition, for the record.

There is a brief conversation visible—as Mr. LaTourette walked you through the video, there is a brief conversation visible between Mr. Hoyer and Ms. O'Neill at the rostrum. She appears to—well, she does immediately turn and appears to be saying something to you, although your testimony today is that you cannot recall what that was.

You know, it strikes me as highly unlikely that if the Majority Leader of the House of Representatives told an employee of the Speaker's Office that he wanted the vote closed, as he stated, and she immediately turned and said something to you, that Mr. Hoyer's wishes would not have been conveyed during that conversation.

Does that strike you as unlikely, as well, or unusual?

Mr. MCNULTY. No. I am just telling you what I recall as I recall it. And there was no communication from Catlin to me that Steny Hoyer was directing me to close that vote. That did not happen.

Mr. PENCE. Thank you. But given the Majority Leader's testimony that he had——

Mr. MCNULTY. There are a lot of things that you can look at on the tape and interpret stories and so on, but some of them are true and some of them are not. That one is not.

Mr. PENCE. Let me push on to the question of when we had the opportunity to interview you before, you were asked, and I think this appears on page 62 of—one moment.

Just for clarification, you were asked in your interview how would you characterize Mr. Hoyer's demeanor during that interaction with Mr. Sullivan, and we are referring to that point in the tape where we see them having a conversation. Your reply was agitated. Did you know——

Mr. MCNULTY. I think I said that earlier, too, something to that effect.

Mr. PENCE. You did.

Mr. MCNULTY. I wasn't happy or something.

Mr. PENCE. You did.

Did you know—do you recall knowing what Mr. Hoyer was agitated about?

Mr. MCNULTY. You know, things were happening so rapidly that evening; and I was fixated on not violating the appearance of clause 2(a) of Rule XX, and I was looking at the board constantly.

So, no, I didn't hear what he said to John. I know he said something. He didn't look happy to me. If you were to ask me to independently, say what his words were, I couldn't tell you of my own knowledge.

I can tell you what they are now because they have been published umpteen times; but if you were relying on me to be the source of that, I wouldn't be able to truthfully tell you that I remember him saying that. It was just very, very loud and I was concentrating on other things at the time.

Mr. PENCE. Let me ask this one other way, and then you can say "no" again.

Did you suspect that Mr. Hoyer was upset because you had not closed the vote while the Majority was prevailing?

Mr. MCNULTY. Let me put it to you this way: If he wanted to express that thought, why couldn't he have turned his head to me and told me that? He didn't.

Mr. PENCE. During his interview with this Committee, when I asked Mr. Hoyer whether his demeanor or actions, quote—and this was my question—"may have unintentionally created an environment of more pressure on Mr. McNulty to close a vote," the Majority Leader merely replied that that was, quote, "certainly possible."

Mr. MCNULTY. I felt no pressure from Steny Hoyer that night. My concentration was on enforcing the rules of the House, including the new rule.

Mr. PENCE. Thank you. That probably answers my last question.

So Mr. Hoyer's, what many have characterized as angry demeanor—you characterize it as agitated—it is your testimony it had no effect on your decision to prematurely close the vote?

Mr. MCNULTY. That is absolutely true. And if he wanted to communicate anything to me at the time he was having the conversation with John, he was close enough to me to turn to me and say something. He did not.

Mr. PENCE. I think that is all I have.

Mr. LaTourette, do you have anything further?

Mr. LATOURETTE. I do.

Just three quick lines of inquiry, Mike, and thank you for your patience and your answers to the questions.

When we talked to you earlier, on page 27 of your testimony, you were asked, do you think it was significant that there wasn't a tally sheet; and you say, I think it was pretty darn significant; I didn't wait for it because I felt that if I allowed additional time in between the time after Mario had voted, that other Members of the House might be persuaded on both sides of the aisle to change their votes; so we can get into one of those situations where a couple change on one side, a couple change on the other side, time keeps going on and I could be subject to criticism for violating

clause 2(a). So I decided after Mario's vote when I saw no one in front of me with a card—attempting to get a card ready to vote, that I would call the vote.

And then you have reinforced that today. That was your mindset at the time?

Mr. MCNULTY. Yes.

Mr. LATOURETTE. And let me, if we could play chapter 8 of the tape, please, and just ask you to watch chapter 8 for a second. And I would ask you to pay particular attention to the time, which is 22:51:14, when you announced for the second time—hold on a second—when you announced the second time the vote to when Mr. Sullivan opposes it.

[Video played.]

Mr. LATOURETTE. We are now at 22:52:39, which is about a minute and a half after you gaveled the vote for the second time. It didn't appear to me—and at this moment in time that we have frozen it, it appears that Mr. Sullivan is writing the statement that you referred to and you subsequently read. It appears to me that that is the first time that Mr. Sullivan, since your calling of the vote at 214–214, the motion is not agreed to, had any contact with you; is that right?

Mr. MCNULTY. It appears that way.

Mr. LATOURETTE. So again, you know, and you know what is troubling us—I mean, what is troubling us is, you called the vote 214–214, when it is really 215–213. And then in that intervening time, wherein the Parliamentarian does not appear to be giving you any instructions, three Democratic Members come to the well and change their votes, three Democratic Members who you say weren't attempting to change their votes when you made the decision that you would be criticized for violating clause 2(a) if you didn't call it after Mr. Diaz-Balart's vote. And on page 60 of your interview with us earlier, I said—I asked you this question, can you as the presiding officer indicate for what purpose you kept the vote, that vote, open beyond your declaration of 214–214 other than for the sole purpose of having the outcome of the vote affected. Your answer is, I did it for the sole purpose of following the directions of the Parliamentarian after I had committed an error.

I don't see the Parliamentarian giving you any direction.

Mr. MCNULTY. Which is what I said today. But let me clarify what was in my mind then, Steve.

After I committed that error, which was very obvious the moment that the changed vote appeared on the board, I made the determination in my mind that I committed an error, that it was a serious error, and I wasn't going to compound it by committing another one, and that I made the decision in my own mind I was not going to make no further ruling on that vote until and unless I was directed to do so by the Parliamentarian.

So I made that decision to wait until the Parliamentarian gave me further instruction. That is the sum and substance of my mindset at the time.

Mr. LATOURETTE. Okay. I appreciate it and I thank the Chair.

Thank you, Mike.

The Chairman. Mr. McNulty, thank you for your testimony today. And I can appreciate the experience that you had and the

fact that you probably chose the wisest course of action, which was seeking the advice and listening to the guidance and the suggestions of Mr. Sullivan, whom we will hear from this afternoon. But thank you, Mike, again for your testimony.

Mr. MCNULTY. I thank all of the Members, and I apologize for being the reason that you are here. Thank you.

Mr. PENCE. Thank you, Mike.

The CHAIRMAN. You are excused.

And we will recess until 2:00, at which time we will reconvene.

[Whereupon, at 1:30 p.m., the Committee recessed, to reconvene at 2:00 p.m. the same day.]

The CHAIRMAN. Welcome, Leader Hoyer. I am going to give a formal introduction, and then we will go to the Minority side.

Mr. LATOURETTE. We are actually starting on your side.

The CHAIRMAN. Well, let me formally introduce the Majority Leader.

Congressman Hoyer represents Maryland's Fifth Congressional District. He is currently serving his 14th term in Congress. In November 2006, he was elected by his colleagues in the Democratic Caucus to serve as House Majority Leader in the 110th Congress, becoming the highest ranking member of Congress from Maryland in history.

He has held positions of great responsibility in the House Democratic leadership. Prior to being an elected Majority Leader, he shared as Whip Chair of the Democratic Caucus, co-chair of the Democratic Steering Committee and candidate recruiter for House Democrats.

Welcome, Steny.

And we will go right to the vice chairman of the Committee, the gentleman from Alabama, Mr. Davis.

Mr. DAVIS. Thank you, Mr. Chairman.

And Mr. Leader, welcome.

Mr. HOYER. Thank you for giving me this opportunity.

Mr. DAVIS. And let me. Just so you understand the agreement that we have made with respect to time today, I am going to have approximately 30 minutes to question you for a direct exam, if you will; then the Minority will have 30 minutes.

The Majority side will reserve 10 minutes for rebuttal and the Minority will have an additional 10 minutes.

Let me begin, Mr. Leader, by saying that we are very appreciative of your cooperation in this matter. As you recall very well, you spent approximately 3 hours of your time, when we promised you 1 hour, when we took a deposition in your office; and you know how long-winded your colleagues can be.

But you have been extremely gracious with your time. You have been gracious enough to orient your schedule today to be here. The House is in session today. There are a number of things you could be doing, and we are genuinely appreciative of your cooperation.

Mr. HOYER. In terms of long-windedness, some people say I live in a glass house.

Mr. DAVIS. Mr. Leader, you are aware that the Select Committee was empowered by the House to investigate alleged voting irregularities regarding the Roll Call Vote 814 on the night of August

2nd. And we have had extensive depositions; we have deposed over 20 witnesses, including yourself.

We have heard testimony from one of the Clerks, Kevin Hanrahan, today. And we have just heard testimony from Mike McNulty, the presiding officer. And there will be other witnesses; Mr. Sullivan, the Chief Parliamentarian, will testify and two of his staffers will testify.

So those in this room have gotten a little bit fatigued with seeing the tape many times today. And I am going to try not to spend too much time with the tape, but to ask you some more general questions. And I want to begin by trying to get people a little bit focused on what it is we are even talking about.

I had a chance to talk to my office, and I got a instructive call from a viewer. Apparently this was carried on one of the C–Spans earlier; and someone called in and said, I get most of what you all are talking about, but nobody has ever told me what this "motion to recommit" business is. And the person is like—it is like trying to follow a tennis match without knowing what the rules are.

So I am going to ask you to begin by setting a little bit of context. Exactly what is a motion to recommit?

Mr. HOYER. Well, a motion to recommit is a motion that the Minority usually makes. A Majority can make a motion to recommit, a Majority Member, but it is reserved to the Minority at the end of the consideration of the bill to make a motion to recommit.

There are two types of motions to recommit—or, I suppose, three types. One is a motion to recommit without instructions, in effect, send the bill back to Committee.

The second is a motion to recommit to report back forthwith. That simply means that an amendment that might be attached to that motion would be voted upon, and if it prevailed, it would immediately come back on the floor. And the bill, as amended, would then be passed. So that it is like the adoption of an amendment.

There is a third type, which the motion that night was, a motion to recommit and report back promptly. The difference between "forthwith" and "promptly" is that the bill actually for "promptly" goes back to Committee; it does not actually go back to Committee with a "forthwith." And as a result of going back to Committee, it will delay that bill for a very substantial period of time—in this case, more than 30 days because we were about to leave.

Mr. DAVIS. Now, let me again stop you and put this in context for people that don't follow the House every day.

You are saying, in effect, that a motion to recommit "promptly" has the effect of killing the bill? That is what you are saying in plain English?

Mr. HOYER. It has the effect of killing, really——

Mr. DAVIS. Or substantially delaying?

Mr. HOYER [continuing]. Substantially delaying.

Mr. DAVIS. The motion to recommit that was offered by Republicans this night of August 2nd, as I understand it, was a motion to recommit that would have had the effect of substantially delaying the bill; is that right?

Mr. HOYER. Yes, sir.

Mr. DAVIS. The bill that was on the floor was the Agriculture Appropriations bill; is that right?

Mr. HOYER. Yes.

Mr. DAVIS. Now, one of the things I want to clarify—because, again, I tend to listen to calls to my office because it means somebody in some cave was listening—several people said to me, I heard the Republicans say in their opening statement that they want to keep illegal aliens from getting benefits, and why are you Democrats against that? Several people come off and ask, why are Democrats for illegal aliens getting benefits?

Now, without getting into loving detail on this, can you explain exactly what it was the Republicans were trying to do on their motion, substantively, and why most Democrats were opposed to it?

Mr. HOYER. The bill of the Agriculture Appropriations Committee was relatively non-controversial. It had bipartisan support. The bill really had nothing to do with illegal immigration and certainly did not allow anything that was against the law for illegal immigrants.

Democrats were not opposed to the expression—when I say "Democrats," I don't want to speak unanimously. The motion effectively has been used relatively frequently by the Republicans for the purposes of, from our perspective, adding what are not necessarily germane amendments in a motion to recommit, which have to be somewhat germane; and they try to make them so.

In this case, as Congresswoman DeLauro, who is the chair of the subcommittee pointed out, A, the bill would have been effectively very substantially delayed—this is an appropriation bill; we wanted to get it over to the Senate—secondly, that the subject matter of the motion on illegal immigrants really had little, if anything, to do with this bill——

Mr. DAVIS. Let me just slow you down and ask you a few things and see if you agree with them.

It is already illegal for people who aren't U.S. citizens to get benefits from the U.S. Ag Department; is that correct?

Mr. HOYER. The last thing I was going to say:—and it also replicated existing law.

Mr. DAVIS. Right. So the motion to recommit was unnecessary because it is already against the law for illegal aliens to receive government benefits. You agree with that?

Mr. HOYER. Yes.

Mr. DAVIS. And do you agree, Mr. Hoyer, some people have said that motions to recommit of this nature are frankly brought for the purpose of embarrassing certain Members in the casting votes that may be hard to explain.

Without spending a lot of time on that, have I got that right?

Mr. HOYER. I won't spend a lot of the time.

It is my perception that—and very frankly, leadership staff of Mr. Boehner and Mr. Blunt have asserted this in a newspaper article covering motions to recommit—that these are made for political reasons or purposes of putting certain people, mostly Democrats, in a political dilemma of supporting the proposition, but not wanting to kill the bill in the same process.

Mr. DAVIS. And one——

Mr. HOYER. If the motion were made, for instance, to do it "forthwith," that would not have had that effect. The reason the "forthwith" is used, is so that Democrats are put in a position of killing

the bill that had bipartisan support or voting against a proposition they may otherwise agree with.

Mr. DAVIS. And one other point before we move from the definition of "a motion to recommit":

If anyone were really serious about adding a provision that, for whatever reason, felt the need to restate current law, there is a Committee process and that amendment could have been offered in Committee; is that correct?

Mr. HOYER. It could have been offered in Committee, but even simpler, they could have been offered a motion "forthwith."

Mr. DAVIS. Yes.

Mr. HOYER. And had the amendment been adopted, it would have been immediately attached to the bill.

Mr. DAVIS. All right. Now that you have explained what it is that we were arguing about on the floor that night, I want to ask you a little bit about the duties of a presiding officer, because you know that Mr. McNulty's actions have been at issue.

He was the presiding officer, and I think you are aware that he made the decision to call a vote that night. And he has acknowledged that when he called the vote, it was an error. And he said today that it was an error, not of a willful nature, not out of any intent to disenfranchise, but I was looking up at the board, and I believed that it reflected all the vote changes that were going on, had ended up in a 214–214 score.

And he said this morning, I just missed the fact that the gentleman from Florida had changed his vote, and the tally board didn't reflect it. That is what Mr. McNulty told us.

I want you to give everyone a little bit of a sense of exactly what a presiding officer's responsibilities are with respect to the termination of a vote.

Mr. HOYER. The duties of a presiding officer are obviously to manage the deliberations of the House, whether it is the Speaker, the Speaker pro tem or the Chair of the Committee of the Whole House or the House meeting as the Committee of the Whole House.

In furtherance of that responsibility, obviously the calling of the vote—that is, asking for Members to start voting on a proposition that is before them after the debate is concluded—under the rules, providing for the 15 minutes that the rule says is a minimum for Members to be given the opportunity to vote; and then—in his or her discretion to then close the vote at the conclusion of the vote from the Speaker's or presiding officer's perception.

Mr. DAVIS. And when a presiding officer exercises that discretion to close the vote, as an experienced Member of the House, as a former presiding officer yourself, what are the factors that a good presiding officer takes into account?

Mr. HOYER. Well, first of all, the rules require 15 minutes. It says it shall be a minimum of 15 minutes. So the threshold of the Speaker and the presiding officer is to assure themselves that the 15 minutes has run.

Beyond that, there has been a practice of the House to add some more time. In this instance, most of the Members were on the floor. There were—as you know, there were 428 Members voting on all of these votes—relatively unusual that nobody left and nobody came in.

The presiding officer then has to make a judgment that Members have, in fact, voted. It does so by seeing whether there are Members in the well. The presiding officer then, upon his conclusion that the votes have been cast, has the responsibility of calling the vote and announcing that vote to the House.

Mr. DAVIS. You are familiar with rule 2(a) of clause XX of the House of Representatives?

Mr. HOYER. Yes.

Mr. DAVIS. That is a rule that the new Majority adopted last year.

Would you characterize the rule, Mr. Hoyer?

Mr. HOYER. Well, the rule provides for the vote not being held open for the sole purpose of allowing Members to be opportuned or urged or encouraged to change their vote to change the outcome of the vote.

Now, that is hard to interpret for the presiding officer as to exactly why somebody wants to change their vote; whether they want to change their vote because they made a mistake, whether they want to change their vote because they have changed their mind on the substance of that vote, or frankly, whether they personally have decided they want to change their vote because they want their side to prevail.

It is very difficult for the presiding officer to sort of get into the mind of the voter; and in fact, the rules essentially say that we cannot question the motives of another Member and their vote.

I think that it is appropriate that we can't question their motives. I personally believe that that rule is almost impossible to enforce.

And both sides obviously believe they are right in their position; and not only Members of the leadership, but other Members are talking to other Members throughout the course of a vote saying why they ought to vote "aye" or "nay" on a particular proposition.

So the rule is a very difficult one to enforce. But it clearly says that if the presiding officer perceived that the rule was being violated, that the presiding officer would have a responsibility to ensure the enforcement of the rules.

Mr. DAVIS. Difficult rule to enforce, difficult rule to interpret, but it is the presiding officer ultimately who has the power to interpret and enforce; do you agree?

Mr. HOYER. I think the presiding officer is the sole determinant of that issue, yes.

Ultimately, the House would be if there were an appeal of the ruling of the Chair, but certainly, in the first instance, the sole authority is in the presiding officer's hands.

Mr. DAVIS. There has been a lot of testimony today and some argument in the course of this morning that a tally sheet is indispensable to the calling of a vote. As you know, Mr. McNulty called the vote that night without a tally sheet. For that matter, even when he made the final calling of the vote, there was no tally sheet. There was never a tally sheet prepared that night.

It is my understanding that the rules of the House contain no reference to a tally sheet, is that right—

Mr. HOYER. That's correct.

Now, I don't know that a tally sheet was never—

Mr. DAVIS [continuing]. In the context of closing a vote?

Mr. HOYER. In this vote there was not, as I understand. I did not know at the time, because I think I have said when I appeared before you last, I did not know, for a couple months later, that there had not been a slip.

Mr. DAVIS. The Speaker's Office selects a group of Members——

Mr. HOYER. Can I make a comment on that?

The tally slip, my observation over a long period of time and last week is that the person who fills out the tally sheet looks at the board, puts the number down, and hands it to the Parliamentarian.

Mr. DAVIS. The Speaker's Office assembles a group of Members who are part of the roster of regular presiding officers; is that correct?

Mr. HOYER. Yes.

Mr. DAVIS. Mr. McNulty was a part of that group, as of August 2, 2007?

Mr. HOYER. Yes.

Mr. DAVIS. And do you have any knowledge that presiding officers are given any kind of instruction or any kind of information stating to them that there must be a tally sheet before they call a vote? Have you ever heard of that kind of instruction being given as a matter of course to presiding officers as they are trained?

Mr. HOYER. No. And, of course, my belief is that while it is the best practice to follow, it is not essential.

Mr. DAVIS. And if we can jump ahead a little bit, you have reviewed the videotape, Mr. Hoyer, of that night several times?

Mr. HOYER. We have all done the instant replay, yes.

Mr. DAVIS. Do you recall the point where Mr. McNulty calls the vote erroneously; as he acknowledges. He says, 214–214, and the motion is not carried; you recall that moment?

Mr. HOYER. Can I make a point though? Mr. McNulty called 214–214 twice.

Mr. DAVIS. Right. That's right.

Mr. HOYER. In his first instance, I think he was absolutely accurate in his count. I am absolutely convinced that the voting machine reflected a count of 214–214 subsequent to the Speaker's voting. And, very frankly, I am not sure why the vote was not concluded at that time.

Mr. DAVIS. All right.

Now, let me go back to the point, though, where he says, the motion is 214–214 and adds the critical language, the motion is not carried. From your review of the videotape, did any Member of the parliamentary staff approach Mr. McNulty and say, you have to have a tally sheet?

Mr. HOYER. Not to my knowledge.

Mr. DAVIS. Do you remember the Tally Clerks or anyone else trying to stop or interrupt Mr. McNulty at all?

Mr. HOYER. Not to my knowledge.

Mr. DAVIS. And as Mr. McNulty makes his calling of the vote—for that matter, the first time when he says, 214–214, and then stops himself; or the second time, when he uses the words, the motion is not carried, do you have any recollection of any member of the parliamentary staff that night intervening and saying, stop, Mr. McNulty, you need a tally sheet?

Mr. HOYER. I want to be precise in my answer because the answer to your question is "no." Did I perceive members of the parliamentary staff intervening? I didn't know what they were intervening, but my perception was, there were discussions between the Parliamentarian and the presiding officer.

Mr. DAVIS. But you don't know the content and you have no memory of anybody saying, you have got to have a tally sheet to call this vote?

Mr. HOYER. No. As a matter of fact, I would be surprised if somebody said that because it is not necessary to have a tally sheet.

It is, as I have said, the best practice to have a tally sheet. I do not know of an instance and I believe there is no instance where the board does not reflect the vote.

In the second 214–214, what happened, from my perception, was contemporaneously with Mr. McNulty reading from the board, 214–214—this is the second time he did it, 214–214—contemporaneously, almost instantaneously as if it was being done the same time, the clerk entered into the machine, Mr. Mario Diaz-Balart's vote, making it 215–213.

But my own view is—what happened is, at the same time Mr. McNulty read the 214–214, almost instantaneously after he had gotten out 214–214, the board changed.

The board was accurate in both instances.

Mr. DAVIS. There have been a lot of questions this morning about the appropriate relationship between the Majority Leader and the presiding officer as far as the calling of a vote goes.

Could you give us a brief description of what the role of a Majority Leader would be in the context of closing a vote?

Mr. HOYER. Well, the Majority Leader obviously has the responsibility, first of all, of scheduling legislation.

The Majority Leader also is responsible for helping to manage the business on the floor and to speak on behalf of the majority, at times to state our position or to, frankly, try to put us in a position of prevailing on the questions that we want to prevail on or defeating the questions we want to defeat.

The Minority Leader has the same role on his side of the aisle to do the same for his party. So that in terms of a vote, as Mr. Blunt stated the day after, August 3rd, on the floor, that for 4 years, he said, it was his role when the vote should quit. Those are his words, not mine.

But essentially, in my opinion, what he meant was that—and you have had testimony from the Parliamentarians—that where there was a nod or shake of the head or, you know, it is time to cut it off, both sides try to manage the vote so they can prevail. Again, within the rules, within fair consideration of those who may be seeking to vote, both sides have, over the years, conveyed their thoughts as to when the vote should come to a close within the rules.

Mr. DAVIS. And when the Majority or Minority convey a sense that a vote should close, is it fair to say that it is still up to the presiding officer whether or not to follow that admonition?

Mr. HOYER. Absolutely.

Mr. DAVIS. The night of this vote in question, there has been a lot of scrutiny as to your interaction with Mr. McNulty that night.

Let me take you through a brief set of questions and simply ask you for a brief answer to each of them.

Was there a point that night when you in some way verbally communicated to anyone in the Chamber that you felt that the vote should close?

Mr. HOYER. Yes.

Mr. DAVIS. And to whom did you make that communication.

Mr. HOYER. Generally toward the Chair. I didn't have a discussion with Mr. McNulty. I was in the well, and at the time the Speaker voted, I wanted the vote to come to a close.

Mr. DAVIS. How did you communicate that?

Mr. HOYER. I think I said, it is time to shut it down. It may have been something like that.

Mr. DAVIS. Were you standing close to Mr. McNulty when you said, time to shut it down, or words to that effect?

Mr. HOYER. Close. Probably, what? Do you think 20 feet away? Maybe a little less than that if you are in the well.

I was essentially by the microphone on the Majority side when I said that. And I said it probably a couple of times.

I said it loudly enough, so I thought it could be heard by anybody who wanted to know what I thought.

Mr. DAVIS. Did Mr. McNulty follow the admonition?

Mr. HOYER. He did not.

Mr. DAVIS. What did he do instead?

Mr. HOYER. Well, I am not sure exactly when I said to do it. He waited, and after the Speaker voted, he then—and was read across as having voted, he called the vote at 214–214. As I said, I believe the vote was then 214–214. Sixteen minutes and 1 second had transpired, the minimum period had transpired. I think he was within his right. My own view is the vote should have come to a close at that point in time.

Obviously, as you have heard testimony, and we have all experienced, votes don't necessarily come to close when they are announced. And the reason for that is the Speaker, in the exercise of fairness, tries to assure the fact if there are additional votes, to allow those to be cast.

Mr. DAVIS. Now after you—let me make sure I fully understand your testimony. You are in the well, you are not standing up next to the presiding officer.

Mr. HOYER. I am in the well.

Mr. DAVIS. And there is a lot of voice. I am not saying you spoke loudly, but it was a very noisy Chamber that night.

Mr. HOYER. I think it has been referred to as chaos. I am not sure it was exactly chaos, but it was loud and contentious.

Mr. DAVIS. In fact, is it fair to say that numerous Members were saying, close the vote, or call the vote, or something like that?

Mr. HOYER. There were a large number of Members on my side of the aisle who were urging that the vote terminate.

Mr. DAVIS. Was there ever a point when you climbed up to the rostrum and walked close to Mr. McNulty and instructed him to close the vote?

Mr. HOYER. No. I did go to the rostrum, as you know—actually, I didn't go to the rostrum, the Parliamentarian, as you know,

stands down the step and about 4 or 5 feet from the presiding officer, and as everyone knows, I did go up to talk to Mr. Sullivan.

Mr. DAVIS. In fact, just so we are clear, Mr. McNulty attempts to call the vote. He begins to call it at 214–214 at approximately 10:50 that night. Do you have any way of knowing how close in proximity that was to you orally saying, close the vote down. Was it a minute, second?

Mr. HOYER. It was a relatively short period of time we are talking about. This vote took about 24, 25 minutes, as I recall, somewhere in that time frame. If it was 16 minutes, it was probably leading up to that, or shortly after. I can't recall specifically that time frame within that 30 to 60 seconds. It was probably undoubtedly within that time frame because I perceived that when the Speaker voted, we had prevailed, and I wanted the vote to come to a close.

Mr. DAVIS. So, just so I am clear, in the instance when you recall communicating in some fashion that the vote was closed, Mr. McNulty did not follow the instruction, is that right?

Mr. HOYER. No, he did not.

Mr. DAVIS. Later on, Mr. McNulty does call the vote in a definitive way at 22:51. We have seen the tape several times, and I will represent to you that you are not physically visible in the tape at the time that Mr. McNulty calls the vote. Do you agree with that from what you have seen?

Mr. HOYER. Yes.

Mr. DAVIS. You are not near Mr. McNulty. You can't be seen. Do you agree with that?

Mr. HOYER. Yes.

Mr. DAVIS. Do you agree that Mr. McNulty appears to be looking up at the board as he is waiting before he appears to call the vote the second time?

Mr. HOYER. Yes.

Mr. DAVIS. Was there any oral instruction from you that was close in proximity to the time that Mr. McNulty calls the vote the second time?

Mr. HOYER. No. I never talked to Mr. McNulty prior to, I think, the conclusion of this event.

Mr. DAVIS. At the time Mr. McNulty calls the vote, you recall there is much consternation on the floor, and one of the points of contention is that several Democratic Members went into the well and they cast vote changes. Do you recall that happens?

Mr. HOYER. Yes.

Mr. DAVIS. And I think there has been agreement among all witnesses that roughly 7 minutes lapses between the time that Mr. McNulty calls the vote at 214 and the time that Mr. McNulty reads the final vote. Is that roughly consistent with your memory? There has been widespread agreement it is about 7 minutes.

Mr. HOYER. Yes.

Mr. DAVIS. During that 7-minute time frame, three Democratic Members, Space, Gillibrand and McNerney go into the well to change their votes. The question has been asked, Well, why were they allowed to go into the well and change their votes? Would you agree, Mr. Hoyer, that that 7 minutes allowed ample time for any

Member to change their vote, regardless of what side of the issue they were on?

Mr. HOYER. Yes.

Mr. DAVIS. Do you know, do you have any recollection that night of any Member coming to the well seeking to change a vote from yes to no, and being denied the opportunity to do so?

Mr. HOYER. No.

Mr. DAVIS. Do you have any memory that night of any Member of either party coming to the well, holding up a card, or in any way manifesting an intent to change their vote and being denied the right to do so?

Mr. HOYER. No.

Mr. DAVIS. Before that 7 minutes, during that 7 minutes?

Mr. HOYER. No. My conclusion is that the final vote that was called 212–216, again, the 428 that were voting that night, everybody had an opportunity to vote, everybody had an opportunity to vote as they chose, and Mr. McNulty was, I think, accurate in his final call, which I say, was 216–212. With the exception, of course, which I know has been discussed earlier today, of the fact that Mr. Boehner's vote was not counted, which would have made it 211–217.

Mr. DAVIS. Let's put this in some context. If Mr. Boehner's well card had been processed, what would the effect have been of processing Mr. Boehner's change of vote?

Mr. HOYER. It would have had no effect on the outcome, but what it would have done, and why Mr. Boehner did it, it would have put him in a position to make a motion to reconsider as a member of the prevailing side.

Mr. DAVIS. You ultimately made that motion yourself, didn't you?

Mr. HOYER. I previously informed the parliamentarian that I was either going to ask that the vote be vacated after the second call of 214–214, and then almost, as I said, contemporaneously, the display on the board of 215–213. The Minority was rightfully angry and upset by that disparity, by that contradiction, and it was my view that, given that, in fairness, we ought to revote the issue. The vote went on, as you know, from that point on. But I told Mr. Sullivan shortly after that occurred that it was my intention to try to vacate by unanimous consent or move to reconsider.

Mr. DAVIS. So there were several options that night for making the situation right. There was a motion to reconsider that could have been advanced, is that correct?

Mr. HOYER. Yes.

Mr. DAVIS. There was a motion to vacate that could have been advanced.

Mr. HOYER. Not a motion, but a request for unanimous consent.

Mr. DAVIS. That was one other option. Were the Republicans amenable to any of those options?

Mr. HOYER. I heard, when I made—ultimately, when I made the motion, the unanimous consent request to vacate the vote, there were a large number of objections I heard from behind me to my right. Now, I don't know who objected because I was looking at the Chair and asking for unanimous consent from the Chair. But there were a lot of objections to that. And there may have been some on my side. I don't know.

Mr. DAVIS. But ultimately, you did make a motion that night, and there was a vote on it, isn't that correct?

Mr. HOYER. Immediately, yes. I don't know whether immediately, but very, very soon, I then made the motion to reconsider.

Mr. DAVIS. If I could just finish out this line of questions before I yield my time, Mr. Chairman. What did the Republicans do as that motion to reconsider was being voted on?

Mr. HOYER. Most of them left the Chamber.

Mr. DAVIS. Do you remember what Mr. Boehner did?

Mr. HOYER. I don't.

Mr. DAVIS. If I represent to you rather than cast a vote on the motion to reconsider that supposedly he had attempted to make, that he left the Chamber too, would you disagree with that?

Mr. HOYER. No, I wouldn't disagree with it because I was not looking at Mr. Boehner or, frankly, behind me at that point in time. I was facing the Chair. When the Republicans started to walk out, I did look around and watch them march out.

Mr. DAVIS. Let me just end with one observation and ask if you agree with it. After Mr. McNulty makes what he acknowledges is an error, whether you believe it is an error or not, he acknowledges it was an error, there were several procedural options that were available that would have had the effect of creating another vote or setting aside the vote. You, at the risk of losing the vote and vote those options, even though, frankly, you didn't know that night how many Democratic Members even remained, did you?

Mr. HOYER. No.

Mr. DAVIS. If there had been a revote that night, there was a very real risk that the Democratic side, if you will, would have lost. Is that right?

Mr. HOYER. There was certainly a risk.

Mr. DAVIS. Despite that risk, you attempted to reopen or create another vote, and you took on that risk yourself, didn't you?

Mr. HOYER. I did. I thought that it was important to correct—the mistake that Mr. McNulty made was a mistake not of animus or intent, but of timing. The Diaz-Balart vote, he thought—I don't know what he said, but my perception is he thought it had been cast.

Mr. DAVIS. Mr. Hoyer, one final question, if you would give me a brief answer. Can you give me any explanation of why the Minority would have, instead of just letting the vote be set aside and have another vote that night, can you give me any explanation of why they would in effect decline those options and come out and ask for an investigation that has lasted 9 months and has cost half a million dollars?

Mr. HOYER. I don't have the answer to that question.

Mr. DAVIS. Do you suspect it is politics?

Mr. HOYER. There is no doubt in my mind it is politics. I think, frankly, the Minority party was very badly stung by keeping the floor open for 3 hours on a vote. No slip was ever passed up; apparently never asked for. For an hour and 45 minutes the Democratic side was prevailing on the issue. A vote was never taken by the Speaker. My own view is the Speaker was acting within the rules. But I think it was an abuse of power, as I have said in my previous comments.

I think that the Republicans were upset. It is tough being in the Minority, particularly in the House of Representatives, which, unlike the Senate, has a Rules Committee and can put pretty tight controls on the Minority, and is frustrating. Having served in the Minority for 12 years, I can feel their pain, if you will. I don't say that in any way as mocking. I really do. It is a frustrating situation. I think they were frustrated that night. I think the bill was not itself controversial. But this was, as I said earlier, a political effort to put some of our Members in a position of voting against something they otherwise would have been for solely because they didn't want to kill the Agriculture appropriation bill.

So my speculation is that when that occurred, they got angry and they decided to pursue this matter. I was the one who made the decision not to table the motion to have this investigation, because in my opinion—or panel—because, in my opinion, what was done was proper, and looking at it to the extent that it cleared up this matter was not a problem.

Mr. DAVIS. Thank you, Mr. Hoyer.

The CHAIRMAN. I am going to recognize Mr. Pence at this point in time. Without objection, the Chair will grant the Minority an additional 4 minutes since the Majority went past the 30-minute limit.

Mr. Pence.

Mr. PENCE. Thank you, Mr. Chairman. Thank you.

I want to thank the distinguished Majority Leader for appearing before our Select Committee today. I also want to thank you for your cooperation from August 3 forward. I sense in your testimony today a questioning of our motives, about politics being our motivating factor, but let me take this opportunity to thank you for not moving to table the resolution creating this Select Committee, thank you for supporting efforts to properly fund this Committee so that we could do more than 20 interviews, review thousands of documents, and pay the kind of careful attention to the integrity of the vote on the floor of the House of Representatives that I think all of us that care about the institution want to preserve.

I also want to thank you for your candor both in your previous interview with the Select Committee and your candor again today. I think you know that in our nearly 8 years of service together, that I see you, our political differences notwithstanding, I see you as a man deeply committed to both the principles you have come to Washington to advance, as well as the institution.

Mr. HOYER. Thank you.

Mr. PENCE. And I welcome you.

Mr. HOYER. Thank you very much.

Mr. PENCE. I am going to ask you just a couple of questions, Mr. Leader, and then I am going to yield the balance of our time to——

Mr. HOYER. The hardworking Mr. LaTourette.

Mr. LATOURETTE. Thank you so much.

Mr. PENCE. During your interview——

Mr. HOYER. Talking about my initial appearance?

Mr. PENCE. Your initial appearance before the Select Committee, which took place on April 16, 2008, you were very candid about acknowledging that after Speaker Pelosi cast her vote, and I expect Mr. LaTourette will take us all through the video one more time.

Mr. HOYER. Look forward to it.

Mr. PENCE. You were very candid in acknowledging after Speaker Pelosi cast her vote in making the total 214–214, you said towards the Chair, in a voice, as you reiterated this afternoon, loudly enough, to use your phrase, loudly enough to be heard, you said it a couple of times, was your testimony moments ago, words to the effect of, "Close it down." You said today you——

Mr. HOYER. Shut it down or close it down, one of the two phrases.

Mr. PENCE. Time to shut it down.

Mr. HOYER. My intent was, I think, clear.

Mr. PENCE. You communicated that toward the Chair.

Mr. HOYER. Yes.

Mr. PENCE. Let me support your testimony by saying that by our recollection, fully a half a dozen officers of the House working at the rostrum recall hearing you communicate words to that effect.

Mr. HOYER. They recall accurately.

Mr. PENCE. You also stated that you had a conversation with Catlin O'Neill, an employee of the Speaker of the House, not an employee of yours.

Mr. HOYER. Works for the Speaker.

Mr. PENCE. You had a conversation with Catlin O'Neill shortly thereafter in which you were, and I am quoting you now, "Clearly saying to Catlin that we need to shut down the vote when we are prevailing." Is that still your recollection?

Mr. HOYER. Essentially, yes. The only thing, I want to make it clear that my communication not directly to the Speaker, but I think the presiding officer could hear me, was that I was cognizant of the rule and I was cognizant of the fact of whether anybody was in the well. But when those two circumstances were met, there is no doubt I wanted the vote concluded within the rules when we were prevailing.

Mr. PENCE. Understood. Thank you.

Mr. McNulty has testified before this panel once in deposition and once earlier today. He reiterated today again, and I will paraphrase with leave of my colleagues, and be happy to be corrected in a subsequent record, but he, in effect, has testified consistently that while he was aware of your presence, he was aware of conversations that you had with particularly the Parliamentarian that had been reported widely. That he was not aware of your desire that the vote be closed, and let me quote from his interview. He said, "No one instructed me to call the vote at any time that night, I recognize. I will be perfectly honest with you. Earlier on I was hoping to get some direction, but it never came. So I used my own judgment at the time." That is on page 23 and 24 of the April 9 interview with Mr. McNulty.

Would that come as a surprise to you, Mr. Hoyer, that Mr. McNulty at no time during the course of the vote was ever aware of your express intention that the vote be closed?

Mr. HOYER. Surprise? Disappointment. But I don't know surprise. As I think it has been referenced it was at that point in time pretty loud in the Chamber, a lot of moving around on both sides of the aisle, a lot of people urging action to be taken at one time or another, so that I certainly wouldn't dispute Mr. McNulty in his

assertion. I don't know what he saw or heard. All I can say is what I saw.

Mr. PENCE. Your testimony is you, at a minimum, would have been disappointed.

Mr. HOYER. Mr. Pence, if I can, in reading, in hearing of some of the testimony, apparently there was some testimony from the Parliamentarian about the Republican side of the aisle, and of course, Mr. Blunt indicated for 4 years it was his role to determine when the vote should quit, as he said; end. I accept that. Whether it is conveyed by, time to do it, or shaking of the head affirmatively its time to shut it down, or a sign, sort of let's cut it off. A lot of staff give that to me when I am speaking. I did not use hand signals. I was trying to communicate. Now whether Mr. McNulty heard it or not, I don't know.

Mr. PENCE. I expect this will come up in further conversations before the panel today, but in reviewing Catlin O'Neill's testimony, she also did not recall receiving any direction, instruction from you, relative to when the vote would be closed. Would that surprise you?

Mr. HOYER. No. As I said in my deposition, it would not surprise me that she said she didn't receive instructions from me. After all, I am not in a position to instruct Ms. O'Neill. Ms. O'Neill is the Speaker's staffer, very competent. Her grandfather, obviously a former Speaker of the House. But we did have a conversation. It was not a long conversation. She may have—she stands pretty much down between where I was standing. If you go up the stairs, you are going to pass her because she stands pretty much down at the bottom left as you are looking at the rostrum. As I went by, I am sure I conveyed to her that I wanted it shut down. Whether or not she believed that was direction or not, I don't think I have the authority to direct her.

The CHAIRMAN. Would the gentleman yield?

Mr. HOYER. I think she knew my sentiment.

Mr. PENCE. I would be pleased to yield.

The CHAIRMAN. We continue to use the term conversation. By agreement between the Majority and the Minority, we have requested that the staff examine on the video the duration of what would appear to be verbal exchanges between parties. I guess my question would be: Do you remember at the time that Mr. Pence is referring to——

Mr. HOYER. A conversation?

The CHAIRMAN. Do you remember saying something to her, and if you did, do you remember any response from Ms. O'Neill?

Mr. HOYER. I think it was more an observation as I was going by. I am certain I didn't have a conversation, but I well could have said I want this shut down, it ought to be shut down. Again, I want to reiterate——

The CHAIRMAN. Not to interrupt, but to interrupt, you are using the term as you were going by. I think it is important to not fall into the belief that these were extended conversations whereby you and her or any other individual took time to discuss tactics or strategy or what should occur next.

Mr. HOYER. I want to be candid with you.

The CHAIRMAN. We are asking for that.

Mr. HOYER. My expression that it ought to be shut down was not to a limited audience. That was my belief. It remains my belief. And I conveyed that. Catlin was in the vicinity.

The CHAIRMAN. Others have noted that your expression conveyed that with clarity.

Mr. HOYER. With clarity. I thought it was very clear.

Mr. PENCE. Reclaiming my time, Mr. Chairman. One more question and then I am going to yield to Mr. LaTourette.

Let me return. I don't know that you had the opportunity to answer my question before the chairman interjected, and I would clarify that even from her interview she indicated that she did not recall receiving even a signal from you, whether it be signal, instruction, a directive, a word about closing the vote.

Would it surprise you that Catlin O'Neill testified that she received no direction from you to close the vote?

Mr. HOYER. Well, I think I did not give her direction. If anything, I was directing direction, desire to the presiding officer. I don't need to go through Catlin O'Neill, with all due respect to Catlin, she's wonderful, but I don't need to go through her. The Majority Leader, I think, not only has the right but responsibility to communicate, as Mr. Blunt said he did for 4 years, and as Mr. DeLay did before him, that based upon our responsibilities to our party and to the propositions we want to see prevail or fail, to try to manage those efforts.

Again, I stress within the rules in a manner that we are successful. I think that is my responsibility. But I can understand because I don't think I gave her direction. I think she is probably accurate in that.

Mr. PENCE. For the record, she also indicated you never signaled her to close the vote.

Mr. HOYER. I didn't signal anybody. I was articulate or lacking in articulateness.

Mr. PENCE. Let me say, I think on behalf of the Minority of this Committee, Mr. Leader, that we do believe, as Mr. Davis used the term earlier, that it is perfectly commonplace for Members of the leadership in the Majority to indicate a preference about when votes should be closed, and appreciate very much your candor before this Committee about your repeated and, to use your phrase, loudly enough communications toward the Chair to make your intentions clear.

Let me ask one more question. The videotape on the vote shows a fairly heated exchange. We have spoken with you about this on the record in the past, and I would say for the record today, I have appreciated your humility and regret about that moment, and it is not my purpose to be judgmental about that evening from an emotional standpoint.

Mr. HOYER. I am judgmental about my own conduct.

Mr. PENCE. Let me say, we know the heated exchange to which we are referring with Mr. Sullivan on the rostrum, the uncontroverted statement you made to him, was, "We control this House, not the Parliamentarian." Specifically on that issue is it fair to say that that exchange was in close proximity to Mr. McNulty?

Mr. HOYER. Certainly in close proximity. As I explained, we all know where the Parliamentarian sits. Mr. Sullivan was not seated,

he was standing, because he was not acting as the Parliamentarian, Mr. Lauer was at that point in time. He is the Parliamentarian. Mr. Lauer is an assistant Parliamentarian or deputy—assistant Parliamentarian, I guess.

The conversation clearly occurred—I want to withdraw that. It was not a conversation. Mr. Sullivan may have responded, but I don't think so. It was a one-way assertion, me to him, that the Parliamentarian does not run the House, we do. By that, I meant the Majority party, and the Speaker. I believe that then, I believe it now, and I believe to have it otherwise would not be in the interest of the House of Representatives or our democracy. But it was not a conversation, it was a one-way assertion, and we all looked at the tape, it was relatively brief; I was there a matter of seconds, made my point. I was angry.

This is not a confessional, as it was referred to earlier in the paper today, but it is, as I have told you, had I been calmer and cooler, I think I would have been less loud in my representation of what I believed to be the fact as it relates to the relationship between the parliamentarian and the Speaker.

Mr. PENCE. Thank you, Leader. I will yield, Mr. Chairman, to Mr. LaTourette for the balance of our time and have a few follow-up questions in our next round.

Mr. LATOURETTE. Mr. Leader, welcome. As you know from our interview, I am not a nitpicker. We are going to just move through some details. I hadn't thought I needed to ask some of these questions, but a couple of things during Mr. Davis, and I love Mr. Davis, he is a great questioner, but he asked some things that I don't want you to be mistaken, and the one was we have stipulated that there were a number of 2-minute votes on amendments to the Ag approps bill before we got to this moment in time. That is not a static number. It went from anywhere from 422 members voting to 431.

Mr. HOYER. What I was referring to, on each of the votes on the motion to recommit there were 428 votes.

Mr. LATOURETTE. That is correct. I thought I heard you say there was always 428 Members in the Chamber.

Mr. HOYER. On those three votes.

Mr. LATOURETTE. Second of all, this whole notion of promptly versus——

Mr. HOYER. Actually, four votes. 214s twice, 215, 213 referenced on the board, which was never called, and then the final vote.

Mr. LATOURETTE. Right. In reference, just this whole business about the education of the C–SPAN community on what a motion to recommit is, you are not indicating in the 12 years that the Democratic party was in the Minority in this House you didn't craft a motion to recommit to sort of put members of the Majority party in a difficult situation through those votes, are you?

Mr. HOYER. We did. As a matter of fact, we offered in the 12 years almost exactly the same number that you have offered in 15 months.

Mr. LATOURETTE. Well, we are professional writers. Let me ask you this too; when Mr. Gephardt was the Minority Leader——

Mr. HOYER. In the eye of the beholder.

Mr. LATOURETTE. When Mr. Gephardt was the Minority Leader, do you recall walking out of the Chamber en masse with your colleagues because you were disgruntled over something that had occurred and you were aggrieved by the Majority at the time?

Mr. HOYER. Yes, I do. I remember thinking to myself at the time: This is silly.

Mr. LATOURETTE. Right.

The CHAIRMAN. And you regret it now, Mr. Hoyer.

Mr. HOYER. I don't know whether I regret it, but I thought it was silly then and didn't make much of a point with the public.

Mr. LATOURETTE. Lastly, this business about the Ag approps bill being delayed. This vote occurred on August 2nd. The Ag approps bill didn't pass in its final form through the House until December 19 as part of an appropriations omnibus bill. And so it didn't pass in August because we weren't here, it didn't pass in September, it didn't pass in October, it didn't pass in November. So this delay of 30 days or so really wasn't the lynchpin that—it certainly didn't kill the bill. I grant you that they would have had to have brought it back after we got back. But nobody seemed to be in any big rush.

Then Mr. Pence's observation——

Mr. HOYER. May I comment on that?

Mr. LATOURETTE. Of course you can. Sure.

Mr. HOYER. Thank you. You are absolutely correct that the bill didn't pass until later in the year in December, I suppose it was.

Mr. LATOURETTE. 19th.

Mr. HOYER. However, I believed it important and we believed it important to get it to the Senate because, of course, the fiscal year ends on September 30, and as you know, the House last year passed every one of its appropriation bills on or before August 2. We thought it was important to do that to get those bills to the Senate so they could consider them. Unfortunately, as you know, that did not occur, and therefore we had a very late passage ultimately of all the bills.

Mr. LATOURETTE. Well, and you are now experiencing—we used to have an expression when we were in the Majority that the Democrats are our opponents but the Senate is our enemy, and you are now discovering, in fact, they don't always move according to the calendar you would wish.

Mr. HOYER. We have found agreement.

Mr. LATOURETTE. Two other things. I think Mr. Pence asked you about whether or not you would be surprised that Mr. McNulty didn't hear. If I could have the picture of the Chamber, the rostrum put up. I think that that question was generated by the fact that six other people heard you, who were on the rostrum, and including—you are familiar with Mary Kevin Niland, who is the Reading Clerk. You know who she is.

Mr. HOYER. Yes.

Mr. LATOURETTE. Would you agree with me she is the woman in yellow?

Mr. HOYER. I would. She lives in my district.

Mr. LATOURETTE. Mary Kevin Niland was able to hear your attempt to communicate with the Chair. I think that is where the question came from. Not saying that Mr. McNulty did anything wrong.

I want to go to the first call of the vote. Could somebody give the distinguished Majority Leader this color-coded thing. Since we saw you last, we have made some improvements in the videotape so we don't have to rely on eyesight. If you look on the back, there is a color coding and we have put halos around people. And you will be honored to know that you are a red halo and Catlin O'Neill is an orange one. That should help you sort of navigate what I am going to ask you to watch.

The CHAIRMAN. Would the gentleman yield for a moment. I am going to ask that the volume be turned up so that we all have a better perception or comprehension of the noise level that existed at the time. I understand that there was an enhancement done of the comments by Mr. Hoyer to Mr. Sullivan. But I do think it is important that we hear the noise, the din, if you will, that some described as deafening. I think that was Mr. Hanrahan's testimony, in the Chamber at the time. So, Hugh, if you would ratchet up the volume.

Mr. LATOURETTE. I thank the gentleman.

We are going to roll chapter seven, please, with volume——

Mr. HOYER. When you say chapter seven.

Mr. LATOURETTE. It is to get him to the right place.

[Video was played.]

Mr. LATOURETTE. Stop it there, please. I have indicated that before this moment in time, which is 22:49:48.10, it appears that the orange and the red circles are pretty close to each other, as they have become concentric circles, and that is you and Catlin O'Neill, just for reference.

Carry on.

[Video was played.]

Mr. HOYER. The green is Mr. Blunt?

Mr. LATOURETTE. The green is Mr. Sullivan.

[Video was played.]

Mr. LATOURETTE. Thank you very much. Let me know if you disagree, but what it appeared occurred was that you and Ms. O'Neill came to within close proximity, and you know whether you had a conversation or not, and I will ask you about that in a minute. She then departed that space where you are located and engaged Mr. McNulty in something. Mr. McNulty leans over. And then the Speaker's vote is read.

Mr. HOYER. Can I make——

Mr. LATOURETTE. Let me finish this statement. Mr. McNulty calls it 214–214 after the Speaker's vote is announced. What would you like to say?

Mr. HOYER. I couldn't tell. Maybe Catlin has testified to that, Ms. O'Neill has testified to that. I couldn't tell where she was facing. We came together for obviously a second or two, as I said, testified earlier. Now whether or not she then went and spoke to Mr. McNulty, I don't know.

Mr. LATOURETTE. Okay. And we will get that from other people. But does that look like the time when you might have been saying to her what you have said before, and that is, When we are ahead, we need to get out of this thing. Would that have been the likely moment in time?

Mr. HOYER. Could have been.

Mr. LATOURETTE. In fact, Mr. McNulty brings down the gavel, calls it 214–214 after the Speaker's vote is announced, and your observations, and I think you are exactly right, that that was perfectly within Mr. McNulty's right to do, in that all votes had been recorded and announced and there appeared to be no one in the well attempting to change their vote.

Mr. HOYER. Right.

Mr. LATOURETTE. Mr. McNulty did not complete the vote at that moment in time. You agree with that.

Mr. HOYER. I agree that he did not say the magic words. I don't, by the way, adopt the premise of the magic words. They are useful to have words that we all understand triggers a reaction, but I don't think there are any magic words. The rules don't have magic words, I don't think.

But what you notice is that immediately upon his announcing the 214–214, the vote screen disappears. Now I am not sure who makes that determination. But somebody obviously made a determination. They thought at that point in time, the vote was concluded. Absent the magic words, they drew that conclusion themselves.

Mr. LATOURETTE. But let me ask you this. Do you think that the vote was over at that moment in time?

Mr. HOYER. I don't think he articulated clearly enough that the vote was concluded, and therefore—and he obviously believed that as well because he allowed the vote to then continue.

Mr. LATOURETTE. Which was within his province as the presiding officer.

Mr. HOYER. Absolutely.

Mr. LATOURETTE. When we talked to you before, one of the things that apparently got your blood pressure going was you believed that at this moment in time the parliamentarian had stopped Mr. McNulty from completing the vote.

Mr. HOYER. That was my perception. I don't know that.

Mr. LATOURETTE. If I told you that Mr. McNulty said that didn't happen and the parliamentarians will testify later and say that didn't happen, and your perception was wrong, is that surprising to you?

Mr. HOYER. No. If they said that didn't happen, then I was incorrect.

Mr. LATOURETTE. You were incorrect.

Mr. HOYER. But I was not incorrect that that was my perception. The reason—that was my motivation for reaction.

Mr. LATOURETTE. I know that. That is what you said. But Mr. McNulty actually indicated that he stopped because he heard people yelling, One more, and he believed that other people wanted to cast ballots, which would be an appropriate response by the presiding officer if that is what he or she believed.

We then go to the second vote, the second call of the Chair by Mr. McNulty. He calls it 214–214, and I understand you disagree with me on the magic words, but he does say, And the motion is not agreed to. He is in error at that moment in time because although the three Floridians have turned in their well cards, the seated Tally Clerk is still entering Mr. Diaz-Balart's well card and

the uptick that occurs a minute later is what really makes it 215–213. Do you agree with that?

Mr. HOYER. Yes.

Mr. LATOURETTE. There are some choices here and all the choices go the way we sort of talked about. One is the Chair would have been within his rights to say, Oh, I made a mistake. He could have demanded a tally slip to be brought up to him that said, 215–213, the motion carries. Is that correct?

Mr. HOYER. I think he could have. Those are options available, I presume. Not presume, I believe those options were available to the Speaker. However, my view would be he never called the vote at 215–213. He never articulated a 215–213 count. He realized his articulation of 214–214 was in error and he subsequently indicated he called the vote prematurely.

Mr. LATOURETTE. Right.

Mr. HOYER. But that is not unusual, because Speakers do this on a regular basis, in light of that, his determination was to continue the vote to assure that all Members who wanted to change their vote were given that opportunity and were counted.

Mr. LATOURETTE. Almost. We will get to that in just a second. Relative to the rights that you would have had as a member as the Majority party, if Mr. McNulty had demanded a slip be sent up to him, 215–213, which was within his rights and certainly would have comported with the rules and would have reflected what the vote actually was at this moment in time, any one of the 19 Democrats who had voted on the prevailing side could have made the motion to reconsider and we would have had the revote. Is that not a correct statement of the rules of the House?

Mr. HOYER. Yes.

Mr. LATOURETTE. Now we get to this sort of nagging and troublesome—let me just go to this motion to reconsider because this is troubling me a little bit. It has sort of been presented—and you were very magnanimous and I think you deserve a lot of credit as the Majority Leader for recognizing a serious wrong had been committed and going to attempt to rectify it. The problem that I have is that all of your attempts to rectify had you guys winning. By that, I mean, a do-over, a motion to reconsider quite frankly is like playing a football game over. Every vote is different. There is a dynamic. The floor is like a living creature. You are trying to get your guys to vote some way, we are trying to get our guys to vote. There is a lot of pressure that builds towards the banging of the gavel.

A motion to reconsider, I mean, unless all your guys went out for pizza, you are always going to win the motion to reconsider because there is more of you. And as a matter of fact, the way you got from 215–213 to 212–216 is three people did that walk of shame, Gillibrand, Space and McNerney. They went down and said, It's going to be tough, I am having to have to explain to the Chillicothe Gazette why I think illegals should have food stamps. But I am a party guy. So I don't think——

Mr. HOYER. The three previous people who did that, Ms. Ros-Lehtinen, Mr. Balart, and Mr. Balart will all have to go home and explain why for 15 minutes, for 16 minutes and 30 seconds, they believed that your motion was not a good motion.

Mr. LATOURETTE. Listen, I agree with you 100 percent. But that gets me to this new rule you all have put in place, clause 2(a) of Rule XX.

Mr. HOYER. Oh, yes.

Mr. LATOURETTE. In response to the horrendous Part D Medicare vote, which was held open for a very long, but as you indicated, didn't violate the rules of the House. I think you might have misspoke because a tally slip was handed up, but it was handed up after 3 hours. A tally slip actually concluded that vote.

Mr. HOYER. Can I comment? What I said was we weren't ahead for 1 hour and 45 minutes. At no time then was the tally slip asked for or handed up. The reason it wasn't is because Mr. DeLay wanted to wait until you had the votes. As soon as you had the votes, the vote came quickly to a close. I think you were within the rules.

Mr. LATOURETTE. I do too. I guess that leads me to implicit in that answer is, and I believe Representative Hastings of Washington was in the chair during that extended period of time, is it your belief that Representative Hastings of Washington as the Speaker pro tempore at any time during that 3 hours could have demanded of the Tally Clerk and the Parliamentarian he be provided with a tally slip that indicated that you had prevailed?

Mr. HOYER. It is my position that at any time during that period of time Mr. Hastings has the authority to gavel the vote to a close and announce the vote from the board.

Mr. LATOURETTE. Okay. Perfect.

Mr. HOYER. At no time in the 27 years that I have served, have I ever heard of the board being at variance with the tally sheet.

Mr. LATOURETTE. Right. I heard you say that. And just because you told us that before and I just wanted to indicate because I thought you made a great point when we were interviewing you—that I have seen it too. The standing Tally Clerk will look at the board and write the numbers down on the pad from the board.

We had the opportunity to talk to Mr. Hanrahan today, and he indicates while that is right, that is so that the standing Tally Clerk can sort of make sure the well is static, you don't have more people running up there, but he only writes those numbers down after he has received confirmation from his partner that no more votes are in.

So it is not a matter of as Mr. McNulty did. So that is why you have never gotten an uptick, because they don't begin to write those numbers down until the system is closed.

Mr. HOYER. I don't want to quibble with Mr. Hanrahan. If that is what he says he does, he does. But my perception, and this happened last week, and I looked very carefully, Mr. Hanrahan with pad in hand looked at the board, wrote the number down, turned and gave to the Parliamentarian, who was advising the Speaker.

Mr. LATOURETTE. I think he would agree with you, but he would also indicate there is a step in there where the seated Tally Clerk says, System closed, no more votes. Which is different than what happened August 2.

When we chatted with you earlier, on page 28 of your interview we were probing this 2(a) business, and the ability of the Speaker, and I think indicated to you our dissatisfaction, and I think from your comments your dissatisfaction with 2(a) is you almost have to

crawl in the head of the guy or the gal that is in the Chair. The only way that there can be an actionable violation of clause 2(a) is if the person in the Chair says, "You're right, I did it, and I don't care." Right?

Mr. HOYER. My view is that 2(a) is not enforceable, and frankly, I would not be unhappy if this Committee recommended, because it's unenforceable, that we delete it. Both sides do it.

Mr. LATOURETTE. Pursuant to the vast authority that is given to the presiding officer, I asked you on page 28, "Mr. McNulty testified to us that it was his judgment that to keep the vote open after Mario Diaz-Balart's well card was entered would have been violative of rule 2(a), and he intended to close the vote after Mario Diaz-Balart's vote was entered.

If that is Mr. McNulty's position, which he has reinforced here today, that as the Presiding Officer that you say is invested with the authority to close the vote, if that was the testimony, that the vote in his mind was closed when he said 214–214 because he mistakenly believed the Mario Diaz-Balart card was in, and the motion is not agreed to, I asked you would you dispute his authority to do that. You said no. Do you have any different answer today?

Mr. HOYER. No.

Mr. LATOURETTE. It is your belief that the Presiding Officer is the sole interpreter of 2(a), as bad as it may be?

Mr. HOYER. Yes.

Mr. LATOURETTE. Mr. Davis asked you about 9 months and half a million dollars and the fact that this is just political. I think as somebody who has worked hard on this Committee, I find that a little offensive. We know that Mr. Boehner's card was never counted. Having listened to a lot of people give speeches about every vote counts and every vote should be counted, and one of my colleagues contesting the second election of President George W. Bush based upon the fact 125,000 votes in Ohio wasn't enough, this, whether mistake, accident, anything else, disenfranchised 630,000 people who didn't have the opportunity to have their vote recorded the way that he intended on that evening, for whatever reason he chose to do it. Right?

Mr. HOYER. Can I respond to that? I absolutely agree with you.

Mr. LATOURETTE. I know you do.

Mr. HOYER. But I want to go a little further. Somebody, not a Member, made a determination not to count that vote. My anger that you saw displayed was exactly along that point.

Mr. LATOURETTE. I know that.

Thank you so much.

The CHAIRMAN. Thank you, Mr. LaTourette.

Mr. Davis, do you have any follow-up questions?

Mr. DAVIS. A little bit, Mr. Chairman.

Mr. Hoyer, let me pick up on that last point because, again, all this procedural talk can sound confusing to people, including Mr. Boehner's constituents, perhaps. Mr. Boehner initially voted for the motion to recommit, is that right?

Mr. HOYER. Yes.

Mr. DAVIS. When the well card that we have been talking about wasn't processed, and let's make sure we are clear about something, he was trying to change his vote against the motion to re-

commit. Now let's forget the procedural effect of that, but that is what he was trying to do. He was going from saying, I feel so strongly about the illegals that I think we need to put a redundant proposition in there to keep them from getting benefits, to Whoops, so I can make a procedural move on the floor of the House. Now I am going to change it and say the opposite of what I said earlier.

This whole question of how his constituents felt about the issue and whether his constituents would have been disenfranchised, I just want to make sure they characterize what his vote would have been.

Let me move on to one last set of questions here.

Mr. HOYER. Can I say something? In fairness though, Mr. Boehner cast his vote for procedural reasons, not substantive reasons that way. He tried to change his vote, and I understand that.

Mr. DAVIS. Now the picture that I think some people may have, Mr. Hoyer, listening to the testimony today, may be a picture that there is a point when you are walking around loudly and obviously say, Close the vote, End the vote, and that basically anybody with an eardrum that night would have heard you. That is kind of the picture we have. So I want to play a critical portion of this tape and ask you a few questions about it. I represent to you that a time line prepared by the staff says that at 10:47 Mr. McNulty says, Two minutes. Members have 2 minutes in which to vote on the motion to recommit.

So I am going to make an assumption that is plausible, that there are roughly 2 minutes left on the board, maybe a little bit less, maybe a little bit more. So I am going to ask that we go to 22:49, and I want to ask that the volume be turned up frankly as high as we can turn it up and I want you to just watch from 22:49 until I tell him to stop.

[Video was played.]

Mr. DAVIS. Do you see yourself, Mr. Hoyer?

Mr. HOYER. Standing there in the orange.

The CHAIRMAN. You are in the red.

Mr. DAVIS. Can you spot yourself, Mr. Hoyer?

Mr. HOYER. Not yet.

Mr. DAVIS. The circle will come into view when you come into view.

[Video was played.]

Mr. DAVIS. Do you see yourself now, Mr. Hoyer?

Mr. HOYER. Yes.

Mr. DAVIS. Let's stop at this point. 22:49. Approximately 33 seconds before you even come into view. Do you agree with that? Another 33 seconds lapses before you even come into view at this point.

Mr. HOYER. I am in view now.

Mr. DAVIS. Right. I am just asking if I counted right.

Mr. HOYER. Yes.

Mr. DAVIS. Keep playing here.

[Video was played.]

Mr. DAVIS. Mr. Hoyer, I never heard you. Did you hear yourself during this stretch we just watched?

Mr. HOYER. No.

Mr. DAVIS. Mr. Hoyer, I never saw you walk toward the rostrum and approach Mr. McNulty. Did you see yourself walk toward the rostrum and approach Mr. McNulty?

Mr. HOYER. No.

Mr. DAVIS. This was turned up the highest volume we can possibly turn it. I never heard your voice. Do you agree with that?

Mr. HOYER. I agree with that.

Mr. DAVIS. The reason that stretch is critical is that is the stretch before Mr. McNulty makes his first calling of the vote.

Now continue to play, if you would, sir.

[Playing video.]

Mr. DAVIS. We may turn it down a little bit. Keep it playing, though.

[Video was played.]

Mr. DAVIS. Stop.

Mr. Hoyer, do you see yourself at that point? Do you see yourself go up there and quickly walk away?

Mr. HOYER. I missed that.

Mr. DAVIS. If you would just do that again.

Mr. HOYER. Oh, to Mr. Sullivan?

Mr. DAVIS. Yes.

Mr. HOYER. I don't see it right now. But I was there.

Mr. DAVIS. Please restart.

[Video was played.]

Mr. DAVIS. Stop.

Mr. HOYER. As you can see, it was not a conversation.

Mr. DAVIS. I did hear you then, and I heard you say something to the effect, We control this House. I did not hear you say, Call the vote. Did you hear yourself say call the vote?

Mr. HOYER. I did not say that.

Mr. DAVIS. I don't see you turn toward Mr. McNulty and give him any instructions.

Mr. HOYER. I was not focused on Mr. McNulty, nor did I turn to him, nor did I say anything to him.

Mr. DAVIS. So, if I can simply end, Mr. Hoyer, by making this observation, I understand that there may have been a point that night when you, with some level of vigor, communicated that the vote should be called.

What I will represent to you and everyone in this room is that, if you look at the tape, it is very clear that in the minutes prior to both of the vote callings by McNulty, you don't hear you a single time.

And I will yield back my time.

The CHAIRMAN. With that, I will yield to the ranking member.

Mr. PENCE. Thank you, Mr. Chairman. I just have a couple more questions for the leader. And I want to repeat my gratitude for his public-mindedness and cooperation over the course of the past 8 months.

I am not entirely sure where Mr. Davis was going with that line of questioning.

Can I just ask you one more time—you said——

Mr. DAVIS. You can ask Mr. Davis if you would like.

Mr. PENCE. In your testimony here today, you communicated that it was, quote, "time to shut it down." You said it, quote, "a

couple of times." You said it, quote, "loudly enough to be heard." You said it, quote, "toward the Chair."

Is that still your testimony?

Mr. HOYER. That is still my testimony. But in listening to the tape, there was so much noise that perhaps I need to go to hand signals. I say that not facetiously.

If this hearing is about whether I tried to convey to the Speaker that I thought the vote ought to be concluded, we needed no hearing. I tried to convey that to the presiding officer.

Mr. PENCE. Let me ask, were you close enough to Catlin O'Neill to be heard?

Mr. HOYER. Yes.

Mr. PENCE. By her?

Mr. HOYER. I am sure. I thought I was close enough to the Speaker to be heard, but he says he didn't hear me. And when you listen to it—I had not listened to it that way—you can see how much noise was in the Chamber at that period of time.

But I believe that everybody is telling the truth here. The problem is, we all see it a little differently from our vantage points. And, you know, I——

The Chairman. And predispositions.

Mr. HOYER. Well, and predispositions. But my view is that if this hearing is about whether I wanted to convey something to the Speaker, there ought not to be a hearing, because I absolutely tried to do that. I believe I was within my responsibility, and I wanted to do it.

And I wanted the vote shut down after the Speaker voted. There was nobody in the well. And consistent with the rules, as Mr. LaTourette has said, Mr. McNulty would have been within his rights to conclude the vote at that time. He didn't, and we now have the issue of the 215–213.

I thought that was a legitimate problem. I appreciate your comments about my taking that position that it needed to be corrected.

Mr. PENCE. Well, respectfully to the Majority Leader, I would say what this hearing is about the fact that your testimony is that, as is the common practice of leadership throughout the years on the floor of the Congress, you repeatedly, and at one regrettable moment even angrily, conveyed your desire that the vote be closed. And the net effect of that was the vote was closed in a manner that ignored the longstanding practice of the House floor to allow the Clerk to complete a record vote.

Let me slide to that question, if I can, and I would really like to get your sense of it. And then one more question after that, and I will yield to Mr. LaTourette and let the leader go about his business.

We talked a lot about clause 2(a) of Rule XX. There is another piece of that that simply provides, quote, "The Clerk shall conduct a record vote by electronic device." That is in the House rules.

In your testimony—and forgive me for not having the page—but you referred to the Clerk and the Parliamentarian as ministerial officers. And I don't take issue with that characterization.

Mr. HOYER. I did.

Mr. PENCE. But when you approached the Parliamentarian, frustrated as you were after the first call of 214–214 was stopped, you

said and have confirmed you said angrily to the Parliamentarian, "We control this House, not the Parliamentarian."

As recently as last week on the House floor, you, again, reiterated, in another controversy, a frustration over votes being changed and indicated to the Members gathered on the House floor that you thought it was within the purview of the Majority to close the vote.

And I guess my specific question for our purposes, if I may—let me ask the question, and then you can comment however long you need to—do you believe the majority can close a vote with or without the assent of the Clerk of the House in, quote, "conducting a record vote"?

Mr. HOYER. Absolutely.

Mr. PENCE. Let me ask——

Mr. HOYER. The rules says "conduct." In my view—and I have reread the rules since Mr. Hulshof asked me the question while we were having the depositions.

Conducting the vote, turning on the machine, making sure it is working properly, seeing the votes as they are cast either by voting card or by paper card, the green or red cards, is the ministerial duty of opening up the machines, making sure the levers work, things of that nature. But the conduct of the election, in the sense of when it starts, when it closes, and the ultimate determination of calling the vote, is the Speaker and the Speaker's alone. It is not the decision of the Parliamentarian or the Clerk or any other of the ministerial officers.

I believe that emphatically. And to believe otherwise, I think, undermines the democracy of the House of Representatives and turns it over to people who are not elected but who are critically important employees of the House in conducting our business, but they are not the decision-makers.

Mr. PENCE. And I appreciate the clarity and consistency of your position. But I want to understand it, that your testimony is you believe the Majority can close a vote even without the assent of the Clerk of the House.

If I may ask——

Mr. HOYER. Absolutely.

Mr. PENCE. In plain English, who would count the vote?

Mr. HOYER. You said close the vote without the assent of the Clerk. The assent implies that the presiding officer needs the approval or consent of the Clerk to close a vote. I absolutely reject that premise out of hand. The Speaker can close the vote within the rules—I keep stressing within the rules—at such time as the Speaker makes a determination to close the vote.

The paper slip is not necessary. I asked this morning where this paper slip was. It does not exist. Why doesn't it exist? Because it is thrown away as soon as it is done. Why? Because it is not the official record of anything. The official record is the tally sheet that is kept, which is a large document which is not passed to anybody. The slip is what Mr. Hanrahan or somebody else—he could make a mistake. But I have never seen, in 27 years, there be a discrepancy between the board and the machine. I don't think there has been that I have ever heard of.

In this instance—and this is all about a split instance where Mr. McNulty saw 214–214. Why did he see 214–214? Because the tally

machine at that point in time, that second in time, had counted 214–214. The problem that resulted was—and the confusion and the anger and the upset feelings, which I fully understand, resulted because a split-second—less than almost a second, almost contemporaneously with his seeing 214—we all believe Mike McNulty is one of the most honest, high-integrity, principled Members of this body. He saw 214. He reported 214–214.

He made a mistake. He made a mistake not consciously, not intentionally, not in any way to skew the vote inaccurately, but because he did not know that Mr. Mario Diaz-Balart's vote had not been computed. And it came up almost instantaneously.

And, frankly, from my perspective, he did what a person of his integrity would do. He later announced that he had called it prematurely, and he was going to further allow people to either change or confirm their vote as they saw fit.

Mr. PENCE. And I think, as the leader acknowledged today with the response, he could have—one of the options he could have done to remedy that would be to request a tally slip that reflect the moment that he spoke the words, "The motion is not agreed to." And as Mr. LaTourette raised with you and you acknowledged with the words, he could have—

Mr. HOYER. He could have done that. That is accurate, and I responded that. I think he could have done that.

Mr. PENCE. And the Republican motion would have passed.

Mr. HOYER. What he did was—and as Mr. LaTourette pointed out, one of our people could have moved to reconsider, so we could have been in the same position.

But having said that, he could have done that. That was an option available to him. He was not compelled to do that. He took the alternative to assure that every Member was able to vote that wanted to either change their vote because he had called it prematurely at 214–214.

215–213 never had magic words applied to it. Somebody not elected determined and pushed the button "final." Somebody not elected determined at 214–214, the first time, to take the voting screen off the television.

Neither compelled the Speaker to take action. That was a decision made in error, as it turns out, but not with any animus.

Mr. PENCE. Let me—and I know this came up in our interview with you before. I think the Majority Leader would be aware, and we will likely hear it in testimony from the Parliamentarian momentarily, that there is no contemporary memory of the previous two Parliamentarians of any vote being closed without a tally slip until the night of August 2nd.

Mr. HOYER. Mr. Lauer, in his testimony before you, did indicate he thought there may have been one other instance.

Mr. PENCE. Well, let me——

Mr. HOYER. I believe that is the case.

Mr. PENCE. Let me just push away from the table for just a second and get to the issue of why that occurred in this instance and ask you—you made a comment that I thought was both admirable and candid during your interview. The chairman of the Committee began this hearing this morning speaking about the search for a

culprit. Mr. LaTourette said that there may be several culprits, in this instance.

One of them, I will grant, could be the confusion of the moment; disagreement about interpretations of the rules and traditions of the House.

But another—and I say this with great respect—another theory is that the reason why Mr. McNulty abruptly closed the vote when the Clerk of the House was still counting the votes of Congressman Diaz-Balart was because of the possibility that your demeanor and your behavior, particularly in connection with the Parliamentarian, might have—and I will use the words that I used in our interview—may have, quote, "unintentionally created an environment of more pressure" on Mr. McNulty to close the vote.

You responded, I thought, generously when I asked, "Do you have anywhere that maybe inadvertently you created an environment where he felt more pressure to drop the gavel than he would have otherwise?" Your response then was that was, quote, "certainly possible."

Mr. Leader, on reflection, do you believe that your behavior that night could have contributed to pressure on Mr. McNulty that resulted in the vote being called prematurely and at odds with the vote total that the tally clerk was preparing?

Mr. HOYER. I think the answer to that is it could have, but I take Mr. McNulty at his word that it did not.

Mr. DAVIS. I thank the leader and Mr. LaTourette.

Mr. LATOURETTE. Mr. Chairman, I see our time has expired.

The CHAIRMAN. It has expired. If the gentleman from Ohio has a few——

Mr. LATOURETTE. I just have two questions, and one has two parts. And I will attempt to be very brief.

The CHAIRMAN. Two parts and two different questions.

Mr. DAVIS. I would ask for additional time, frankly, if you have that much. Because, honestly, the point I would make to the Chair is the leader has been here for a very long time, we have both gone over time, and I would ask that the witness be excused.

The CHAIRMAN. Well, I am going to extend to the gentleman from Ohio an additional 2 minutes.

Mr. LATOURETTE. Thank you so much for your courtesy, Mr. Chairman.

Mr. Leader, a couple of times, I have heard you reference testimony and what people have said to this Committee. Have you had the opportunity or your staff been afforded the opportunity to review the testimony that has come before this——

Mr. HOYER. I have seen some of the testimony, yes.

Mr. LATOURETTE. Okay. And here is the two-part question, and it deals with rules versus customs and traditions of the House.

You have heard that the two Parliamentarians have indicated for 40 years a vote has never been called with a tally slip. You correctly say that is not in the rules; that is not part of Rule XX.

When I had the pleasure of presiding when we were in the Majority, there is a practice when the leader of either party or the Speaker of the House is recognized, he or she is usually yielded a minute, and they don't seem to talk for a minute. No disrespect for

you, but I have heard you talk longer than a minute when you have been yielded a minute.

The CHAIRMAN. And you have been yielded 2 minutes, Mr. LaTourette.

Mr. LATOURETTE. That is right, and I have a 1:08 left, buddy.

And I don't find that anywhere in the rules. And would you agree with me, that is not a rule of the House?

Mr. HOYER. Yes.

Mr. LATOURETTE. It is a custom practice, courtesy, that the person presiding is told to, if you—and, as a matter of fact, leaders of both sides are pretty good, because if the manager on the Republican side only has 2 minutes left, he knows that if he gives Mr. Boehner a minute, then Mr. Boehner could talk for 20 minutes. And the same courtesy is afforded to you and to Speaker Pelosi, right?

Mr. HOYER. Yes.

Mr. LATOURETTE. So that is a custom practice. I was just wondering what your reaction would be the next time you were yielded a minute and you exceed that minute, if someone were to object, make a point of order, do you think that would be appropriate?

Mr. HOYER. No.

Mr. LATOURETTE. Thank you.

Mr. HOYER. Can I comment on your observation?

Mr. LATOURETTE. It is now up to the chairman.

Mr. HOYER. I would like to comment on your observation. If Mr. Delahunt would prefer that I didn't, because he wants end my testimony, I would understand that.

I think the paper slip is a useful best practice to rely on. I reiterate that I do not believe it is necessary, nor do I believe it is more accurate than the board. I have never, in 27 years, found a distinction between the two.

I believe this was not a question of the slip. Much has been made of the slip. The question is whether or not on the 215–213 it was a final vote. The Speaker never called 215–213 at any time during his presiding. He called a 214, a second 214, and a 212–216.

Mr. LATOURETTE. Right.

Mr. HOYER. 215–213 was never called by the responsible authority to end the vote at that number.

The slip is a useful, important device to confirm the vote. But I believe he was right each time that he called the vote at the instant he called it.

As I have said, in the second 214, contemporaneously almost, the vote changed. He missed that. He made a mistake. He said that. We all acknowledge it. And I, therefore, tried to correct that mistake and did, in fact, correct that mistake, I thought, by either vacating the vote by unanimous consent or asking that it be redone to assure every Member the opportunity to vote as they saw fit.

Mr. LATOURETTE. Thank you.

Mr. HOYER. Can I close by simply saying——

The CHAIRMAN. No, because I am going to ask unanimous consent to allow myself to have a minute and a half.

And I am going to ask—I know, at one point in time, the ranking member at the beginning of a question made some assumptions

that I believe were assumptions only and not supported by any facts.

But I am going to ask the reporter if she could return to the final question or the next-to-final question by Mr. Pence and read it aloud, so that I can pursue that with Mr. Hoyer.

[Reporter reads back as requested.]

The CHAIRMAN. That will be fine.

I don't know if you are aware of the testimony this morning by Mr. McNulty or his interview before the Committee that was done in private, but let me represent to you that, if you intended to bring pressure, according to Mr. McNulty, he did not hear what you said. You were unsuccessful.

Mr. HOYER. It is my understanding that he said he didn't feel pressure.

The CHAIRMAN. And there had been statements made that the vote was overturned due to pressure from the Democratic leadership. Would you care to comment on that?

Mr. HOYER. Which vote, the 215–213?

The CHAIRMAN. No. Well, the 215 to the 213, the 214 to the 214, the second one.

Mr. HOYER. Well, the 214, of course, we wouldn't want to overturn that because we would have prevailed on the proposition, because, in a tie, the proposition fails.

On the 215–213, as I have reiterated on a number of occasions, Mr. McNulty never called that vote. Somebody, not an elected Member, decided to put up on the board that that was the final vote. They made the conclusion then, as did the person who has the vote screen up at the time of the vote at the end of the first 214–214 that the vote had concluded.

Both were in error. That doesn't mean that they were doing something wrong. They made a mistake. Mr. McNulty made a mistake, as he acknowledges, by calling the vote early. I don't believe there is a culprit here, in the sense of culprits. I think a series——

The CHAIRMAN. To inform the leader, my reference in my opening remarks was that the culprit might be in the form of a well-intentioned rule that was in response to perceived abuses on other occasions.

However, I concur at this juncture with both the leader and the gentleman from Ohio, in terms of the difficulty of enforcement and the practicality of the operation of that rule. And it might be very well a recommendation by this Select Committee to review that particular rule.

Having said that, I thank the Majority Leader for his testimony, and we will see you on the floor later.

Mr. HOYER. Thank you very much.

Mr. LATOURETTE. Mr. Chairman, before you recess—I don't need the leader for this.

Thank you so much for your cooperation.

Mr. HOYER. Thank you.

Mr. LATOURETTE. I know you are going to take a little recess. Could I just ask before we reconvene, because there was one matter that came up in the leader's testimony that I feel the need to discuss with the Members, not in an open session yet. And maybe

we could take a 10-minute break, and, for 5 minutes, we all could just have a brief conversation.

The CHAIRMAN. All right. Why don't we reconvene at 4:05? And the members of the Office of the Parliamentarians can be seated at their seats.

We will recess.

[Recess.]

The CHAIRMAN. Welcome, gentlemen.

The crowd seems to be thinning.

The Committee is now in order.

I enjoy reading these biographies. It has all kinds of vital information, like the Parliamentarian was born in Chicago in 1952. I am saying that with a certain facetiousness, obviously. He resides in Virginia. He is the third of nine children of James Patrick Sullivan and Mary Claire Wiley. He attended the United States Air Force Academy and the Indiana University School of Law. He is a member of a variety of bar associations, including the United States Court of Appeals for the Armed Services.

Mr. Sullivan was appointed as the Parliamentarian of the House in 2004 after having served as Deputy Parliamentarian and as Assistant Parliamentarian. Before joining the Office of the Parliamentarian, he served as a trial and appellate lawyer in the Air Force and as counsel to the House Armed Services Committee.

Ethan Lauer is a native of Fond du Lac, Wisconsin, and obtained his undergraduate degree from the University of Wisconsin. He later went on to study law at the University of Minnesota and was admitted to the Wisconsin Bar in 1999.

He joined the Office of the Parliamentarian in 1999 and serves as Assistant Parliamentarian in the House of Representatives.

Mr. Max Spitzer currently serves as Assistant Parliamentarian in the House of Representatives. Prior to joining the Office of the Parliamentarian in 2006, he studied law at Duke University and completed a clerkship in the State of Pennsylvania.

As part of his studies, Mr. Spitzer served as research assistant and summer associate at law firms in the United States and abroad. He has written several academic works in the area of law and history.

Welcome, gentlemen, and thank you for your attendance here today to help us with our mandate.

And let me begin by yielding the time to the gentleman from Alabama, Mr. Davis.

Let me first inquire of the panel. Mr. Sullivan, do you, as the Parliamentarian, have a statement that you wish to make?

Mr. SULLIVAN. No, thank you.

The CHAIRMAN. Fine.

Mr. Davis.

Mr. DAVIS. Thank you, Mr. Chairman.

Let me welcome all three of you. And let me begin, frankly, in the spirit with which we started today.

One of the things that has been enhanced by the work the six of us have done on this Committee is our collective appreciation of what you gentlemen do. Frankly, a lot of us tend to lapse into the routine of seeing you all up there but not necessarily paying a whole lot of attention to what you do or, more importantly, fully

appreciating what you do. And sometimes it takes an unexpected set of events like August 2, 2007, to crystallize the importance of the very excellent staff we have to the process.

So I want to begin by thanking all three of you, and reiterating something that, frankly, may not be understood by the public, that the staff, the Parliamentarian, tally clerks, reading clerks don't work for the Majority. They work for the House of Representatives. And all three of you have conducted yourselves that way when you work for a Congress that was run by Republicans and now that you work for a Congress run by Democrats. And I think all of my colleagues would share those sentiments.

The way I intend to structure my questions today, Mr. Sullivan, I am going to use military rules and essentially speak to the commanding officer who is here, since you are the Chief Parliamentarian, and I am going to direct my questions at you. If Mr. Lauer or Mr. Spitzer want to jump in and interject observations, they are certainly free to do that. And I will give them a chance at the end to see if they wish to differ from your testimony in any way.

But out of deference to you as the Chief Parliamentarian, I am going to direct my questions to you, sir, if that is appropriate.

And you have to actually audibly answer. I have to get you in the habit of that for the record.

Mr. SULLIVAN. That would be fine. Thank you.

Mr. DAVIS. Let me begin by asking you about the issue that we have talked about all day long, and it is the question of a tally sheet.

As you know from your deposition, as I think you know from becoming aware of the disputed facts in this case, there is an argument that has been made that a tally sheet is a standard custom and practice of calling a vote. You described it as the ultimate quality-assurance mechanism for determining the accuracy of a vote in your deposition.

I want to ask you some questions about, frankly, Member awareness of these issues around tally sheets.

It is my understanding as Parliamentarian that you sometimes have occasions to brief presiding officers and to have discussions with presiding officers about the nature of their duties. Am I right about that?

Mr. SULLIVAN. That is correct.

Mr. DAVIS. Give me just an estimate in 2007 of how many presiding officers you sat down with and had some briefing with them about what it means to be a presiding officer.

Mr. SULLIVAN. I would estimate maybe 50.

Mr. DAVIS. Of that 50 Members, approximately how many did you discuss—with whom did you discuss a tally slip?

Mr. SULLIVAN. Probably none.

Mr. DAVIS. Probably none.

Mr. SULLIVAN. The reasons—the briefings I am speaking of are mainly to orient the Member to the physical plants that they are going to be operating in and who is going to be there to assist them and the extent to which we will have prompts prepared for them in writing or rather using the mute button and prompting them verbally.

I usually will cover the very essential aspects of presiding officer practice: How to confer recognition and how to do so tentatively, and to discover for what purpose recognition is being sought before conferring it; the very narrow set of occasions in which the Chair takes initiative to enforce the rules of the House, rather than awaiting a point of order from the floor; the technique to use with the gavel to apprise a Member that her time has expired and bring her speech to a close—very essential things.

I assure them that we will get as deep in the weeds with them as they like over time. And there will be object lessons as they wade in to the practice of presiding.

But I don't recall any occasion to get into the weeds of the tally slip and its role in the closing of a vote.

Mr. DAVIS. Do you remember a single one of the approximately 50 Members with whom you have met asking you about the electronic vote system and how the electronic vote system closes down a vote?

Mr. SULLIVAN. No.

Mr. DAVIS. So you would agree that, in the briefings that you provided for Members, you didn't discuss tally slips and you didn't get into the EVS system? Would you agree with that?

Mr. SULLIVAN. Yes.

Mr. DAVIS. Let me go to the night of August 2, 2007. I take it, based on that answer, that prior to that night you had never had any occasion to discuss with Mr. McNulty the advisability of a tally slip?

Mr. SULLIVAN. I don't believe I had.

Mr. DAVIS. And prior to that night, had you had any occasion to discuss with Mr. McNulty the fine points of how the EVS system closes a vote down?

Mr. SULLIVAN. No.

Mr. DAVIS. Had you had any occasion prior to the night of August 2, 2007, to discuss with Mr. McNulty even the relevance of the board and the vote totals that are announced on the board?

Mr. SULLIVAN. I don't believe so. In recent years, we have begun a practice of using prompting sheets for the Member who is closing out a vote if they are new to it. And on that sheet, we, even before these events, had begun to have some sort of mention of, "Don't look at the scoreboard. Look at the slip in your hand." That was just to keep them from jumping the gun by looking at the scoreboard.

But in the case of Mr. McNulty, because he had a fairly good rote recitation of those incantations, I don't think we would have put one of those sheets in front of him.

Mr. DAVIS. Had you had any occasion prior to August 2nd to say to Mr. McNulty, don't ever view what is on the board as being the ultimate determination of what a vote count is in the House?

Mr. SULLIVAN. No.

Mr. DAVIS. Do you remember having any occasion to tell any presiding officer prior to August 2, 2007, that it is inadvisable to look at the board? Do you have any recollection of raising that issue with any presiding officer?

Mr. SULLIVAN. Well, if I saw a presiding officer who looked like he might be thinking of announcing a result from the scoreboard, I would say, "Don't look at the scoreboard. Wait for a final slip."

Mr. DAVIS. Had you ever done that with McNulty?

Mr. SULLIVAN. No, I don't believe so.

Mr. DAVIS. Mr. Boehner testified during his deposition that his belief that the accurate score that night, that 215 in favor of the motion and 213 against, was based on his looking up at the board and seeing 215–213 final.

Does it surprise you that Mr. Boehner would have that mistaken belief about the board?

Mr. SULLIVAN. That is not surprising. Mr. Hoyer has the same sort of attitude.

And it is correct that if there is a slip extant, it is not going to vary from the board. But it is the fact that that slip is extant that tells you that the number on the board has become static, is no longer a moving target.

Mr. DAVIS. Let me just ask you this question before I move on. You obviously interact with Members, and you have gotten to know a lot of us from the expertise that you provide.

Do you think it is fair to say, Mr. Sullivan, a significant number of Members, experienced and inexperienced, believe that when they see a number go up on the board, it is actually an accurate count of what is going on on the floor?

Mr. SULLIVAN. I believe they do. I think the question here is, is it still in motion or has it come to rest?

Mr. DAVIS. Now, you know I believe that Mr. McNulty has acknowledged that he made an error that night. He did it today. In fact, he did it the day after the vote. Is that correct?

Mr. SULLIVAN. Yes, I listened to that part of his testimony this morning.

Mr. DAVIS. Describe for me, if you would, what you think is the error that Mr. McNulty made.

Mr. SULLIVAN. If I may, first, I would like to say that I let Mr. McNulty down. And he is a very upright man to lay all the blame on himself, the way he did this morning, but I think it was too much.

But the error was to announce a number, a pair of numbers that had not settled from a source that had not been documented as settled.

Mr. DAVIS. And if I can repeat, it seems that Mr. McNulty's position is that he believed that when the Diaz-Balart card was processed, that it was reflected in the tally that was on the board, and that when he looked up and saw 214–214, he felt empowered to call the vote because he thought that Diaz-Balart's card was counted.

Have I essentially captured his testimony right, as far as you recall?

Mr. SULLIVAN. I believe that is what he said.

Mr. DAVIS. And the error rests in the fact that, actually, Diaz-Balart's card had not been processed and, indeed, was processed at almost the same instant he called the vote. Is that right?

Mr. SULLIVAN. That is right.

Mr. DAVIS. You have known Mr. McNulty for a while now. Do you view him to be an individual of the highest integrity and ethics?

Mr. SULLIVAN. Absolutely.

Mr. DAVIS. And was your sense of that reinforced by his appearance here this morning?

Mr. SULLIVAN. Absolutely.

Mr. DAVIS. Did he strike you as someone who testified here honestly and credibly?

Mr. SULLIVAN. His testimony this morning was absolutely in character for him. That is how he is.

Mr. DAVIS. After Mr. McNulty made his error that night on the floor, the video makes it very clear that you spent some time in consultation with him, that you spent some time having a conversation with him. Do you have a ballpark memory of what it is that you said to Mr. McNulty?

Mr. SULLIVAN. I told him an ostensible result had been announced. It included the language that would make an announcement final, but that, in my judgment, it could not be accorded legitimacy.

What was wrong with the announcement was not the particular numbers it contained, but that it contained unsettled numbers. And, in my judgment, to just introduce a different pair of unsettled numbers would not solve the problem.

So what I was doing was waiting for the numbers to settle and using that time to compose a statement that, in my mind, was going to serve as a final tally slip with explanation of error.

Mr. DAVIS. Now, let me stop you at that point, because you said something that I think is very important, given some contention that——

The CHAIRMAN. Would the gentleman yield for a moment?

Could you please, John, pull the microphone closer, speak into it? Thank you.

Mr. DAVIS. Yes. That would help, Mr. Sullivan.

I want to go back down this road of what you just said, because, given some contention today, I think it is important.

One of the issues that has been raised is the fact that several Democratic Members went into the well and changed their votes. You recall from watching the videotape Mr. Space, Mr. McNerney and Mrs. Gillibrand all go into the well to change their votes.

Do you recall that?

Mr. SULLIVAN. Yes. Well, I don't recall that. I learned that from the tapes. I have no independent recollection of it.

Mr. DAVIS. You said that it was your belief that the vote had not settled, that the vote was still dynamic. Do I take that to mean that you felt that there were still Members in the process of changing their vote or Members who manifested an intent to change their vote?

Mr. SULLIVAN. I based it almost entirely on the fact that, as soon as Mr. McNulty completed the full form of announcement, the board changed, which told me that the system had not been closed to further input. And I didn't know whether that uptick was the last uptick.

Mr. DAVIS. And not only did the board change, but our timeline reflects that within 7 to 10 seconds you can physically see Ms. Gillibrand walking forward to turn in another card. Does that sound about right, from your recollection?

Mr. SULLIVAN. I don't have any recollection of that. I was rocked back on my heels, and——

Mr. DAVIS. Did you hear people—did you hear the Clerk announcing changes in votes, though? Does that register with you?

Mr. SULLIVAN. I certainly have observed that by watching the videotape at this date. But I don't think, when I try to play back a tape in my head from my actual recollection, I don't know that I recall that.

I do recall going through the process in my mind of diagnosing that we had an illegitimate situation and then figuring out why it was illegitimate. It felt illegitimate; I had to figure out why it felt illegitimate, and then what would tend to correct it. And that took me a little longer than I would like.

Mr. DAVIS. Let me just show you one part of the tape, so we can be crystal-clear about this.

If you would go to 22:51.

And if you would just watch, Mr. Sullivan.

You can start it.

[Video was played.]

Mr. DAVIS. You will note that two individuals changed their votes, in effect: Mr. Space and Mrs. Gillibrand. Is that a correct representation of what you just saw?

Mr. SULLIVAN. Yes.

Mr. DAVIS. Is there anything that you believe to be inappropriate about those individuals being allowed to process their changes of vote at this point?

Mr. SULLIVAN. Well, in critiquing my own performance, that was 30 or 40 seconds, I think, that I was trying to figure out what the situation ought to be.

Mr. LATOURETTE. I am sorry, you were saying what?

Mr. DAVIS. You need to lean directly into the microphone.

Mr. SULLIVAN. Figure out what we ought to be doing.

Mr. DAVIS. Did you see the Democratic leadership—well, let me ask the question differently. The fact that Gillibrand and Space changed their votes, in effect, that was a function of the fact that, in effect, nothing is going on here. In effect, there is a dynamic period where a vote has been called, but obviously Members are still proceeding to change their vote. Do you agree with that?

Mr. SULLIVAN. Yes.

Mr. DAVIS. And was that a function of any instruction or order by the Democratic leadership that these individuals be allowed to change their votes?

Mr. SULLIVAN. No. It was a totally anomalous situation in which a putative result was extant. I mean, the Chair had said the words that ordinarily would end that proceeding. But they were so immediately and so forcefully contradicted by the scoreboard that I thought that it could not stand, and we had to let the thing play out.

Mr. DAVIS. In effect, the changed votes of three individuals—McNerney, Gillibrand and Space—were counted that night. Is that correct?

Mr. SULLIVAN. Yes.

Mr. DAVIS. And to this day, do you believe that that was inappropriate or in any way a violation of the will of the House to count those three votes that were changed?

Mr. SULLIVAN. I don't know that I can judge what the will of the House was. It was a bad way to conduct a vote.

Mr. DAVIS. But during this period of time—and I will represent to you that there was widespread agreement today it is about a 7-minute period in between Mr. McNulty's erroneous calling of the vote and the time that he announces the right result. During that 7 minutes, any Member who wished to change could have done so. Is that right?

Mr. SULLIVAN. That is right.

Mr. DAVIS. It would have been equally open to Members to go off no on aye and off aye on no. Is that correct?

Mr. SULLIVAN. That is right.

Mr. DAVIS. Was there any point that night, Mr. Sullivan, when you attempted to give Mr. McNulty an instruction and he ignored you or refused to follow your instructions?

Mr. SULLIVAN. No.

Mr. DAVIS. Was there any point when you suggested that he do something and he refused to do it?

Mr. SULLIVAN. No.

Mr. DAVIS. There has been a lot of questioning about your exchange with Mr. Hoyer that night. There was a heated exchange with Mr. Hoyer. Is that correct?

Mr. SULLIVAN. I think I had five exchanges with Mr. Hoyer. One of them was the one that everybody seems to focus on, and that had a little heat to it.

Mr. DAVIS. The exchange that we saw, he seems to say something of the effect that we control this House, or words to that effect, not the Parliamentarians.

Did Mr. Hoyer act in an abusive manner to you at any point, Mr. Sullivan?

Mr. SULLIVAN. No.

Mr. DAVIS. Did Mr. Hoyer use any profanity toward you at any point?

Mr. SULLIVAN. I don't believe so.

Mr. DAVIS. I think you say in your deposition, he might have used a word that starts with "D" and ends in "N" that we have heard sometimes.

Mr. SULLIVAN. The question was repeated enough times that I thought, you know, there was something—and I said, well, if there was something, then maybe he said "this damn place" instead of "this place." But I don't have any particular recollection.

Mr. DAVIS. And just to put it in some context, did a Republican Member of the House approach you last week and have a heated exchange with you?

Mr. SULLIVAN. Yes. I think some of the heat was from me, though.

Mr. DAVIS. Without naming that individual, as I don't want to embarrass him, which would you say was the more heated, provocative encounter, the one that you had last week with this individual or the one you had with Mr. Hoyer?

Mr. SULLIVAN. I think the one last week, but I think I exacerbated the situation.

Mr. DAVIS. What was the individual doing last week that exceeded what Mr. Hoyer did?

Mr. SULLIVAN. I felt that he was accusing our office of manipulating the form of the question that the Chair puts on an appeal.

Mr. DAVIS. Had you ever had that kind of an allegation ever made by Mr. Hoyer?

Mr. SULLIVAN. No.

Mr. DAVIS. Has any Democratic Member ever made that kind of allegation to you?

Mr. SULLIVAN. Probably.

Mr. DAVIS. All right, probably. All right. But not Steny Hoyer? [Laughter.]

The CHAIRMAN. Yield back, Artur?

Mr. DAVIS. All right. But not Mr. Hoyer?

Mr. SULLIVAN. I don't believe so.

Mr. DAVIS. All right.

And one final set of questions, Mr. Sullivan. Was there any point—I figure Mr. LaTourette asked so many questions he didn't know the answer to, I would try at least one to balance it out.

But let me just ask this observation. Was there any point that night when either Mr. McNulty or Mr. Hoyer did anything that you felt was an intentional violation of the rules or the customs of the House of Representatives?

Mr. SULLIVAN. No.

Mr. DAVIS. All right. No further questions.

The CHAIRMAN. Mr. Pence, I will yield the balance of my time, as well as your 20 minutes, to you and your side.

Mr. PENCE. Thank you, Mr. Chairman.

I want to welcome this panel. And I know I speak for everyone on the Committee when I say that we are grateful for your cooperation, and we are mindful of the discomfort that being questioned by Members of Congress that you serve would present to all of you professionally.

And I want to say that my take-away from this inquiry is to have a higher opinion of each of you and a higher opinion of those who serve at the rostrum than I had before this inquiry. And I expect that will be broadly shared by members of this Committee and Members of the Congress. So I thank you for your service and your cooperation.

Mr. Sullivan, a couple of quick questions, and then I just had a couple questions for Mr. Lauer. And I will yield, as has been my practice, to Mr. LaTourette.

Very specifically, Mr. Sullivan, did the tally clerks prepare a tally slip for Roll Call 814?

Mr. SULLIVAN. No. No.

Mr. PENCE. Prior to Roll Call 814, have you ever seen a vote closed without a tally slip being prepared?

Mr. SULLIVAN. I don't recall ever seeing that.

Mr. PENCE. Mr. Davis asked an intriguing line of questioning about the preparation that you provide for Members who serve as pro tem in the chair. You said that you personally as Parliamentarian would not have discussed the tally slip. Is that because it is not a significant element of a record vote or because it is so deeply entrenched in the traditions that you would not have mentioned it, or if you have a third response.

Mr. SULLIVAN. I think the latter. I think it is part of the DNA of the way the House proceeds.

Mr. PENCE. You have testified during your interview with this Committee that the tally slip, consistent with your immediate previous statement, is, quote, "probably the most important quality control device in the announcement of a vote."

Could you elaborate on that? Why is the tally slip so important to maintaining the integrity of the voting process in the House of Representatives?

Mr. SULLIVAN. The electronic voting system has 47 input devices: 46 boxes at which Members use smart cards, and the Tally Clerk's terminal at the rostrum. And they are closed down from the periphery so that at some point or other during the electronic vote the seated Tally Clerk closes the 46 boxes and all further transactions are conducted by ballot card in the well. And then toward the end, very near the end, the seated Tally Clerk closes down even the 47th input device, his terminal at the rostrum, and then tells the standing Tally Clerk, I just shut the entire system down to further input, it is safe for you to look up at the board and capture a result. The standing Tally Clerk waits for whatever length of time constitutes a computer refresh cycle. I think it is 1.5 seconds or .5 seconds, but they wait a beat, assure themselves that they have a static number and write it on a tally slip. And that tally slip once extant is a marker to all of us that somebody captured a result from a system that had been closed to further input.

Mr. PENCE. Thank you. Last question for you, Mr. Sullivan. I believe you were seated here in the hearing room when the Majority Leader testified on the topic that I would like to raise with you. I specifically asked the Majority Leader, do you believe the Majority can close a vote with or without the assent of the Clerk of the House, quote, conducting a record vote? As Parliamentarian, would it be your view that a Majority of the House can close a vote without the assent of the Clerk of the House conducting a record vote?

Mr. SULLIVAN. I don't have an understanding how the Majority has anything to do with it. I would think in terms of presiding officer. And I would observe that the role that is assigned to the Clerk in clause 2 of Rule XX is that of an agent. And her principal is the presiding officer. So when the rule says the Clerk shall conduct the vote, the Clerk shall make sure the electronic voting system is properly employed and everything, she is operating at the direction and control of the gavel—the presiding officer. And I suppose it is true that the presiding officer could say I am going to depart from best practice, I am going to—when I think the numbers have settled—announce a result. But until this occasion that has never occurred.

Mr. PENCE. Until this occasion it had never occurred without the assent of the Clerk.

Mr. SULLIVAN. Not to my knowledge. The only precedent I found, I think it is the only one, that mentions the tally slip in particular, not a tally sheet as they use in a manual call of the roll. On one occasion the presiding officer, there was a motion to adjourn, and he had the tally slip in his hand and was about to announce that the House had adjourned, but he paused and entered a leave of absence request on behalf of a sick Member. And someone complained, "wait a minute, you have a tally slip in your hand, you can't do that, your duty is to read the tally slip." But other than that, it is largely intramural lore.

Mr. PENCE. Thank you. That is very helpful. Let me ask Mr. Lauer a quick question. There has been a lot of talk about pressure that the Chair may or may not have felt. In your deposition you were asked the following question. You appear from the video to be standing at the rostrum and you are close to where the rather heated exchange took place between Mr. Hoyer and Mr. Sullivan. In your opinion was there a palpable sense of pressure to close the vote? You responded yes. Is that your testimony today, that there was a palpable sense of pressure at the rostrum at the time of this vote?

Mr. LAUER. Yes.

Mr. PENCE. And you testified in response to the question, "was that pressure coming from Mr. Hoyer," your response was, "he was a big part." Is that still your testimony today?

Mr. LAUER. Yes.

Mr. PENCE. And in your proximity, if we can put the poster up, I want to make sure that the record reflects your proximity to, and I don't know, Mr. Lauer, if you can see this. I believe we have got a label over your head. Would you mind stepping over there and showing us where you were at the rostrum when you sensed this palpable sense of pressure coming from Mr. Hoyer? And let the record reflect the witness is pointing to himself. Facing the rostrum he is at the left of the presiding officer—excuse me, to the right hand of the presiding officer, but left facing the rostrum. Thank you.

Let me ask you one other question. Do you recall testifying to this Committee that there was another instance of a vote being closed without a tally slip?

Mr. LAUER. Yes.

Mr. PENCE. When did you provide that testimony or can you recount that for us?

Mr. LAUER. Yes. I believe it was the first interview. And the question was asked has a vote ever been closed in the absence of the normal tally slip. And at first I said no. And then later in the interview the question came up again, and I thought I did remember a case where I was, as I was on August 2nd, assisting the Chair, and saw a vote that was closed before a tally slip actually made it into the hands of the presiding officer. But I couldn't recall any specifics. And I trust it was not a figment, but I believe it did happen.

Mr. PENCE. Thank you. I will yield to Mr. LaTourette.

Mr. LATOURETTE. Thank you very much. And gentlemen, thank you all for being here. And I would just say having had the opportunity to preside from time to time, the House of Representatives

is lucky to have you as employees. And I think you all do a great job. We are going to put up on the lectern over there, on the issue of training, there was some discussion about training. And this is a document, a large document dated April 25, 2007, and ask you Mr. Sullivan, do you recognize that document?

Mr. SULLIVAN. Yes, I do.

Mr. LATOURETTE. Okay. You can have a seat. Let us give him the small one. Am I correct that as part——

Mr. DAVIS. Can I have a copy too, Mr. LaTourette?

Mr. LATOURETTE. Yes. I would be happy to get you one. Does somebody else have a copy? Can you get it to Mr. Davis and get one to the chairman? Because of the desire of the Parliamentarian to make things go smoothly, this is a sheet that was in existence as of April 25, 2007, and it would be from time to time based upon your testimony placed upon the rostrum to assist the presiding officer, is that right?

Mr. SULLIVAN. Yes.

Mr. LATOURETTE. The third line says ignore scoreboard, rely on tally slip.

Mr. SULLIVAN. Yes.

Mr. LATOURETTE. And was that to indicate to the person who was acting in place of the Speaker that to read off the scoreboard was not the preferred way to do it and you should wait for the tally slip?

Mr. SULLIVAN. Yeah. It was my way to steer them towards tally slip consciousness.

Mr. LATOURETTE. And was this—when was this? This is dated April 25, 2007. But did you have any idea how long it has been used?

Mr. SULLIVAN. This form has been used in a variety of iterations. That third line might be slightly different from one to another. But I think it was during Mr. Hastert's term as Speaker that I began for Mr. Hastert to create a sheet for him on closing out a vote. Because whenever he got in the chair, Members would be pestering him constantly. Everybody would be coming up to get a piece of the Speaker. And it wasn't easy for him to remain plugged in. So I would write out basically what is the bottom half of that sheet for him, so that he could when he got the tally slip just fill in the blanks with the numbers and then read. And then after a time we made it a typed endeavor and used it with any presiding officer who we thought was not used to the incantations of closing a vote.

Mr. LATOURETTE. And was this document in existence on August 2nd of 2007?

Mr. SULLIVAN. This or something equivalent.

Mr. LATOURETTE. And, Mr. Lauer, do you know whether or not this was on the rostrum in front of Mr. McNulty?

Mr. LAUER. I do not know.

Mr. LATOURETTE. You do not know. And if it was not, Mr. Sullivan, did you indicate that it would be your belief based upon Mr. McNulty's expertise that he wouldn't need this?

Mr. SULLIVAN. Right.

Mr. LATOURETTE. Mr. Sullivan, do you believe that a presiding officer can announce a result that differs from the tally of the Clerk?

Mr. SULLIVAN. No.

Mr. LATOURETTE. I want to—and let me just talk about the interplay of rules and customs, practices and procedures, and ask the Majority Leader this. When I would be in the chair and someone would yield a minute to the Majority Leader, the Minority Leader or the Speaker of the House, Members of my party would always come up to me and say, why do you—shut them down, they have talked for 15 minutes and they only got a minute. And am I correct that that is, based upon the long-standing tradition of the House, that courtesy is given to the leadership of each party and certainly to the Speaker of the House?

Mr. SULLIVAN. Yes.

Mr. LATOURETTE. Would I find that in the rules anywhere?

Mr. SULLIVAN. Only inasmuch as the Chair is—the power of recognition is in the rules, and the precedents on what constrains the Chair's exercise of discretionary recognition. That custom is supported by the—it is the magnanimity of the Chair that allows the leaders to go on.

Mr. LATOURETTE. And let me ask you this. If the next time a Democratic Member yielded one minute to Majority Leader Hoyer and he spoke more than one minute, what would your ruling as a Parliamentarian of the House be if I made a point of order that he had exceeded his time limit?

Mr. SULLIVAN. I would ask the Chair to say that it is the custom of the House to hear its leaders at their length.

Mr. LATOURETTE. As it is the unbroken custom, practice and precedent of the House to provide the Speaker pro tempore with a tally slip?

Mr. SULLIVAN. Yes.

Mr. LATOURETTE. Clause 2(a) of Rule XX is something that is vexing us.

Mr. SULLIVAN. The new sentence.

Mr. LATOURETTE. The new sentence.

Mr. SULLIVAN. Yes.

Mr. LATOURETTE. And Mr. Hoyer I think, and I found Mr. Hoyer's testimony to be refreshing, and I think he hit the nail on the head, that the enforcement of clause 2(a) rests with the occupant of the chair, it is for the Chair to determine in the first instance whether or not he or she is holding the vote open solely to affect the outcome?

Mr. SULLIVAN. Well, on Thursday, May 8th, we had a ruling of the Chair sustained on appeal to the effect that the new sentence in clause 2(a) is susceptible only of collateral enforcement, that it does not support the litigation of a point of order in real time.

Mr. LATOURETTE. I understand that. But in terms of the bedrock parliamentary procedure is that we hope that the presiding officer follows the rules of the House.

Mr. SULLIVAN. Yes.

Mr. LATOURETTE. And in this instance the person in the chair is entrusted with the responsibility of following the rules.

Mr. SULLIVAN. Yes.

Mr. LATOURETTE. And the rule as presently written, the words "solely for the purpose," that can only be obtained, we can only get

to the bottom of it by ascertaining of the Chair what their purpose was.

Mr. SULLIVAN. I agreed with you earlier, he is the judge and a defendant on a specific intent crime.

Mr. LATOURETTE. Okay. And I asked Mr. Hoyer this, and let me just read you this exchange and ask you if you agree, on page 28 of Mr. Hoyer's interview, which he reaffirmed today, Mr. McNulty testified to us that it was his judgment to keep the vote open after the Mario Diaz-Balart well card was entered—that it was his judgment that to keep it open after that moment in time would have violated clause 2(a) and he intended to close the vote after Mario Diaz-Balart's vote was entered. If that is Mr. McNulty's position, that as the presiding officer, that he and Mr. Hoyer said is invested with the authority to close a vote, if that were to be his testimony, that the vote in his mind was closed when he said 214–214, the motion is not agreed to, would you dispute his authority to do that? The Majority Leader said no, and I would ask you the same question.

Mr. SULLIVAN. Well, I guess de facto I did dispute that by making the judgment that the announcement of 214–214 without proper closing of the system could not be accorded legitimacy and that the substitution of 215–213 for the numbers in that announcement would not solve that problem, and that we had then to allow the numbers to settle and make a complete announcement.

Mr. LATOURETTE. Well, let me ask you this. I am talking about whether or not 2(a), clause 2(a) was violated by the occupant of the chair. And I think I believe, and you tell me if I am wrong, that the only way that that can ever be definitively determined is if the person in the chair says, yeah, I kept it open for the sole reason of influencing the vote. In this instance we have the converse. We have the presiding officer indicating to us that based upon the traffic and his seeing what was going on in the House, he had reached the conclusion that to keep the vote open after the Diaz-Balart card was entered would have been violative of 2(a). How does that not get us to a violation of clause 2(a)?

Mr. SULLIVAN. I don't know. One of the things that I am—I don't know if we are talking past one another, but I don't think a confession by the presiding officer is the only way a violation could be adjudged. As the Chair held on May 8th, a collateral challenge could allege and adduce some sort of reprimand for a violation.

Mr. LATOURETTE. What better evidence could you have than the Chair saying I did it? I mean I understand what you are saying; you could have totality of the circumstances, there could be other factors upon which you could impute the Chair's mens rea. But when the Chair says I did it, I mean you don't need more evidence for that, do you? You are not suggesting that?

Mr. SULLIVAN. No. This is where I let Mr. McNulty down on the evening of August 2nd. The fact that I did not give him an opportunity to let me know what he was thinking and I didn't give him the immediate benefit of my thinking.

Mr. LATOURETTE. Well, I think you are being too hard on yourself, just the way Mr. McNulty was too hard on himself. There were some choices after this vote was prematurely called at 214–214. And you have said that you wanted things to settle. Well,

there is a moment in time in terms of votes that had been handed to the standing Tally Clerk and entered into the system by the seated Tally Clerk, Mr. Anderson, the vote was settled at 215–213, was it not?

Mr. SULLIVAN. I didn't think so. I don't think I diagnosed the situation before others started to trickle in. I lingered longer than I remembered with Tom Wickham down toward the—below the mace, whispering about the situation we were in.

Mr. LATOURETTE. But you were—the time that you took to assess or figure out what was going on can't affect the parliamentary status of the proceedings of the House of Representatives, can it?

Mr. SULLIVAN. Well, the one thing I knew for sure was that the announced result could not be accorded legitimacy, and no other result had the benefit of announcement. So we were still engaged.

Mr. LATOURETTE. Right. But that is my point, I guess. Could you as a valid disposition have written a slip for Mr. McNulty to call this vote 215–213 and the motion is agreed to?

Mr. SULLIVAN. If that was where the numbers settled at that point, yes.

Mr. LATOURETTE. Well, because at that moment in time Mr. McNulty had made, you called them magic words in previous, that he had made a definitive statement concluding the vote, and that is that the motion is not agreed to. Are you also aware that Mr. Anderson, the seated Tally Clerk, upon hearing those words attempted to get out of the vote and close down the system? Are you aware of that today?

Mr. SULLIVAN. No. I know that he pushed the button that causes the word "final" to appear, so he was on his way out. It is a two-step process, I believe, and the word "final" is the penultimate step.

Mr. LATOURETTE. And what would have happened if Mr. Anderson had been successful?

Mr. SULLIVAN. I don't know. This was a totally anomalous situation. I knew one thing for sure, that we had an announced result that could not be accorded legitimacy, and we were in territory that nobody had ever charted. And I was trying to compose a logical, just resolution of it. And to me the gravamen of the problem was that the numbers had not been allowed to settle. And so my first mission was to let the numbers settle. And that is why I wrote for so long in front of Mr. McNulty, because I was listening to what was going on behind me and looking up at the board from time to time to see whether we had reached stasis. And I don't think that the words there were that long. You could probably write them in about 15 seconds.

Mr. LATOURETTE. Okay. Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. Does the ranking member wish 2 minutes of direct before I go?

Mr. PENCE. I would be happy to follow Mr. Davis.

Mr. DAVIS. I just have a few questions, Mr. Chairman. Mr. Sullivan let me pick up on the last observation that you made to Mr. LaTourette. You put a lot of stock in the question of whether or not the vote had settled. Just as a matter of common sense it seems to me that if three Members went up there to change their votes that the vote had not settled. Does that make sense to you?

Mr. SULLIVAN. Yes.

Mr. DAVIS. One of the points of contention today, obviously, has to do with Mr. Hoyer and whether or not there was some undue pressure influence on the Chair. From what I observed on the tape, and what I think most of us have observed today, you are standing pretty close to the presiding officer during most of the relevant exchange, are you not?

Mr. SULLIVAN. I would say I am about at the mace.

Mr. DAVIS. Do you have any recollection of Mr. Hoyer coming up there and having any conversation with Mr. McNulty?

Mr. SULLIVAN. No.

Mr. DAVIS. Were you able to hear Mr. Hoyer saying close the vote that night?

Mr. SULLIVAN. I think I heard, I think I heard him yelling in the well early. I don't know what word he used. But it was clear to me he wanted the vote closed.

Mr. DAVIS. Did Mr. McNulty close the vote when Mr. Hoyer said whatever you just referred to?

Mr. SULLIVAN. No. And I am not sure he was yelling to Mr. McNulty. I think Mr. Hoyer basically sees us as the ones who are the drag on the—and this happens not just when there is political anxiety over the result of a vote, but anxiety over what time planes are leaving on a Thursday. And we, our penchant for asking the Chair to take another Member's vote when it's apparent to us he wants to vote, sometimes come at some displeasure to the Members.

Mr. DAVIS. Mr. McNulty testified here earlier today that he does not remember even hearing or perceiving that Mr. Hoyer was instructing him to close out the vote. Are you in any position to contradict Mr. McNulty's testimony?

Mr. SULLIVAN. No.

Mr. DAVIS. In fact is it possible there was so much noise that night that Mr. McNulty could not have heard the exchange that you just described from Mr. Hoyer?

Mr. SULLIVAN. Yes.

Mr. DAVIS. Is it possible there was so much confusion that night and so many people yelling that Mr. McNulty could not have necessarily perceived an instruction from Mr. Hoyer?

Mr. SULLIVAN. Yes.

Mr. DAVIS. Mr. Lauer, you were asked by Mr. Pence whether or not there was pressure that night from Mr. Hoyer and whether that might have influenced Mr. McNulty's decision to call the vote. Mr. McNulty testified earlier that the pressure that he felt was that he feared a controversy over rule 2(a). Are you aware that was his testimony earlier?

Mr. LAUER. Yes, I heard that part of his testimony.

Mr. DAVIS. Are you in any position to get in Mr. McNulty's mind and to say that that is not accurate, are you in a better position than he is to know what he was thinking? Presumably not.

Mr. LAUER. No.

Mr. DAVIS. Do you believe Mr. McNulty to be someone who is truthful?

Mr. LAUER. Yes, as far as I know him.

Mr. DAVIS. And if you had to guess based on his reputation as a Member and what you know of him, if you had to take a bet as

to whether he would testify truthfully or untruthfully before this Committee, which would you think is the much more likely possibility?

Mr. LAUER. I don't know him that well.

Mr. DAVIS. Well, that is fair enough. Mr. Sullivan, do you know Mr. McNulty well enough to answer that question?

Mr. SULLIVAN. Yes.

Mr. DAVIS. So I will put the question to you. Based on what you know of Mr. McNulty's reputation and your assessment as you saw him sitting here today, if you had to venture a guess of whether you think he is much more likely to have testified truthfully or untruthfully, which would you venture?

Mr. SULLIVAN. Much more likely to be truthful.

Mr. DAVIS. I have no further questions.

The CHAIRMAN. Before I yield to the ranking member I want to pursue what I think is the point that Steve LaTourette has raised with you. John, you seem to take the responsibility for not having a full exchange with Mr. McNulty that evening. I think that was what I heard in response to one of Steve LaTourette's questions. If you had known, or if he had explained to you—I am going to ask you a hypothetical question. If he had explained to you that his concern was the possible violation of clause 2(a) of Rule XX, and that mentally he had processed and reached a conclusion that upon the submission by Mario Diaz-Balart of a well card, that he would then have closed the vote, if you had been made aware of that information, if you had that kind of exchange with him, what would your advice have been under those circumstances?

Mr. SULLIVAN. I would have said that waiting for a slip is not holding the vote open.

The CHAIRMAN. And with that, I yield.

Mr. PENCE. Thank you, Mr. Chairman. And I just have two quick series of questions, and I will yield the balance to Mr. LaTourette. On the subject of pressure, Mr. Sullivan, pressure that may or may not have existed at the rostrum, Mr. Lauer has testified that he believed that there was a palpable sense of pressure to close the vote at the rostrum. He was standing just a few feet away from the Chair. I think you are aware because you were in the room, when I asked the Majority Leader here and in his interview whether it was possible that his demeanor and actions that night may have, quote, unintentionally created an environment of more pressure on Mr. McNulty to close the vote, he testified before and reaffirmed today that that was certainly possible.

Now, is it possible in your mind that Mr. Hoyer may even have created an environment where Mr. McNulty felt pressure?

Mr. SULLIVAN. I can't speak for Mr. McNulty, but like Ethan, I felt pressure. I think the way I felt it was, "are we overstepping our bounds, are we acting like we are, you know, too big for our britches here by the way we are operating the Parliamentarian's Office." I questioned myself because of what Mr. Hoyer was saying. So you know I certainly felt the atmosphere that Ethan is talking about. Whether Mr. McNulty even noticed it, I have no way of knowing.

Mr. PENCE. Now, you—and Mr. LaTourette has even asked a better question of you than I did of you, and I just want to make sure

I understand. I asked you earlier if you thought it was possible for the Majority, and you corrected me and said the Chair, to close a vote without the assent of the Clerk of the House conducting a record vote. Mr. LaTourette said do you believe the Chair can announce a vote that differs with the Clerk? Your answer to that seemed to me was an emphatic no.

Mr. SULLIVAN. Right. And substituting the word assent for the word data, I am with you 100 percent. The Chair has to ask the Tally Clerk, "how did it come out?"

Mr. PENCE. Well, and you may recall I posed the question to the Majority Leader if a vote can be counted without the assent of the Clerk who counts the vote. Your expectation is the Clerk counts the vote under our system in the House of Representatives.

Mr. SULLIVAN. Right.

Mr. PENCE. Thank you. Mr. Lauer, just a specific clarification. There has been much talk about tally slips and whether there ever was a tally slip or a vote ever closed without a tally slip. Thank you for clarifying your previous testimony earlier. I would note in your testimony of February 14, 2008, on page 25, you first were asked the question, and I think we have covered this before, but you personally have never seen a vote closed without a tally sheet, is that right? Your answer was, "I believe that is accurate to say, I have never been assisting a Chair when a vote was called without having a slip in hand, I believe that to be the case."

On page 49 you answered another similar question by saying, "I would verify that that is the first time, referring to August 2nd, that that is the first time I have seen the Chair not wait for the formality of a slip." And but to your point of your testimony today, you pointed out that later in your testimony you were asked, "and you haven't seen any other vote called without a tally slip, right?" Your answer, "yeah, I said that and then I had this and I don't know if I can say that, there may have been one, there may have been one other, and nothing happened, I mean there was no controversy surrounding it, there was no change."

Is that the element of your testimony you were referring to in my questions earlier?

Mr. LAUER. Yes.

Mr. PENCE. I think you used the phrase that you had a vague recollection that it may have occurred. Your testimony here does use the word "may." Since both Mr. Sullivan and his predecessor have testified that there were no instance in many decades where a vote was closed without the production of a tally slip, do you have any more specific recollection of that instance that may have occurred?

Mr. LAUER. I am afraid I don't. Obviously, we don't, each of us in the office does not see every vote through to conclusion. It is often one, as few as one member of the office.

Mr. PENCE. Since Mr. Sullivan has testified that a tally slip is, I think his words were the most important quality control measure in the conduct of a vote, did you, do you recall reporting the incident of a vote closing without a tally slip to Mr. Sullivan or whoever might have been your superior at that time?

Mr. LAUER. I don't think so because he would have remembered.

Mr. PENCE. I am sorry.

Mr. LAUER. I said I don't think so because he would have remembered if I told him. So I think I did not tell anybody.

Mr. PENCE. But again I want to, this is, you know whether it happened once in the last 60 years or once and one maybe in the last 60 years, you can't offer this Committee any specific testimony about when that may have occurred, what the vote was, that we could look into it further?

Mr. LAUER. I am sorry, I can't document that it happened. I just had a brief flash that it may have occurred in a case where the slip did not make it to the Chair, and the Chair perhaps impatiently just announced the outcome.

Mr. PENCE. In your recollection, was that an instance where a slip was never produced or does part of this vague memory involve a slip simply didn't reach the Chair before they called the vote?

Mr. LAUER. Right. Definitely the slip did not make it to the Chair. I am not sure whether the Clerk——

Mr. PENCE. Before the vote?

Mr. LAUER. Before the announcement, that's correct.

Mr. PENCE. Since the testimony had really uncontroverted facts of this case here that the tally slip was never produced in connection with Roll Call 814, do you have any recollection of a vote being closed where a tally slip was never created at any point?

Mr. LAUER. Just this one instance where I am——

Mr. PENCE. But your memory there was simply the tally slip did not precede the calling of the vote, but you are not really sure whether or not there was never one created? Do you understand what I am getting at? I am really not trying to pile on here. I am just trying to bear down on what your recollection might be, vague as it is.

Mr. LAUER. Yes, it is just that one instance that, you know, I think happened, and I can't reproduce any more of it.

Mr. PENCE. Thank you. Helpful clarification.

Mr. LaTourette.

Mr. LATOURETTE. Thank you very much. Mr. Lauer, I just wanted to do one housekeeping matter. The Majority Leader when we interviewed him indicated that part of what got his blood pressure up is that he perceived that when Mr. McNulty called the vote the first time at 214–214 you stepped in and stopped Mr. McNulty. And he has been forthright today in indicating that was his perception and is willing to accept that that is not right if that didn't happen. And the question to you, just so the record is clear, when Mr. McNulty attempted to call the vote the first time did you stop him or try to stop him?

Mr. LAUER. I believe I failed to do that.

Mr. LATOURETTE. I am asking, but failed, did you try to and he didn't listen to you, or you just didn't do anything?

Mr. LAUER. I did not do anything.

Mr. LATOURETTE. Okay. That is what I am getting at. Then you just recently were re-interviewed by the staff and on page 13 of your second observation you were asked a question by the very gifted counsel for the Majority, Mr. Spulak. And the question is, is there anything in and of itself wrong about closing a vote at an opportunistic moment; that is, when a Majority has prevailed? Your answer is, I would say yes. He then says that it is wrong to close

a vote at an opportunistic moment? Your answer is, well, it is wrong to try and preclude input on an opportunistic basis. Question, in your opinion is that what happened on 814? Answer, well, I don't want to speak for motive but that is certainly possible. Well, you mentioned you didn't want to speculate that the tie vote was the result the Chair wanted. Is there any doubt in your mind that the tie vote was the result that Mr. Hoyer wanted? And you answered no. Do you remember giving that testimony just a couple of days ago?

Mr. LAUER. Yes.

Mr. LATOURETTE. Mr. Sullivan, do you agree with Mr. Lauer's observations that I just read?

Mr. SULLIVAN. Yes.

Mr. LATOURETTE. You agree with him? Okay. And then Mr. Lauer, on page 19 of your second set of observations, I will get there real fast, again, there was some discussion about the fact whether or not we have talked about a tally sheet. And Mr. Sullivan has testified to us that what he wrote out for Mr. McNulty was his functional equivalent, he was trying to create a functional equivalent of a tally sheet, and you were talked to about that. And I understood your testimony to be that that could not be a valid tally sheet either. But because by the time Mr. Sullivan was making those notes to be read by the Speaker pro tem you became aware that Mr. Boehner had submitted a well card and that that well card would not be reflected in the statement that Mr. Sullivan was reading, was preparing for the Speaker to read. And so in fact if we were to really have a vote that everybody could stand behind based upon either the 46 voting stations and the well cards that were entered that night, this vote, Roll Call 814, would be 211 to 217, is that right?

Mr. LAUER. Yes.

Mr. LATOURETTE. Mr. Spitzer, I just want to say hello to you because I read your statement and I feel very bad for you. And just so that there is human interest stories in everything, if you read Mr. Spitzer's interview, he was getting married 2 days after August 2nd, as I understood it, made the misfortune of coming onto the floor to say good-bye to people and as a result got stuck in this Donnybrook.

But the question I did have is that you prepared a series of notes. You were seated, we will put the picture back up, but you were seated at what I call the Parliamentarian's desk. And so you were seated at that empty chair basically, either you took the chair of the woman who is there or you were seated, is that right?

Mr. SPITZER. That's correct.

Mr. LATOURETTE. And you made some notes because Mr. Lauer asked you to make some notes so that everybody's memory was fresh. And Mr. Lauer added to those notes and we have blown up those notes. And I just want to talk about number 6, number 5 and 6 of the notes that you have prepared on that evening. And, one, do you remember preparing these notes?

Mr. SPITZER. When were they prepared? Shortly after.

Mr. LATOURETTE. Do you remember doing it?

Mr. SPITZER. Yes.

Mr. LATOURETTE. And does that look like a blown-up version?

Mr. SPITZER. Can I go over?

Mr. LATOURETTE. Yeah, sure. It could be a forgery.

Mr. SPITZER. Yes, it is.

Mr. LATOURETTE. And just my last question, on number 5 and number 6. Number 5 says the vote changes after cards are processed and new Members. Number 6 says, the vote again reaches 214–214, Hoyer tells the Chair to call it and the Chair calls it without any paper and without the computer refreshing. Are those the notes you made and is that consistent with your observations on the night of August the 2nd?

Mr. SPITZER. Yes.

Mr. LATOURETTE. Thank you so much. Thank you, Mr. Chair.

The CHAIRMAN. I would make a unanimous consent request that since the Minority exceeded its time by some 3 minutes, that I would extend to the Majority 3 minutes. I would simply have one or two questions to ask of Mr. Sullivan, then I will yield the balance of the time to Mr. Davis.

There has been a lot of talk about pressure. And I think it is difficult to define it. In many respects it is in the eye of the beholder or the eye of the recipient if you will. For some they wouldn't think of, they wouldn't perceive—people would perceive pressure in a different way. I just thought it interesting as I read the transcript of your interview last night, that on page 11 you made this statement, John. He, referring to McNulty, was having a lot of advice on both sides. He was hearing people hold the sentiment of Mr. Hoyer that wished to have the vote closed. Your words are, close the vote, close the vote. And he was hearing arguments on the other side that the vote was being held open to change the result.

Is that your memory of what was occurring around the time that Mr. McNulty was in the throes of calling these votes?

Mr. SULLIVAN. That and more. I mean there were people who just wanted to go home. And there were people who were still angry that Mr. McNulty would not entertain a unanimous consent request to make the first vote in the series 5 minutes. It was just an angry late night situation. And so there was—it was probably as loud as the Chamber gets.

The CHAIRMAN. In your experience, have you heard the Chamber louder on occasion?

Mr. SULLIVAN. An ovation during a State of the Union Address.

The CHAIRMAN. Well, this certainly didn't arise to that level. But I think it is fair to say, because we have all witnessed the video, that it was very loud, that there was a lot of yelling going on, and it wasn't simply the Majority Leader, it was people, individuals, Members on both sides, who for a variety of reasons they were tired, they wanted to go home, and others, as you indicated in your testimony, were arguing that the vote was being held open to change the result, as well as those who contemporaneously wanted to close the vote, close the vote because they wanted to either prevail or they wanted to just go home. Am I representing your memory accurately?

Mr. SULLIVAN. Yes.

The CHAIRMAN. Thank you, John. With that I will yield to Mr. Davis.

Mr. DAVIS. Just two points, Mr. Sullivan. Mr. Hoyer said that night that we control, not the Parliamentarians. Do you take issue with that statement in any way?

Mr. SULLIVAN. No.

Mr. DAVIS. And one thing that continues to jump out at me, it is the last observation I will leave us with today, for all of the talk about the settled necessity of having a tally sheet, for all the talk about the well-established custom of having a tally sheet, when Mr. McNulty attempts to call the vote the first time at 214–214 but doesn't say the magic words, he didn't have a tally sheet then either, correct?

Mr. SULLIVAN. Right.

Mr. DAVIS. Mr. Lauer, did you walk up to Mr. McNulty at that point and say you need a tally sheet before you call a vote?

Mr. LAUER. No.

Mr. DAVIS. Mr. Sullivan, did you walk up to Mr. McNulty at that point and say remember, you have got to have a tally sheet before you call a vote?

Mr. SULLIVAN. No.

Mr. DAVIS. No further questions.

The CHAIRMAN. I thank the gentlemen. I thank our witnesses again. Your service is highly regarded and you have made a significant contribution to the Committee, and we all thank you for your presence here today and the service that you give to this institution. And with that we will stand in recess.

Mr. LATOURETTE. Well, could I—I don't need the witnesses, but I just have a quickie to see. I would ask unanimous consent that the exhibits that we have up here on poster size board, that the staff on the Minority side be permitted to reduce them to 8½ by 11 sheets, and that they be submitted and included in the record of this proceeding.

The CHAIRMAN. Without objection, so ordered.

[The information may be found in the Appendix:]

The CHAIRMAN. And gentlemen, you are excused. And we will reconvene here tomorrow at 9:30 a.m.

Mr. PENCE. Thank you, Mr. Chairman.

The CHAIRMAN. And I thank my friend the ranking member.

[Whereupon, at 5:25 p.m., the Committee was adjourned.]

SELECT COMMITTEE TO INVESTIGATE THE VOTING IRREGULARITIES OF AUGUST 2, 2007

INVESTIGATIVE HEARING ON ROLL CALL VOTE 814

OPENING STATEMENT OF THE HONORABLE BILL DELAHUNT, CHAIRMAN

MAY 13, 2007

REMARKS PREPARED FOR DELIVERY

This hearing of the Select Committee will come to order. First, the committee would like to extend our thanks to the witnesses who will testify today. We thank them for the time and assistance they have already provided to the committee, as they all have been previously interviewed by Committee Members and staff. Additionally I want to extend our collective appreciation to all of the individuals – members, officers, and staff of the House – who the committee has called upon to assist us in our work. Every single one of them has - without hesitation – responded diligently and professionally to all of our requests.

In particular, I'd like to recognize the Clerk of the House, Lorraine Miller - who we have not asked to testify today - but who, along with her counsel, Russ Gore, has devoted countless hours educating the committee, compiling document productions, and providing us with unfettered access to her staff and explaining the clerk's office internal operations. I know I speak for all of the committee when I say that all of the officers and professional staff of the House, with which we've interacted, are of the highest caliber and we are grateful for their service. The office of the Parliamentarian, the Chief Administrative Officer, and the leadership staff on both sides. The American people should be confident and proud of the collective service they provide to the people's House.

The purpose of these hearings is to discover what happened on August 2 during Roll Call vote 814. Voting in the House can be a chaotic, confusing, and often emotional process. And on that particularly evening, many members left the floor feeling frustrated and dissatisfied with not simply the result but the process. I understood this committee's mandate is to determine how and why this roll call unfolded in the manner it did. And make recommendations to ensure the integrity of the voting procedures. I would also suggest that implied in this charge, is a task to not only to ensure confidence in our voting procedures but to abate the anger and mistrust that was apparent that evening.

As our first witness testified during his interview, "The atmosphere in that Chamber was vitriolic at best, it was hateful. In my whole time I've seen some weird stuff, but that night was the worst. Everybody was hateful. And I'm putting that gently." And while I believe there has been considerable improvement in the mood and atmosphere in the House, my hope is that this committee's work can further enhance civility and respect among Members that's necessary for a proper functioning of the People's House.

It should be noted, a great deal of time and effort has already been devoted to the committee's task. Members and staff have spent hundreds of hours on this undertaking and I cannot overstate their diligence and commitment and wish to publicly commend them.

We were fortunate to have the benefit of a videotape of the event that committee Members and staff have reviewed countless times. We also requested and reviewed over 5000 pages of documents, emails, logs, notes, and memoranda from over 33 individuals and 6 offices in the House. We have conducted over 20 interviews and taken almost 50 hours of testimony. We will be making all of these transcripts of those interviews, as well as all of the documents, part of the official committee record today.

I'd be remiss if I failed to note the contribution of the Congressional Research Service in assisting with the drafting of the interim report, which was filed on September 27, 2007. This interim report laid out the steps we anticipated would be necessary to conduct a thorough inquiry of the August 2 events. Next, we conducted three public hearings on the history, rules, and customs surrounding voting in the House of Representatives.

What was particularly revealing, even at this early stage, was how little many of us – myself included – know about the process that is involved in recording the votes cast in the House of Representatives - the parliamentary rules and procedures, as well as the instrumentalities – the computer, the electronic voting system, the boards, the tally slip – that serve as the infrastructure of the voting process. It's complex and requires a high degree of coordination.

We interviewed the Clerk of the House, the deputy clerks, and the Parliamentarian Emeritus of the House, Charles Johnson. We conducted an in-depth "walkthrough" of the House floor and the electronic voting system, or the EVS, and took a view of the EVS control room. We used these hearings, and the

expertise of the Congressional Research Service, to provide a strong foundation going forward. I must take special notice of the outstanding work of Judy Schneider and Mike Koempel. Without their assistance, I believe the committee at least would have been adrift as we embarked on our work.

I think it's important to note that while the videotape is clearly helpful, it has its limitations. I believe we've made good use of it, and I expect it we will utilize this videotape today and in the future. However, as we will see, it does not provide a panoramic view of the House. Nor does it explain the actions of the principals. Therefore, our witnesses today are vital in understanding Roll Call vote 814 and that is why the Committee invited these particular individuals to testify.

At our first public hearing, I said a number of things that I believe hold true today. First, none of us chose this assignment. Secondly, though none of us asked for this task I could say that I am honored and privileged to serve with the other five members of the Select Committee. We have worked well together as has our fine professional staff.

August 2, 2007 was a Thursday, but it was not just any Thursday. It was the 2nd to last day before Congress was supposed to break for the August recess. Members were exhausted, staff was exhausted, both anxious to get home. As senior rostrum staff person said during his interview in February, "The workload that 3 months, June, July and August, was maybe one of the worst I've ever been through in my time here. We set a record last year with roll calls." Another officer of the House stated "It was the ugliest week I can remember in the House." Specifically, said another, "we were all tired that night, it was a long night. And we had a stack of votes on a bunch of amendments. And then we moved into what we all thought was going to be final passage and then hopefully going home."

Roll Call vote 814 was a motion to recommit promptly, H.R. 3161, the Fiscal Year 2008 Appropriations bill for the Department of Agriculture. Roll Call vote 814 was supposed to take place around 10 o'clock at night, after a series of 9 two-minute votes on amendments to H.R. 3161.

Congressman Michael McNulty was presiding. At this point, I should note that Mr. McNulty's reputation among his colleagues and the staff is well known for integrity and professionalism and his ability to serve as SPT. Both leaders, following August 2, have reaffirmed their respect for his service to this House. Majority Leader Hoyer stated "I think McNulty is a competent, accomplished

presiding officer, and I think he is perceived by all Members as a very fair individual of high integrity, and I think he is that." Similarly, Republican Leader John Boehner said on the morning following Roll Call 814: "I accept the regrets offered by my friend from New York (Mr. McNulty). Having been in the chair myself, I understand how it can happen. He and I are friends. In fact, he is one of the fairest Members who could ever be in the chair."

The vote began at 10:34:05 pm and as time passed, it was the clear the vote would be close.

At 10:49:47 pm (15 min and 42 seconds into the vote), the Speaker voted against the motion, and the vote was tied. At 10:50:08 pm, Mr. McNulty announced a tally, but did not proceed with any further statements that are often integral to closing down a vote. At 10:50:15 pm, more Members appeared in the well and took possession of well cards, arguably manifesting an intent to change their votes. At 10:50:29 pm, more members entered the well, similarly obtaining well cards. At 10:51:30 pm, Mr. McNulty announced that the vote is tied at 214 and motion is not agreed to. A fraction of the second later, the tally on the display boards in the chamber refreshed – I would use the word "change," or "up-ticked," as the professionals use the term, reflecting a different tally than the one announced. It is fair to say chaos erupted. 6 seconds later, 2 additional members turn in well cards, which the clerks accept and announce as changes. For those of us in the chamber that night, the noise level was, as our first witness, again said, deafening. As another witness said, you could hardly hear. We were then, as the Parliamentarian said, in uncharted territory. One of the first orders of business the next day were apologies offered by Mr. Hoyer and Mr. McNulty for the events of the evening before.

During this hearing, we will review the beginning of Roll Call vote 814, through the subsequent motion to reconsider, Roll Call 815, that is, the time frame that falls within the committee's jurisdiction.

I look forward to listening to the testimony that we will hear today. And while I have reached no conclusions, I do have a sense that when the dust settles that as we consider the events of the evening with the advantage of hindsight and a calm perspective, a culprit will emerge. And I have a hunch that we will see it in the form of a rule. A rule that was enacted with noble intent, to curb other perceived abuses. But a rule that is at best difficult to enforce and at worst the catalyst for the raw anger we observed on August 2.

As I have said, our purpose is to determine what happened, and what changes to the voting procedures could be improved to ensure that a similar situation does not reoccur.

I look forward to working with all members of the select committee to put forth a final report that reflects the good work we have done to this point, and encompasses the thoughtful and respectful deliberations that I am confident we will undertake.

U.S. House of Representatives,
Select Committee to Investigate the Voting Irregularities of August 2, 2007

Investigative Hearing

Opening Statement of Ranking Member Mike Pence

May 13, 2008

I would like to thank Chairman Delahunt for holding this investigative hearing of the Select Committee to Investigate the Voting Irregularities of August 2, 2007.

The integrity of the House of Representatives is completely dependent on the integrity of the vote that takes place on the floor of the Congress. Every American is entitled to have a voice in the People's House and to know that their representative's vote counts. This Select Committee has been tasked with the responsibility of investigating what happened during Roll Call 814 held on the night of August 2nd and making recommendations to the House regarding necessary changes to the House's rules and procedures so that the voting right of every Member of Congress is protected. I am confident that today's hearing will go a long way towards fulfilling this responsibility.

There were some who predicted that the Select Committee would never meet, let alone hold public hearings. I am very pleased that all six Members of the Select Committee have been able, over the course of many months, to put the interests of the American people and this institution above partisan politics, and I would like to thank the Members and staff for conducting this investigation in such a bipartisan manner.

As the Select Committee held educational hearings last fall and then moved forward with its investigation, a clear commitment to fairness and the facts was exhibited, befitting of the serious business with which the Select Committee was tasked. I am pleased to report that we have taken on this responsibility with a thorough and professional investigation. We retained outside counsel to lead the investigation; collected and reviewed over 6,500 pages of documents; and conducted transcribed interviews of 21 witnesses. As a result of these efforts, we now have a solid understanding not only of what happened the evening of August 2nd, but also why it happened. While our examination of the documentary record was substantial, it was hampered by limitations created by the failure of some parties to take timely actions to preserve relevant documents. For instance, if the Chief Administrative Officer of the House had been more diligent in preserving potentially responsive documents, as required by our authorizing resolution, the picture might be even clearer.

Before I go on with my statement, with nearly a year past since the night of August 2, 2007, I think it would be appropriate to watch a short video of some of the key scenes from that night, and I would ask unanimous consent to make this video a part of the record.

Roll Call 814 was taken on the Republican Motion to Recommit the Agriculture Appropriations bill on the night of August 2, 2007. The Republican Motion would have denied taxpayer-funded benefits in that bill from going to illegal immigrants. It was, to say the least, a contentious and controversial issue in the Congress. The evidence will show that the Republican Motion to Recommit passed the House by a vote of 215-213 and was overturned by the Democratic Leadership and the Speaker *pro tem*. In the face of pressure from the Democratic Leadership to

shut down Roll Call 814 while they were prevailing, the Speaker *pro tem*, Rep. Mike McNulty, bypassed well-established procedures for closing a vote. This failure threw the House into chaos and what one veteran professional staff member called "uncharted territory," undermining confidence in the integrity of the House.

Given the video record, and the candor and cooperation of numerous witnesses, most of the facts about what happened that night are not in dispute. After the minimum time for voting had expired, Speaker Pelosi received a signal to go to the well and cast her vote, making the total 214 - 214. Mr. Hoyer was quite candid during his interview with the Select Committee, acknowledging that he had expressed, in no uncertain terms, a strong desire that the vote be closed as soon as the Speaker cast her vote. To this end, he yelled at the Chair to close the vote, in a voice loud enough to be heard. This was confirmed by at least five witnesses on the rostrum that evening.

At the time the Speaker voted, Mr. Hoyer can be seen near the rostrum having a conversation with Catlin O'Neill of the Speaker's floor staff. Mr. Hoyer recalled telling Ms. O'Neill words to the effect of, "We need to shut down the vote when we are prevailing." The video shows that Ms. O'Neill immediately turned and said something to the Chair, who then attempted to close the vote for the first time. Ms. O'Neill and Mr. McNulty have both denied giving or receiving any instructions about closing the vote that evening. It is troubling that their testimony was contradicted by the testimony of Mr. Hoyer.

The Chair attempted to close the vote at 214 - 214 but stopped short when it became clear that well voting change cards were still being processed. Believing that the Parliamentarians had somehow prevented Mr. McNulty from closing the vote while the Majority was prevailing, Mr. Hoyer angrily vented his frustration toward John Sullivan. In remarks that can be clearly heard on the video, he said: "We control this House, not the Parliamentarians." This outburst occurred on the rostrum a few feet from Mr. McNulty, and shortly thereafter Mr. McNulty banged the gavel, called the vote at 214 - 214, and declared that the "motion was not agreed to." However, in the time between the Chair's first attempt to call the vote and the second, three Florida Republicans had changed their votes, and the Tally Clerks were still entering those changes into the House's Electronic Voting System. Consequently, the display board in the Chamber upticked to 215 - 213 milliseconds after the Chair's second and final announcement of 214 - 214, creating an atmosphere of confusion and anger on the House floor because at that time, with those votes counted, the motion had in fact passed.

Mr. McNulty explained during his interview that he intended to close Roll Call 814 as soon as the last of the three Florida Republicans had voted, concerned that holding the vote open any longer might allow other Members, on both sides of the aisle, to change their votes, and that such a delay might violate Clause 2(a) of Rule XX, which states that "a recorded vote by electronic device shall not be held open for the sole purpose of reversing the outcome of such vote." As the presiding officer, Mr. McNulty certainly had the discretion to close the vote at this point -- as Mr. Hoyer himself readily acknowledged – when the true vote count was 215 - 213 in favor of passage.

Clause 2(a) of Rule XX of the House provides that "the Clerk shall conduct a record vote . . . by electronic device." It is uncontroverted that Mr. NcNulty -- an experienced and respected Chair who has presided over dozens, perhaps hundreds, of votes -- called Roll Call 814 without giving the employees of the Clerk of the House an opportunity to conduct a record vote, prepare a tally slip, and certify the results. While the requirement for a tally slip is not formally codified in the Rules of the House, numerous witnesses have stated that this tally slip is deeply embedded in the traditions of the House and that they have never before seen a vote closed without one.

Had Mr. McNulty followed this longstanding procedure, the tally slip would have reflected a 215 - 213 vote total in favor of passage of the Republican motion denying taxpayer benefits from going to illegal immigrants. Rather than simply making a new announcement of the correct result, however, Mr. McNulty compounded his error by allowing the vote to remain open after he had announced the final result, enabling three Democratic Members to switch their votes, thereby altering the outcome from passage of the Republican motion, to failure. Remarkably, numerous witnesses and the documentary evidence attest that a tally slip prepared by the Clerk was never produced in connection with Roll Call 814.

I take no pleasure in saying this, but it is simply not plausible that such an experienced presiding officer simply forgot to wait for the tally slip during the course of such a close and controversial vote. Instead, I believe that the evidence gathered by the Select Committee will show that the Chair rushed to close the vote in the face of pressure from Democratic Leadership, and in so doing sidestepped a long-standing procedural safeguard designed to ensure the integrity of the vote on the floor of the House.

During an interview before this Committee when asked whether his demeanor or actions "may have unintentionally created an environment of more pressure on [Mr. McNulty] to close a vote," the Majority Leader did not argue the point, but merely replied that was "certainly possible." Leadership instructing a presiding officer about the timing of closing a vote is hardly uncommon, but, as one professional staff member explained, he had "never seen the Chair buy into it, never." When any Majority feels that it can cut corners to achieve a particular legislative result, we risk reducing the most powerful democracy in the history of the world to a banana republic.

The chaos of August 2, 2007 was a dark moment in the history of the United States House of Representatives and must never be allowed to happen again. The imperious actions of the Democratic Leadership unduly influenced the Chair and undermined the will of the American people on the controversial and divisive issue of taxpayer-funded benefits for illegal immigrants. Our national legislature was designed to resolve just such issues through the democratic process but to accomplish that, the American people must have absolute confidence that their will is being worked in the People's House and not thwarted through political gamesmanship, procedural sleight-of-hand, or a win-at-all-costs mentality.

We cannot restore Roll Call 814, but this Committee can restore what has been taken – the fundamental respect for the independence, fairness and integrity of the House of Representatives. By acknowledging what happened that evening, and embracing the reforms necessary to ensure that it never happens again, this Congress can learn from the lessons of August 2nd, move beyond that dark moment and restore the confidence of the American people that this is not a

Democratic House, this is not a Republican House, this is the People's House and their will is worked every time a vote is called.

Statement By
Representative Michael R. McNulty (NY-21)
To The
Select Committee on the Voting Irregularities of August 2, 2007

May 13, 2008

I thank the members of the committee for allowing me the opportunity to comment on the vote in question while I was serving as Speaker Pro Tempore on August 2nd, 2007.

First of all, Mr. Chairman, I ask that my floor statement of August 3rd, 2007, be included in the record.

The vote in question was a motion to recommit the Agriculture Appropriations bill.

To summarize, I called this vote prematurely, and that action caused a measure of chaos, confusion, and anger on the House Floor.

The morning after the event, I publicly apologized on the House Floor to all Members of the House of Representatives.

I repeat that apology today.

Beyond my August 3rd remarks, let me make these clarifications:

-- When I announced the vote, all time for voting had expired.

-- After I called the vote at 214-214, no additional votes were cast. Only changes of votes were made.

-- In my opinion, the Parliamentarian's staff, the Clerk's staff, and everyone at the front desk did their usual outstanding jobs that evening. The problems which ensued were the result of my actions.

-- When I announced the vote at 214-214, I did not do so at the direction of any other person or persons. I did so on my own in an attempt to enforce clause 2(a) of Rule XX, which states that "a recorded vote by electronic device shall not be held open for the sole purpose of reversing the outcome of such vote." I believe that it was obvious that Members on both sides of the aisle were changing their votes -- after time had expired -- for the sole purpose of changing the outcome.

-- My attempt to enforce clause 2(a) of Rule XX was the reason for not following the usual - but not required - procedure of waiting for the written slip from the Tally Clerk. That was clearly a mistake on my part.

-- I deem it a mistake because it now seems apparent that the vote change which was announced by the Clerk just prior to my calling the vote at 214-214 had not yet been recorded by the computer. Thus, the discrepancy which ensued almost immediately after my announcement.

Following my August 3rd floor statement, Minority Leader John Boehner said , "I accept the regrets offered by my friend from New York. Having been in the Chair myself, I can understand how it can happen. He and I are friends. He is, in fact, one of the fairest Members who could ever be in the Chair."

I am grateful to my friend, Leader Boehner, for his statement. I believe his comments indicate that he understands that while I erred, there was no ill intent on my part.

I hope that when all the facts are examined, all the Members of the House will reach the same conclusion. Thank you.

United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 110th CONGRESS, FIRST SESSION

House of Representatives

Friday, August 3, 2007

REMARKS OF HON. MICHAEL R. MCNULTY

HON. MICHAEL R. McNULTY
OF NEW YORK
IN THE HOUSE OF REPRESENTATIVES

Mr. SPEAKER, I believe the majority leader's recounting of what happened last night is correct; and I wish to express my apology to all of the Members of the House for calling the vote prematurely. I called the vote at 214-214. Subsequently, Members of both parties changed their votes.

The majority leader is correct. Very soon after that the board showed a different vote, which was, I believe, in favor of the motion to recommit. And then when all of the Members had been counted, it was 212 in favor and 216 opposed. All of those numbers in those various iterations add up to 428. So all Members had voted, but Members of both parties had changed their votes.

I just want to express regret to all the Members of the House, and especially the minority, for any role that I had in causing that confusion by calling the vote prematurely. The Members who have been around for a long time, and staff, know that I have presided over the House many, many times since 1989, when Jim Wright first put me in the Chair. And all during that time, I have always strived to be scrupulously fair, to the extent where a number of Members of my party in the old days used to criticize me for calling voice votes in favor of the minority when the minority had more Members in the room than the majority did. And Members of the minority party mentioned that to me many times through the years, as did Members of the minority staff.

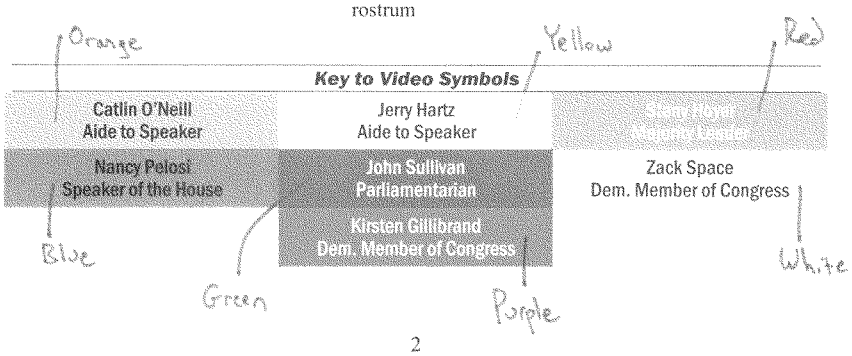
And so I just want to reiterate that I regret any role that I played in causing the confusion.

I just want to pledge to all of the Members of the House that I will continue to go out of my way to be fair when I am given the privilege of serving as Speaker pro tempore to all Members of the House and to both parties.

VIDEO HIGHLIGHTS

Chapter	Time Range	Description
1		Introduction
2	22:33:50 to 22:34:05	McNulty announces beginning of Roll Call 814
3	22:35:00 to 22:35:11	CON leaves rostrum and walks toward Democratic Leadership table
4	22:38:30 to 22:38:59	CON runs down from Leader's desk and speaks with McNulty; McNulty bangs gavel
5	22:46:26 to 22:47:07	CON leaves Leadership desk and speaks to McNulty on the rostrum; McNulty announces 2 mins remaining
	22:47:15 to 22:47:54	Speaker walks into Chamber; CON follows and goes to Leadership table
6	22:48:15 to 22:48:50	CON walks from Leadership table back to rostrum and speaks to Ethan Lauer; McNulty rises
	22:49:00 to 22:49:12	McNulty bangs gavel and asks if any Members wish to vote or change vote
7	22:49:30 to 22:50:50	
	22:49:32	Speaker given signal to vote
	22:49:46	Conversation between CON and Hoyer
	22:49:51	CON speaks to McNulty; initial announcement of 214 – 214, but McNulty does not complete announcement
		De'Andre Anderson continues to enter well votes;
	22:50:14	3 Florida Republicans enter well to vote
	22:50:29	Space picks up well card
	22:50:37	Hoyer to Sullivan: "We control this place, not the Parliamentarians."

8	22:51:14 to 22:52:40	McNulty announces 214 – 214 and closes the vote
	22:51:37	Gillibrand begins filling out well card
	22:51:41	Space turns in well card
	22:51:43	Gillibrand turns in well card
	22:52:10	Hoyer has conversation with Sullivan on rostrum
	22:52:32	Sullivan begins to write statement for McNulty
9	22:53:45 to 22:53:55	McNulty appears to be explaining that he closed the vote at 214 – 214
10	22:54:33 to 22:55:07	Boehner and Hoyer submit well change cards
11	22:55:10 to 22:55:28	JS tells De'Andre Anderson, "We've got bigger problems. . ."
12	22:56:35 to 22:56:50	Hoyer asks UC to vacate the vote
13	22:57:37 to 22:59:06	Hoyer moves to reconsider the vote
	22:58:05	McNulty reads explanation prepared by JS
14	23:00:20 to 23:00:31	Boehner moves to adjourn
15	23:00:48 to 23:01:10	McNulty responds that Boehner's Motion to Adjourn is not proper because vote in ongoing; Boehner moves to adjourn again
16	23:03:28 to 23:03:38	GOP leaves Chamber
17	23:12:56 to 23:13:15	Lengthy discussion between Hoyer and JS on rostrum



MEMORANDUM

To:
Fr: Lorraine C. Miller, Clerk of the House
Dt: September 4, 2007
RE: Timeline Regarding Roll Call Vote 814

Per your request at our August 16, 2007 meeting, the following is a summary of the timeline regarding the voting process for Roll Call Vote 814 on Thursday, August 2, 2007. This summary is based on our review of technical data, a video/audio excerpt provided by the CAO's office of the Floor proceedings from 10:30 p.m. – 11:15 p.m. on August 2, and interviews of Clerk personnel. It is substantively the same as we discussed at the August 16 meeting.

I. The EVS Voting System

The EVS System

The Electronic Voting System ("EVS") utilizes a Stratus server on a UNIX-based system. Stratus has developed similar systems for a variety of organizations, including several stock exchanges. The current system was installed in January 2004 and is the fourth major systemic upgrade of the EVS system since its inception in the 1970's. The main hardware is located in 2403 Rayburn and is connected to the House Floor by a secure line. A primary terminal is located on the House floor and is operated by the seated Tally Clerk at the rostrum. There is a secondary EVS terminal in Legislative Operations (HT-13). There are 46 voting stations on the House floor.

The Typical EVS Process

Typically, the Tally Clerk seated at the rostrum starts and stops the electronic voting based on statements of the Chair. In most cases, once the Chair calls for an electronic vote, the seated Tally Clerk starts the electronic vote by entering the appropriate selection to begin vote on the EVS terminal at the rostrum. (The EVS terminal is controlled through a keyboard, mouse and commands are largely menu-driven). Once a vote is started in the EVS system, the voting stations become operational and the display boards illuminate. When a Member votes at a voting station, his or her vote is automatically recorded electronically in the EVS system and the EVS system updates the display boards as those voting station votes are cast.

In addition to voting at the electronic voting station, Members may also cast their votes at the Well. When a Member decides to cast a Well vote, he or she retrieves a Well card to indicate his or her vote (yea, nay or present). The Member is expected to write his or her name on the Well card as well as the district and State s/he represents. The

Member hands the Well card to the standing Tally Clerk who verifies that the identifying information is on the card and also writes the Roll Call number on the card. If a Member submits a new Well card (for a changed vote, for instance), that new Well card is numbered and stapled to the previous Well card(s) cast by the Member. The card is handed to the seated Tally Clerk, who enters the vote into the EVS.[1]

The process for closing the vote in the EVS system has several steps. First, the seated Tally Clerk selects the option on the EVS terminal screen to close the voting stations. This typically occurs when the Chair asks whether any Members wish to vote or change their votes. Second, the seated Tally Clerk selects the option on the EVS terminal to terminate the vote. This typically occurs when no other Members are present at the Well to vote and the other Tally Clerk writes out the tally sheet to hand to the Parliamentarian. Third, the Tally Clerk selects the option to set the vote to Final. This typically occurs when the Chair is reading the tally sheet. Fourth, the Tally Clerk selects the option to Release the vote. This typically occurs as the Chair completes reading the vote tally and states that the motion to reconsider is laid upon the table (or other similar words). Fifth, the EVS system asks for verification of the release and the Tally Clerk confirms the release. At that point, the vote is closed in the electronic system and the display boards are cleared. The Tally Clerk(s) on the rostrum thereafter communicate with the Tally Clerk located in Legislative Operations (HT-13) to proof the Well card votes. After this proof has been completed, the vote totals are released to the Clerk's public website.[2]

II. Roll Call 814 Timeline

We conducted our investigation into Roll Call 814 and developed this timeline in response to the Committee on House Administration's request. While we believe the timeline to be accurate, it is important to note the following qualifications.

First, because the Select Committee is charged with investigating Roll Call 814, we felt it appropriate to limit our interviews to Clerk personnel who we believed were likely to have relevant information (the Deputy Clerk, the Tally Clerks, and the Reading Clerk on the Floor during the vote). Second, we do not have video excerpts that show the display boards during this vote and we therefore do not identify what vote totals were displayed on the boards at any specific time in the chronology. Third, the video/audio excerpt does not provide a sufficient level of detail to identify when some of the relevant events occurred (*e.g.*, the video does not show what keystrokes the Tally Clerk was entering on the computer terminal at the rostrum, nor does it show what was displayed on the EVS terminal being operated by the Tally Clerk). Moreover, the audio does not

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[1] While a Member may cast and change his or her vote a number of times during a roll call, for purposes of the tally total, each Member has only one vote – the last one cast.

[2] While the vote is progressing, the HT-13 Tally Clerk is monitoring the Floor proceedings by audio and video. The HT-13 Tally Clerk enters the Floor action into the FARS (Floor Action Reporting System), which is then sent to the Clerk's public website. The EVS system is not electronically connected to the FARS system.

record all conversations that took place at the Well and on the rostrum. Furthermore, we do not provide exact times in this chronology. While we have been able to recover data from the EVS system showing the exact time votes were entered into EVS system, and while the video excerpt from the CAO's office also has a time stamp, the base times for these two systems appear to be different. This, we believe, is attributable to a difference in the base time setting of the video equipment that records the video and audio, and the base time setting used by the EVS system.[3] Finally, because the Select Committee may review additional data and may interview additional individuals, this timeline is necessarily preliminary and subject to supplementation as further data is reviewed and individuals are further questioned.

- The Chair called for a recorded vote on the Motion to Recommit offered by Mr. Lewis of California.

- The seated Tally Clerk initiated the start of the electronic vote on the Motion to Recommit (Roll Call 814) in the EVS system, per normal practice. During Roll Call 814, the seated Tally Clerk was De'Andre Anderson.

- Voting progressed and most Members voted at the voting stations.

- The Chair announced the vote on the Motion to Recommit at 214-214 (no tally sheet had been prepared or submitted to the Parliamentarian).

- At the time the Chair announced the 214-214 vote, the seated Tally Clerk was entering a manual Well vote on the Motion to Recommit.

- The seated Tally Clerk completed entering the manual Well card and, because the Chair had called the vote, the seated Tally Clerk began the process of closing the voting system (selecting terminate and setting the vote to final on the EVS terminal).

- Members at the Well handed additional Well cards for the Motion to Recommit to the standing Tally Clerk, who handed them to the seated Tally Clerk for entry into the EVS system. During Roll Call 814, the standing Tally Clerk was Kevin Hanrahan.

- The seated Tally Clerk entered the votes from these additional Well cards into the EVS terminal (which required him to return to a previous screen on the EVS terminal since he had already begun the process for terminating the vote in the EVS system).

- Mr. Hoyer and Mr. Boehner hand in cards at Well for Motion to Recommit.

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[3] A rough analogy for this difference would be the potential difference between the time on sets on his or her wristwatch and the time set on the morning alarm clock. While the wristwatch and the alarm clock count the passage of time identically, they may reflect slightly different times depending on the exact base time set on the wristwatch and the alarm clock.

- The Chair called for a vote on a Motion to Reconsider to the Motion to Recommit; however, at that time, the voting in the EVS system had not been closed on the Motion to Recommit (Roll Call 814).

- The seated Tally Clerk attempted to close the vote on Roll Call 814 in the EVS system so that electronic voting could begin on the Motion to Reconsider called by the Chair.

- The seated Tally Clerk had difficulty directing the EVS system to complete termination of Roll Call 814 (we surmise this was because the normal process for terminating a vote in the system had been interrupted by the entering of additional Well votes from Members who presented themselves at the Well).

- The difficulty in terminating the vote in the EVS system meant that the display boards were still displaying Roll Call 814 even after the Chair had called for voting to commence on the Motion to Reconsider.

- In order to clear Roll Call 814 from the display boards and allow for the EVS system to begin accepting votes on the Motion to Reconsider that had already been called by the Chair, the seated Tally Clerk was directed to abort vote in EVS system.

- The abort of Roll Call 814 on the EVS terminal caused the EVS system to recycle Roll Call number 814. This meant that the number 814 was automatically reissued by the EVS system and given to the Motion to Reconsider.

- Upon recognition that aborting the vote in EVS had resulted in the vote being deleted from EVS system, the decision was made to attempt to recover the vote.

- Working through the night, Clerk personnel were able to recover some data and were able to recreate Roll Call 814 vote.[4]

- Before restoring the vote to the EVS system in the early morning hours of August 3, the Clerk's office first "tested the recovery/restoration process on the EVS "development system" to ensure the recovery would work before actually implementing the recovery on the live EVS system (the "production system").

- When the development system became operational for the test, it "connected" to various sockets (extensions), including the three sockets for the display boards.

- After the testing was completed on the development system, the development system was not taken down and a cable connecting it to the Floor remained connected.

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[4] Although the Clerk's office was able to recover some files showing the final vote tally, on August 2-3, 2007, we could not recover one of the files (called the Transaction Log) which showed exactly when and where each Member voted. On August 15, 2007 -- in the process of reviewing data for our meeting with CHA on August 16 -- we located the Transaction Log file.

- When the test on the development system proved successful, the Clerk's office recreated Roll Call 814 on the live EVS production system.

- Additionally, the two later votes – which had been automatically numbered 814 and 815 by the EVS system (as noted above, after the Tally Clerk aborted the original vote 814 in the EVS system, the number 814 was used for the next vote) -- were renumbered accordingly as 815 and 816.

- The House remained in recess subject to the call of the Chair throughout the night (August 2) and morning (August 3).

- Adjournment on August 3 was followed by beginning of new legislative day and there was insufficient time for the normal testing that takes place overnight during adjournment to occur.

- When the first vote of August 3 was called, the EVS voting was commenced as usual and Members began voting.

- However, the display boards did not illuminate because they were connected to the development system that had been used the night before.

- The EVS system was working, but the display boards were not displaying the vote because they were essentially still connected to the development system that had been used for the test (similar to a TV screen being hooked up to a VCR and a cable box; if the VCR is "connected" to the screen, the screen will be showing the feed from the VCR and may not be showing feed from the cable box, even though the cable box is working).

- The problem was solved when Clerk staff discovered that development system was connected and disconnected it.

1. the clock goes down to 0:00
2. the vote reaches 214-214
3. Hoyer yells to the chair to close the vote
4. the chair begins to call it 214-214, but john says that there are still members' cards that need to be processed in the computer, and the chair holds up .
5. the vote goes to something like 212-216 after the cards are processed, but in the meantime, members have arrived in the well to offer new cards .
6. the vote again reaches 214-214, hoyer tells the chair to call it, the chair calls it (without any paper, and without the computer refreshing)
7. the second the chair calls it for the nays, the computer refreshes to 215-213
8. republicans begin yelling
9. in the ruckus, several more people offer cards in the well, and the vote eventually goes back to 212-216 or ~~212-217~~

Chair announced that motion has failed.
Hoyer move to reconsider.
Chair put question. Yays and nays ordered.
Vote board could not be [illegible]
Vote closed.
Majority voted nay.

Original

Boehner > well this is not recorded
Hoyer

Lauer-Spitzer Notes

O'Neill, Catlin

From: O'Neill, Catlin
Sent: Friday, August 03, 2007 11:57 AM
To: Daly, Brendan
Subject: RE: in case yall care...

I really appreciate that – sorry to be snippy

From: Daly, Brendan
Sent: Friday, August 03, 2007 11:50 AM
To: O'Neill, Catlin
Subject: RE: in case yall care...

They are crazy right-wingers. Don't let them get you down.

From: O'Neill, Catlin
Sent: Friday, August 03, 2007 11:49 AM
To: Daly, Brendan
Subject: RE: in case yall care...

FYI – they continue to bring up this "slip" issue...no slip was ever given to the chair

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From: Daly, Brendan
Sent: Friday, August 03, 2007 11:48 AM
To: O'Neill, Catlin
Subject: RE: in case yall care...

Nobody cares about process – only cspan and fox. (call any of your friends outside DC and see if any have ANY idea of what the hell happened last nite. They wont.)

And We will get our side out at presser at 12.45.

From: O'Neill, Catlin
Sent: Friday, August 03, 2007 11:45 AM
To: Daly, Brendan; Elshami, Nadeam; Hammill, Drew
Subject: in case yall care...

In my opinion theyre framing the message... and cspan keeps replaying.

Ill be radio silence from here on out, Brendan

Memorandum

To: Select Committee
From: Ethan Lauer, Assistant Parliamentarian EL
Re: Form for Chair to close a vote
Date: February 15, 2008

Attached please find two documents discussed during my interview of February 14, 2008. I was asked to produce the paper that the Office of the Parliamentarian places before the Chair when closing a vote and announcing its outcome. In particular, the select committee wanted to see the form that is used today and the form that was in use on August 2, 2007. The first attachment, dated January 16, 2008, is today's form. The second attachment, dated April 25, 2007, is the form I believe was in use in August, 2007. I hope these are responsive to your request.

Have all Members voted?

Does any Member wish to change a vote?

tally slip

On this vote the Yeas are ____ and the Nays are ____

(with ____ answering "present").

The resolution is adopted.

The concurrent resolution is agreed to.

The bill is passed.

The conference report is adopted.

The motion is adopted.

The amendment is adopted.

The previous question is ordered.

Without objection, a motion to reconsider is laid on the table.

Have all Members voted?

Does any Member wish to change her vote?

ignore scoreboard — rely on tally slip

On this vote the Yeas are ____ and the Nays are ____

(with ____ Members answering "Present").

— The resolution is adopted.

— The concurrent resolution is agreed to.

— The bill is passed.

— The conference report is adopted.

— The motion is adopted.

— The amendment is adopted.

Without objection, a motion to reconsider is laid on the table.

At approximately 9:15pm on Thursday, August 2, 2007, the Committee of the Whole House held a series of votes on amendments for H.R. 3161, the Agriculture Appropriations bill. On each of the eleven (11) amendment votes, prior to closing the vote, the Chair asked Members of the Committee of the Whole House, ***"Are there any Members wishing to vote?"*** Then, the Chair continued and also asked, ***"Are there any Members wishing to change their vote?"*** After all Members who wanted to vote voted by electronic card using the voting stations, and after I had entered names of Members into the Electronic Voting System (EVS) who may or may not have changed their vote by submitting a well-card in the Well of the House, the Parliamentarians (upon scanning the Chamber) indicated to me that we were ready to close the vote. I told my colleague, Kevin Hanrahan (the standing tally clerk), that I had closed all voting stations. This signaled to Kevin to tally the vote for that amendment on a sheet of paper and hand it to the parliamentarian, who then hands it to the Chair. The Chair announced the tally, followed by the release of the vote in the EVS at the sound of the gavel. This process had been followed on each amendment vote for H.R. 3161, and all other votes that I have ever seen as an assistant tally clerk, and ever since I started working for the Clerk of the House on the House floor in 1999. After the eleventh vote in the Committee of the Whole House, the Committee rose, and the House

proceeded to vote on the Motion to Recommit, offered by Rep. Jerry Lewis (CA)—(roll call 814). Just like any other roll call vote, I started the EVS after the Chair announced the motion on which Members were voting on, and entered names of Members who used well-cards to vote yea or nay. Toward the end of the vote, as always, the Chair announced in the House, ***"Are there any Members wishing to vote?"*** Then, the Chair proceeded and asked, ***"Are there any Members wishing to change their vote?"*** This announcement prompted some Members to change their vote on roll call 814. My co-worker, Kevin Hanrahan, handed me well-cards of Members who wanted to change their vote. Of these, were Ms. Ros-Lehtinen, Mr. Lincoln Diaz-Balart, and Mr. Mario Diaz-Balart. I entered Ms. Ros-Lehtinen, the EVS showed that Ms. Ros-Lehtinen had voted nay, but she wanted to change her vote from nay to yea. I changed it. I entered Mr. Lincoln Diaz-Balart, and, the EVS showed that Mr. Lincoln Diaz-Balart had voted nay, but he wanted to change his vote from nay to yea. I changed it. As I began entering Mr. Mario Diaz-Balart's name into the EVS, I overheard the Chair announced the tally and gavel down the vote without any indication from the Parliamentarian that we were ready to close the vote, and without the tally sheet from my tally clerk partner, Kevin Hanrahan. **We have never closed down a vote when there was an up-tick in the tally, or when Members who have turned in a well-card wanted to vote, or wanted to**

change their vote. After the announcement of the tally and the gaveling down of the vote, the Parliamentarian, John Sullivan, asked me, ***"De'Andre, are you going to close down the vote?"*** I responded, ***"John, I have one more card, and I will after I enter it."*** Having heard the Chair announce the tally and gavel down the vote; And after I had entered names of Members who turned in well-cards into the EVS (following Mr. Mario Diaz-Balart's), I hurried to shut down the vote. I followed all the steps I usually do when closing a vote—closed voting stations (first step), terminated the vote (second step), finalized the vote (third step), released the vote (fourth step) [{SIDE NOTE}--This is the step that puts the word "FINAL" on the display boards in the House only after the Chair has announced the tally by which the amendment or motion has passed or failed; verifying to the seated tally clerk that what the Chair is reading matches the tally in the EVS—NOT the third step, which is finalizing the vote] ***{--NOTE--I want to make sure that everyone understands that distinction because that is a very important differentiation in the process—Finalizing the vote(the third step) is very different from having the word "FINAL" appear on the display boards after the tally has been announced}.*** Then, I got to the fifth step of the process (the last step-which is "are you sure you want to release the vote?") and I could not release the vote, which in-turn releases the display boards in the House. I clicked, and clicked, and

clicked again, and could not release the display. After about 5-10 seconds of trying to release the boards, more Members came to the Well of the House to vote and submitted well-cards. Kevin Hanrahan handed me the cards of Members who wanted to change their vote. These Members were Mr. Space, Ms. Gillibrand, and Mr. McNerny. Before entering these three well-votes, I asked John Sullivan, ***"Are we still open?"*** He responded, ***"De'Andre, we have bigger problems than that right now."*** ***Since I did not receive any direction on whether to go forward with inputting Members' vote into the EVS, I continued to do my job, as the seated tally clerk, which is to enter names of Members using well-cards when the cards are placed in front of me***. I went back to the well-voting screen to enter these three names. I entered Mr. Space, the EVS showed that Mr. Space had voted yea, but he wanted to change his vote from yea to nay. I changed it. I entered Ms. Gillibrand, and, the EVS showed that Ms. Gillibrand had voted yea, but she wanted to change her vote from yea to nay. I changed it. And, I entered Mr. McNerny, and the EVS showed that Mr. McNerny had voted yea, but he wanted to change his vote from yea to nay. I changed it. The EVS allowed me to use all other functions of the system for the next 10 to 15 minutes. During that span of time, Mr. Hoyer and Mr. Boehner submitted well-cards to the tally clerks at the rostrum. Before entering these names, I asked John Sullivan, ***"What***

are we doing?" (Meaning—are we still taking votes?) John responded, ***"Hold on."*** Others from the Parliamentarian's office also told me to hold off on entering these two Members since we were waiting on a decision regarding roll call 814. However, I checked to see if these two Members had voted, and I noticed that Mr. Hoyer had already voted nay, which made his well-vote a duplicate of his prior vote for roll call 814. Mr. Boehner had voted yea, but he wanted to change his vote from yea to nay. But, as instructed, I held off on in-putting any more Members' vote into the EVS until I got a decision on what to do with roll call 814. After waiting for about 5 minutes, Ed Sorensten, deputy Clerk of the House, came up to the rostrum and asked me, ***"what are we going to do with this vote? Are we going to abort it?"*** I told him, ***"I don't know, you'll have to ask John Sullivan, we're waiting for him."*** Ed then left me to talk with people who work for the Parliamentarian's office. After waiting for another 5 to 10 minutes, Ed came back to me with a decision to abort roll call 814 and move to reconsider the vote. I had never aborted a vote, and nor had any of my tally clerk colleagues (within the regular order of business) in their 25-30 years of experience of working for the Clerk of the House. So, Mr. Sorensten leaned over my shoulder and gave me step-by-step instructions on aborting roll call 814. We aborted the vote, and inserted the motion to reconsider offered by Mr. Hoyer.